

RESOLUTION NUMBER 07-13

RESOLUTION APPROVING A CONTRACT FOR REFUSE AND RECYCLING COLLECTION SERVICE WITH WASTE MANAGEMENT AND THE VILLAGE OF EAST DUNDEE FOR WASTE SERVICES TO COMMENCE MARCH 1st, 2013 AND TERMINATING ON MARCH 1st, 2016.

WHEREAS, the Village of East Dundee is a home rule unit of local government under and pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, has the authority to exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the Village of East Dundee has solicited bids for refuse and recycling services in the Village of East Dundee for the River Haven Senior Housing Development; and

WHEREAS, the corporate authorities of the Village of East have reviewed the estimates submitted; and

WHEREAS, the corporate authorities of the Village of East Dundee have determined that it is necessary and desirable to enter into an agreement for waste and recycling services with Waste Management commencing on March 1, 2013 and terminating on March 1, 2016 unless either party gives the other written notice of termination at least ninety (90) day in advance; and

WHEREAS, the Village will enter into the contract but the developer is responsible for the monthly cost for the first six months commencing March 1, 2013 after which date the Village will take over paying for garbage collection for the remaining contract length.

WHEREAS, the corporate authorities of the Village of East Dundee have determined that it is necessary and desirable for the Village of East Dundee to enter into an Agreement with Waste Management pursuant to the terms set forth in the agreement attached hereto.

NOW THEREFORE BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, KANE AND COOK COUNTIES, ILLINOIS, AS FOLLOWS:

Section One. That the Village of East Dundee hereby approves the contract with Waste Management and the Village President is hereby authorized to sign, and the Village Clerk is authorized to attest to the execution of the agreement for waste and recycling services pursuant to the terms of the agreement attached hereto.

Section Two. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section Three. Repeal. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Adopted this 4 day of February, 2013, pursuant to a roll call vote as follows:

AYES: Trustees Geman, Lynam, Skillicorn, Miller, VanOstenbodge and President Bartels

NAYES: 0

ABSENT:

Trustee Ruffalo

Approved by me this 4th day of February, 2013.

Jerald Bartels
JERALD BARTELS, President

ATTEST:

Heather Maieritsch
Heather Maieritsch, Deputy Village Clerk

Recorded in the Village Records on February 4th, 2013.



Waste Management
780 N. Kirk Road
Batavia, IL 60510
(630) 761-2832

**Commercial
SERVICE AGREEMENT
NON-HAZARDOUS WASTES**

SIC Code 6531
Type of Business _____

WM AGREEMENT# _____
CUSTOMER ACCT# 102-
ACCT. NAME Gardiner Place
SERV. ADDR 251 River Haven Drive
CITY, ST ZIP East Dundee, IL 60118
COUNTY/Parish _____
TEL# 630.788.4758 FAX _____
CONTACT Bryan Fellhauer
E-MAIL _____

REASON CODE NBG
EFFECTIVE DATE 3.1.2013 LAST API DATE _____
BILL. NAME Village of East Dundee
BILL. ADDR 120 Barrington Ave
CITY, ST Zip East Dundee, IL 60118
COUNTY/Parish _____
TEL# 847-426-2822 FAX _____
CONTACT Heather Maieritsch
E-MAIL HMaieritsch@eastdundee.net

EQUIPMENT/SERVICE SPECIFICATIONS -

NEW Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route No.							Charge(s)*	
									M	T	W	Th	F	S	S		
		4	2FL	x	x		2xw		x				x				\$ 245.00 /mth
		2	2FY	x	x		1xw						x				\$ 50.00 /mth
																	\$ /mth
																	\$ /mth

Enter Map Code/ Driver Notes/Cross Roads/Container Description Here Total \$ / mth

OLD Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route No.							Charge(s)*	
									M	T	W	Th	F	S	S		
																	\$ /mth
																	\$ /mth
																	\$ /mth
																	\$ /mth

To be completed, if applicable. Any blanks or unfilled or unmarked boxes or spaces shall be deemed to be inapplicable and not effect the validity of this Agreement:

Container pull/push out required?	No (Yes/No)	* A fuel surcharge and environmental cost recovery charge, calculated as a percentage of the Charge(s), will be included on your Invoice. Information about the Fuel/ Environmental Charge can be found on our website at www.wm.com under billing inquiry. State and Local taxes, if applicable, will also be added to the Charges.	Total \$ / mth	
Container behind gate or enclosure?	No (Yes/No)		if applicable to your account the Recycle Material Offset fee (RMO/RML) may vary from month to month based on the recyclable material commodity market conditions. The charge printed on this agreement represents the current fee and market conditions.	Net Change \$ / mth
Customer's Waste Materials does not exceed an average weight of	[] lbs/yard			

Other applicable service terms (including Waste Material composition): Delivery on 3.1.2013 - place 2 trash containers in each side of building and 1 recycle container in each side of building.

CUSTOMER DEPOSIT		
P.O. NUMBER		
JOB NUMBER		
RECEIPT REQUIRED?	No (Yes/No)	BILL TO ACCT #
TAXABLE	No (Yes/No)	DISPOSAL SITE

THE UNDERSIGNED INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CUSTOMER ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE SECOND PAGE, AND THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF THE CUSTOMER.

--TERMS: DUE UPON RECEIPT--

CUSTOMER	Gardiner Place		
AUTHORIZED SIGNATURE	<i>[Signature]</i>		
TITLE	Village President	DATE	3/24/2013
NAME (PRINT OR TYPE)			
COMPANY	Waste Management		
AUTHORIZED SIGNATURE			
SALESPERSON	Mark Leys	DATE	

SCHEDULE OF CHARGES* AS REQUIRED	
Container Usage Fee	\$ / Month
Locks	\$ / Install
Overage Charge	\$ / yard, min 2 yard charge
Extra Pickup Charges *****	
Per Lift	\$
Per Yard	\$
Delivery Charge	\$
Container Exchange Charge	\$
Trip Charge (Unable to Service)	\$
Removal Fee	\$
Customer Service Assisted Payment Charge	\$
Franchise Fee	\$
Administrative Fee	\$ / Invoice



SERVICE AGREEMENT NON-HAZARDOUS WASTES

Commercial Service Agreement Terms And Conditions

1. SERVICES RENDERED; WASTE MATERIALS. Customer grants to Company the exclusive right, and Company shall furnish equipment and services, to collect and dispose of and/or recycle all of Customer's Waste Materials. Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous solid waste and Recyclable Materials generated by Customer or at Customer's Service Address. Waste Materials includes Special Waste, such as Industrial process wastes, asbestos-containing material, petroleum contaminated soils, treated/de-characterized wastes, and demolition debris, but Customer shall complete a Waste Profile for such Special Waste which has been approved by Company in writing. Recyclable Materials shall include any type of material that can be recycled or recovered whether separated or not separated from other Waste Materials prior to collection. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, 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 Special Waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Material shall remain with Customer at all times. Title to Waste Materials provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or applicable law.

2. TERM. The term ("Term") of this Agreement is thirty-six (36) months from the Effective Date set forth above ("Initial Term"), which shall automatically renew thereafter for additional terms of thirty-six (36) months each ("Renewal Term") unless either party gives to the other party written notice (See Section 10(e)) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.

3. SERVICES GUARANTY; CUSTOMER TERMINATION. If the Company fails to perform the services described within five business days of its receipt of a written demand from Customer (See Section 10(e)), Customer may terminate this Agreement with the payment of all monies due through the termination date. If Company increases the Charges payable by Customer hereunder for reasons other than as set forth in Section 4 below, Customer shall have the right to terminate this Agreement by written notice to the Company no later than thirty (30) days after Company notifies Customer of such increase in Charges in writing. If Customer so notifies Company of its termination of this Agreement, such termination shall be of no force and effect if Company withdraws or removes such increase within fifteen (15) days after Customer provides timely notification of termination. Absent such termination, the increased Charges shall be binding and enforceable against Customer under this Agreement for the remaining Term.

4. CHARGES; PAYMENTS; ADJUSTMENTS. Upon receipt of an invoice, Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the Charges on the first page, as it may be adjusted over the term of this Agreement as noted herein (the "Charges"). Company reserves the right to increase the Charges payable by Customer during the Term: (a) for any changes or modifications to, or differences between, the actual equipment and services provided by Company to Customer and the agreed upon Equipment/Service specifications on the first page, (b) any change in the composition of the Waste Materials or if the average weight per yard of Customer's Waste Materials exceeds the amount specified on the first page; (c) for any increase in or other modification to its fuel or environmental cost recovery charges; (d) to cover any increases in disposal and/or third party transportation costs; (e) to cover increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges or acts of God such as floods, fires, hurricanes and natural disasters; and (f) no more often than annually from the Effective Date (or if specified on the first page, Customer's Last API Date) for increases in the Consumer Price Index plus four percent of the then current Charges. Any increase in Charges enumerated in clauses (a) through (e) above may include an amount for Company's operating or gross profit margin. Company also reserves the right to charge Customer additional fees if the following additional services are provided to Customer: Administrative Fee, Enclosure Charge, Services on High Demand Days, Pull/Push Out Services, Container Relocation Fee, or Seasonal Restart Fee. In the event Company adjusts the Charges as provided in this Section 4, Customer and Company agree that this Agreement as so adjusted will continue in full force and effect for the remaining Term.

Any Customer Invoice balance not paid within thirty (30) 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.

5. CHANGES. Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment, may be agreed to orally, in writing, by payment of the invoice or by the actions and practices of the parties. If Customer changes its Service Address during the Term, this Agreement shall remain valid and enforceable with respect to services rendered at Customer's new service location if such location is within Company's service area.

6. EQUIPMENT, ACCESS. All equipment furnished by Company shall remain the property of Company; however, Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unobstructed access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modifications caused by or resulting from Customer's failure to provide access. Customer warrants that Customer's property is sufficient to bear the weight of Company's equipment and vehicles and that Company shall not be responsible for any damage to the Customer's property resulting from the provision of services.

7. LIQUIDATED DAMAGES. In the event Customer terminates this Agreement prior to the expiration of the Term for any reason other than as set forth in Section 3, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages in addition to the Company's legal fees: (a) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly Charges multiplied by six; (b) if the remaining Initial Term under this Agreement is less than six months, Customer shall pay its most recent monthly Charges multiplied by the number of months remaining in the Term; (c) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly Charges multiplied by three; or (d) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly Charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Customer shall pay liquidated damages of \$100 for every Customer waste tire that is found at the disposal facility.

8. INDEMNITY. The Company agrees to indemnify, defend and save Customer 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, negligent omission or willful misconduct of the Company or its employees, which occurs (a) during the collection or transportation of Customer's Waste Materials, or (b) as a result of the disposal of Customer's Waste Materials in a facility owned by the Company or a subsidiary of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company 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 Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company.

Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

9. 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.

10. 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, 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 agreements, whether written or oral, that may exist between the parties. (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided. (e) All written notification to Company required by this Agreement shall be by Certified Mail, Return Receipt Requested. (f) Any blanks or unfilled or unmarked boxes or spaces on this first page shall be deemed to be inapplicable and not affect the validity of this Agreement. (g) 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. (h) In the event the Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay the Company's attorneys' fees and court costs.



Waste Management
780 N. Kirk Road
Batavia, IL 60510
(630) 761-2832

**Commercial
SERVICE AGREEMENT
NON-HAZARDOUS WASTES**

SIC Code 8531
Type of Business _____

WM AGREEMENT# _____
CUSTOMER ACCT# 102-
ACCT. NAME Gardiner Place
SERV. ADDR 251 River Haven Drive
CITY, ST ZIP East Dundee, IL 60118
COUNTY/Parish _____
TEL # 630.788.4758 FAX _____
CONTACT Bryan Fellhauer
E-MAIL _____

REASON CODE NEG
EFFECTIVE DATE 3.1.2013 LAST API DATE _____
BILL. NAME Village of East Dundee
BILL. ADDR 120 Barrington Ave
CITY, ST ZIP East Dundee, IL 60118
COUNTY/Parish _____
TEL # 847-426-2822 FAX _____
CONTACT Heather Maleritech
E-MAIL HMaleritech@eastdundee.net

EQUIPMENT/SERVICE SPECIFICATIONS -

NEW Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route No.							Charge(s)*
									M	T	W	Th	F	S	S	
		4	2FL	x	x		2xw		x			x				\$ 245.00 /mth
		2	2FY	x	x		1xw				x					\$ 50.00 /mth
																\$ /mth
																\$ /mth

Enter Map Code/ Driver Notes/Cross Roads/Container Description Here Total \$ / mth

OLD Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route No.							Charge(s)*
									M	T	W	Th	F	S	S	
																\$ / mth
																\$ / mth
																\$ / mth
																\$ / mth

To be completed, if applicable. Any blanks or unfilled or unmarked boxes or spaces shall be deemed to be inapplicable and not affect the validity of this Agreement:		* A fuel surcharge and environmental cost recovery charge, calculated as a percentage of the Charge(s), will be included on your invoice. Information about the Fuel/ Environmental Charge can be found on our website at www.wm.com under billing inquiry. State and Local taxes, if applicable, will also be added to the Charges.	Total \$ / mth
Container pull/push out required?	No (Yes/No)		
Container behind gate or enclosure?	No (Yes/No)	If applicable to your account the Recycle Material Offset fee (RMO/RML) may vary from month to month based on the recyclable material commodity market conditions. The charge printed on this agreement represents the current fee and market conditions.	
Customer's Waste Materials does not exceed an average weight of	[] lbs/yard		

Other applicable service terms (including Waste Material composition): Delivery on 3.1.2013 - place 2 trash containers in each side of building and 1 recycle container in each side of building.

CUSTOMER DEPOSIT	
P.O. NUMBER	
JOB NUMBER	
RECEIPT REQUIRED?	No (Yes/No)
TAXABLE	No (Yes/No)
	BILL TO ACCT #
	DISPOSAL SITE

THE UNDERSIGNED INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CUSTOMER ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE SECOND PAGE, AND THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF THE CUSTOMER.
--TERMS: DUE UPON RECEIPT--

CUSTOMER	Gardiner Place		
AUTHORIZED SIGNATURE	<i>[Signature]</i>		
TITLE	Village President	DATE	3/24/2013
NAME (PRINT OR TYPE)			
COMPANY	Waste Management		
AUTHORIZED SIGNATURE	<i>[Signature]</i>		
SALESPERSON	Mark Leys	DATE	2/11/13

SCHEDULE OF CHARGES* AS REQUIRED	
Container Usage Fee	\$ / Month
Locks	\$ / install
Overage Charge	\$ / yard, min 2 yard charge
Extra Pickup Charges	
	Per Lift
	Per Yard
Delivery Charge	\$
Container Exchange Charge	\$
Trip Charge (Unable to Service)	\$
Removal Fee	\$
Customer Service Assisted Payment Charge	\$
Franchise Fee	\$
Administrative Fee	\$ / Invoice



SERVICE AGREEMENT NON-HAZARDOUS WASTES

Commercial Service Agreement Terms And Conditions

1. SERVICES RENDERED; WASTE MATERIALS. Customer grants to Company the exclusive right, and Company shall furnish equipment and services, to collect and dispose of and/or recycle all of Customer's Waste Materials. Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous solid waste and Recyclable Materials generated by Customer or at Customer's Service Address. Waste Materials includes Special Waste, such as industrial process wastes, asbestos-containing material, petroleum contaminated soils, treated/de-characterized wastes, and demolition debris, but Customer shall complete a Waste Profile for such Special Waste which has been approved by Company in writing. Recyclable Materials shall include any type of material that can be recycled or recovered whether separated or not separated from other Waste Materials prior to collection. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any waste that is radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, 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 Special Waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Material shall remain with Customer at all times. Title to Waste Materials provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or applicable law.

2. TERM. The term ("Term") of this Agreement is thirty-six (36) months from the Effective Date set forth above ("Initial Term"), which shall automatically renew thereafter for additional terms of thirty-six (36) months each ("Renewal Term") unless either party gives to the other party written notice (See Section 10(e)) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.

3. SERVICES GUARANTY; CUSTOMER TERMINATION. If the Company fails to perform the services described within five business days of its receipt of a written demand from Customer (See Section 10(e)), Customer may terminate this Agreement with the payment of all monies due through the termination date. If Company increases the Charges payable by Customer hereunder for reasons other than as set forth in Section 4 below, Customer shall have the right to terminate this Agreement by written notice to the Company no later than thirty (30) days after Company notifies Customer of such increase in Charges in writing. If Customer so notifies Company of its termination of this Agreement, such termination shall be of no force and effect if Company withdraws or removes such increase within fifteen (15) days after Customer provides timely notification of termination. Absent such termination, the increased Charges shall be binding and enforceable against Customer under this Agreement for the remaining Term.

4. CHARGES; PAYMENTS; ADJUSTMENTS. Upon receipt of an invoice, Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the Charges on the first page, as it may be adjusted over the term of this Agreement as noted herein (the "Charges"). Company reserves the right to increase the Charges payable by Customer during the Term: (a) for any changes or modifications to, or differences between, the actual equipment and services provided by Company to Customer and the agreed upon Equipment/Service specifications on the first page; (b) any change in the composition of the Waste Materials or if the average weight per yard of Customer's Waste Materials exceeds the amount specified on the first page; (c) for any increase in or other modification to its fuel or environmental cost recovery charges; (d) to cover any increases in disposal and/or third party transportation costs; (e) to cover increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges or acts of God such as floods, fires, hurricanes and natural disasters; and (f) no more often than annually from the Effective Date (or if specified on the first page, Customer's Last API Date) for increases in the Consumer Price Index plus four percent of the then current Charges. Any increase in Charges enumerated in clauses (a) through (e) above may include an amount for Company's operating or gross profit margin. Company also reserves the right to charge Customer additional fees if the following additional services are provided to Customer: Administrative Fee, Enclosure Charge, Services on High Demand Days, Pull/Push Out Services, Container Relocation Fee, or Seasonal Restart Fee. In the event Customer adjusts the Charges as provided in this Section 4, Customer and Company agree that this Agreement as so adjusted will continue in full force and effect for the remaining Term.

Any Customer invoice balance not paid within thirty (30) 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.

5. CHANGES. Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment, may be agreed to orally. In writing, by payment of the invoice or by the actions and practices of the parties. If Customer changes its Service Address during the Term, this Agreement shall remain valid and enforceable with respect to services rendered at Customer's new service location if such location is within Company's service area.

Comm L&A II, version:02/2008

6. EQUIPMENT, ACCESS. All equipment furnished by Company shall remain the property of Company; however, Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unobstructed access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modifications caused by or resulting from Customer's failure to provide access. Customer warrants that Customer's property is sufficient to bear the weight of Company's equipment and vehicles and that Company shall not be responsible for any damage to the Customer's property resulting from the provision of services.

7. LIQUIDATED DAMAGES. In the event Customer terminates this Agreement prior to the expiration of the Term for any reason other than as set forth in Section 3, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages in addition to the Company's legal fees: (a) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly Charges multiplied by six; (b) if the remaining Initial Term under this Agreement is less than six months, Customer shall pay its most recent monthly Charges multiplied by the number of months remaining in the Term; (c) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly Charges multiplied by three; or (d) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly Charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Customer shall pay liquidated damages of \$100 for every Customer waste tire that is found at the disposal facility.

8. INDEMNITY. The Company agrees to indemnify, defend and save Customer 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, negligent omission or willful misconduct of the Company or its employees, which occurs (a) during the collection or transportation of Customer's Waste Materials, or (b) as a result of the disposal of Customer's Waste Materials in a facility owned by the Company or a subsidiary of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company 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 Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company.

Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

9. 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.

10. 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, 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 agreements, whether written or oral, that may exist between the parties. (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided. (e) All written notification to Company required by this Agreement shall be by Certified Mail, Return Receipt Requested. (f) Any blanks or unfilled or unmarked boxes or spaces on this first page shall be deemed to be inapplicable and not affect the validity of this Agreement. (g) 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. (h) In the event the Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay the Company's attorneys' fees and court costs.