

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of:

Waste Management v. Office of
Adjutant General

(Contract Controversy)

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2014-111

POSTING DATE: June 24, 2014

MAILING DATE: June 24, 2014

This matter is before the Chief Procurement Officer pursuant to a request for resolution of a contract controversy under S.C. Code Ann. § 11-35-4230 (2011). By letter of March 20, 2014, Waste Management “protested” termination of its contract with the Office of Adjutant General dated March 9, 2009.¹ The CPO held a hearing on April 3, 2014. On April 22, 2014, the CPO requested Waste Management (WM) furnish additional information regarding its claim. WM replied by letter dated May 16, 2014. The CPO issues this decision based upon information and documents submitted at the hearing and subsequently and upon the procurement file.

FINDINGS OF FACT

For several years, the Office of the Adjutant General (OAG) issued purchase orders for solid waste disposal, treating those services as a utility exempt from the Procurement Code. Among the agreements for cartage was a “frontload” contract with Waste Management. It bears an effective date of March 9, 2009. [Exhibit 2] The frontload contract renews annually on its anniversary date unless earlier terminated.

Ginny Morgan became OAG procurement director in April, 2010. Upon reviewing the cartage purchase orders, Ms. Morgan realized they had been awarded in violation of law. Ms. Morgan requested the State Procurement Office issue an IFB for Richland County waste disposal

¹ WM’s letter included a claim under a second contract with OAG. At the hearing, WM acknowledged that the termination of the second contract was proper and withdrew its claim for that agreement.

services. Richard Edmondson was the procurement officer who administered the solicitation for SPO. He posted IFB No. 5400006249 on June 19, 2013.

According to a report generated by the South Carolina Enterprise Information System (SCEIS), Mr. Edmondson caused automated email notice of the Richland County solicitation to be sent to registered vendors on June 20, 2013. [Exhibit 4] The list of recipients included four addresses for WM employees. WM admitted at the hearing before the CPO that at least one of these addresses is currently valid.

On July 13, 2013, Ms. Morgan sent a memo to all current cartage vendors notifying them of the illegality. [Exhibit 1] The memo provided:

You have received this notification because your company currently provides solid waste pick up services for the Adjutant General's Office. For many years, solid waste pick up was treated as a utility service by our agency. As a result, bids were not obtained as they should have been, as dictated by South Carolina law. To rectify this problem, bids will be solicited for all solid waste pick up services over the next few months. Each solicitation for bids will be by county. As the lowest most responsible and responsive bidder is identified for each county, arrangements will be made at each facility regarding a vendor change if necessary. A solicitation for all of our Richland county facilities is currently posted by the Materials Management Office and will close on July 29, 2013.

According to US Postal Service records, WM received three of these notices at its office in Atlanta, Georgia, on July 20, 2013. [Exhibit 5] WM did not submit a bid in response to the IFB.

SPO awarded the contract for Richland County to Allwaste Services, Inc., by notice posted October 31, 2013. Because of an unrelated protest and appeal, the award was suspended and reinstated on March 12, 2014. Sometime between March 12 and March 20, 2014, OAG notified a driver for WM that the contract was terminated and that WM must remove its equipment from OAG's property. [WM Request for Resolution] On March 20, 2014, WM filed its request for resolution.

The frontload contract provides:

7. LIQUIDATED DAMAGES: In the event Customer terminates this Agreement prior to the expiration of any term for any reason other than a default by Company, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages [...]: ... 3) if the remaining Renewal Term under this Agreement is three or more months, customer shall pay is most recent monthly charges multiplied by three.... 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....

It also included automatic renewal provisions and a "Right of First Refusal." [Exhibit 2] WM presented its latest invoice for the frontload contract, dated March 1, 2014. Current charges for that invoice total \$7,997.74. [Exhibit 3]

CONCLUSIONS OF LAW

Subject to exceptions and exemptions not pertinent to this case, the Code applies "to every procurement or expenditure of funds by this State under contract acting through a governmental body...." Code § 11-35-40(2). The Code defines "procurement" as "buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction." Code § 11-35-310(24). The Code defines "services" to include "the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance." Code § 11-35-310(29). Waste disposal services are plainly within this definition. As OAG was acquiring services under contract, its purchase of waste disposal services was subject to the Code and should have been competitively procured. Since it was not competed, the frontload contract was awarded in violation of law.

S.C. Code Ann. Regulation 19-445.2015 deals with contracts awarded in violation of law.

It provides in pertinent part:

A. Upon finding after award that a State employee has made an unauthorized award of a contract or that a contract award is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance

with this section. The contract may be terminated and reasonable termination costs, if any, may be awarded as provided in this section....

C. Except as provided in subsection D,² if a contract is terminated pursuant to subsection A, the State shall, where possible and by agreement with the supplier, return the supplies delivered for a refund at no cost to the State or at a minimal restocking charge. If a termination claim is made, settlement shall be made in accordance with the contract.

The facts and circumstances surrounding OAG's issuance of purchase orders for cartage services are unclear, since the personnel responsible are no longer with the agency. The new procurement director has taken appropriate steps to assure that all subsequent contracts will be competed. As the personnel responsible for the unauthorized contracts have left or retired, no action will be taken against them.

The CPO finds that the frontload contract should be terminated pursuant to Reg. 19-445.2015(A), effective as of the date OAG notified WM to remove its equipment.

By the terms of the frontload contract, it renewed for a one-year term on March 9, 2013. The earliest notice to WM that the frontload contract would be terminated was June 20, 2014, when SPO posted the invitation for bids to replace that contract. That date is more than three months prior to the end of the renewal term. As required by Reg. 19-445.2015(C), "in accordance with the contract," WM's settlement claim is three times its most recent invoice.

DETERMINATION

For the foregoing reasons, the CPO orders:

The "frontload contract" between Waste management and the Office of the Adjutant General is terminated pursuant to Reg. 19-445.2015(A); and

The Office of the Adjutant General shall pay to Waste Management, in settlement of Waste Management's termination, the sum of \$23,993.22.

² Subsection D applies where there is a finding the contractor acted in bad faith. There is no such allegation here.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

6/24/14

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2013 General Appropriations Act, “[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing.” PLEASE MAKE YOUR CHECK PAYABLE TO THE “SC PROCUREMENT REVIEW PANEL.”

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.



SOUTH ATLANTIC AREA

1047 Highway Church Road
Elgin, SC 29045
(803) 788-3054
(803) 736-0995 Fax

March 20, 2014

Richard Edmondson, CPPB
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Solicitation Number 5400006249

This letter will serve as Waste Management of South Carolina, Inc.'s protest with respect to the termination of its existing contracts with the Adjutant General of SC. Specifically, Waste Management has two existing contracts with the Adjutant General dated March 9, 2009 and October 21, 2010. Copies of these contracts are attached. Both contracts state that after the initial term, the contracts will extend for additional terms of 12 months unless one party notifies the other at least ninety days prior to the expiration of the existing term.

Waste Management has received no notice of termination. We learned through one of our drivers that the Adjutant General had placed these services out to bid last year and planned to award the work to a different hauler. This information was confirmed through your procurement office yesterday, although we still have received no formal notice of termination.

Waste Management believes that it has two existing agreements in place with the Adjutant General which cannot be terminated except through the procedures set forth in the agreements. Since these procedures have not been followed, Waste Management contends that it has the right to continue to provide service under these Agreements through March 9, 2015 and October 21, 2014.

If the Adjutant General does not wish to continue Waste Management's services through these dates, there are liquidated damages provisions specified in the contracts which will apply. Waste Management's preference is to continue providing service to the Adjutant General, but we will accept the payment of the liquidated damages if that is your preference.

For questions or further discussion regarding this matter, please contact me at the following telephone number, 803-744-3351.

Sincerely,

A handwritten signature in black ink that reads "Sumner Zolecki". The signature is written in a cursive style.

Sumner Zolecki
Territory Manager

Enc.



Waste Management
1047 Highway Church
Elgin, SC 29045-
803-419-4916
803-788-9110

Commercial
SERVICE AGREEMENT
NON-HAZARDOUS WASTES

SIC Code _____
Type of Business _____

WM AGREEMENT# _____
CUSTOMER ACCT# 800-1432
ACCT. NAME ADJUTANT GENERAL OF SC
SERV. ADDR 5401 LEESBURG RD
CITY, ST ZIP HOPKINS, SC 29061
COUNTY/Parish 01
TEL # 803-806-2226 FAX 803-806-1777
CONTACT CURTIS HALLIMAN
E-MAIL _____

REASON CODE INF USA
EFFECTIVE DATE 3/9/09
BILL. NAME R.L. MCCRADY TRAINING CENTER
BILL. ADDR 1 NATIONAL GUARD
CITY, ST Zip COLUMBIA, SC 29201
COUNTY/Parish _____
TEL # 803-806-4227 FAX 803-806-1777
CONTACT LYNNE AMICK
E-MAIL AmickLF@tag.scmd.state.sc.us

EQUIPMENT/SERVICE SPECIFICATIONS -

Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route No.							Charge(s)*	
									M	T	W	Th	F	S	S		
	FL	22	6YD				ZX		X				X				\$ 3678.00+F /mth.
																	\$ /mth.
																	\$ /mth.
																	\$ /mth.

Enter Map Code/ Driver Notes/Cross Roads/Container Description Here Total \$ 3678.00 / Mth.

Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route No.							Charge(s)*	
									M	T	W	Th	F	S	S		
	FL	8	6YD				1X						X				\$ 3411.41+F / mth.
	FL	14	6YD				ZX		X			X					\$ / mth.
																	\$ / mth.
																	\$ / mth.

* A fuel surcharge and environmental compliance 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. Total \$ 3411.41 / Mth.
Net Charge \$ 266.58 / Mth

Enter Special Instructions Here

CUSTOMER DEPOSIT	\$	
P.O. NUMBER	1300	
JOB NUMBER		
RECEIPT REQUIRED?	<input type="checkbox"/> (Yes/No)	BILL TO ACCT #
TAXABLE	<input type="checkbox"/> (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 REVERSE SIDE, AND THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF THE CUSTOMER.
-TERMS: DUE UPON RECEIPT-

CUSTOMER	X
AUTHORIZED SIGNATURE	X See attached
TITLE	X DATE: X
NAME/PRINT OR TYPE	X
COMPANY	Waste Management
AUTHORIZED SIGNATURE	Vanessa Strembeck
TERRITORY	45 DATE: 3/10/09

SCHEDULE OF CHARGES AS REQUIRED *	
Container Usage Fee	\$35.00 N/A
Locks	\$60.00/mth N/A
Overage Charge	\$ N/A / Install
Extra Pickup Charges	\$ N/A / yard, min 2 yard charge
Per Lift	\$ 80.00 only if needed
Per Yard	\$ N/A
Delivery Charge	\$60.00
Container Exchange Charge	\$60.00
Trip Charge (Unable to Service)	\$400.00 N/A
Removal Fee	\$ 50.00
Customer Service Assisted Payment Charge	\$ N/A
	\$
	\$
	\$

Contract Review 247
Initial LA
Date 3-6-09

ELSA version:08/06



**SERVICE AGREEMENT
NON-HAZARDOUS WASTES**

**Collection 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 putrescible and non-putrescible 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/side-characterized wastes, and demolition debris, provided that Customer has completed a Waste Profile for such Special Waste which has been approved by Company in writing. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any waste sites, 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.

2. **TERM.** The initial term ("Term") of this Agreement is thirty-six (36) months from the Effective Date set forth above ("Initial Term"). This Agreement shall automatically renew thereafter for additional terms of twelve (12) months each ("Renewal Term") unless either party gives to the other party written notice (See Section 10) 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.** 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), Customer may terminate this Agreement with the payment of all monies due through the termination date.

4. **CHARGES; PAYMENTS; ADJUSTMENTS.** Upon receipt of the invoice, Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the charges on the reverse side, or as adjusted over the term of the contract as noted herein. Company reserves the right to charge a late fee no greater than that allowed by law on balances not paid within thirty (30) days of the date of the invoice. Company may increase the charges: to address any increase in or to recoup all or any portion of, fuel or environmental compliance costs; to address any change in the composition of the Waste Materials or increase in the average weight per container of Waste Materials; to address 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, natural disasters, etc. Company may also increase the charges to reflect increases in disposal and/or transportation costs and increases in the Consumer Price Index for the municipal or regional area in which the Service Address is located. Increases in charges for reasons other than as provided above require the consent of Customer which may be received verbally, in writing, by payment of the invoice or by the actions and practices of the parties. Company reserves the right to charge an additional fee if the following additional services are provided to Customer: Enclosure Charge, Services on High Demand Days, Pull/Push Out Services, Container Relocation Fee, or Seasonal Restart Fee. Company reserves the right to charge a fee no greater than that allowed by law on all Customer checks returned for insufficient funds.

5. **CHANGES.** Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties. If Customer changes its service address during the term of this Agreement, 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. Company shall not be responsible for any damage to Customer's property, including pavement, subsurface or curbing, resulting from Company's

provision of services hereunder. Customer warrants that Customer's right of way is sufficient to bear the weight of Company's equipment and vehicles.

7. **LIQUIDATED DAMAGES.** In the event Customer terminates this Agreement prior to the expiration of any term for any reason other than a default by Company, 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: 1) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly charges multiplied by six; 2) 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; 3) 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 4) 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. Company shall not be liable under any circumstances for any special, incidental or consequential damages arising out of or in connection with performance of this Agreement. Customer shall pay liquidated damages of \$100 for every Customer waste site 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 (1) during the collection or transportation of Customer's Waste Materials, or (2) as a result of the disposal of Customer's Waste Materials, after the date of this Agreement, in a facility owned by 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; and (e) All written notification to Company required by this Agreement shall be by Certified Mail, Return Receipt Requested. 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. 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.



**SERVICE AGREEMENT
NON-HAZARDOUS WASTE**

**Call for Service Agreement
Form WMA-000000**

1. **DEFINITIONS AND SCOPE OF SERVICE.** Customer agrees to provide the...
2. **TERMS.** This Agreement shall be in full force and effect...
3. **ASSIGNMENT.** Customer agrees to assign the...
4. **LIABILITY.** Customer agrees to be liable for...
5. **FORCE MAJEURE.** This Agreement shall be...
6. **ASSIGNMENT.** Customer agrees to assign the...
7. **ASSIGNMENT.** Customer agrees to assign the...

8. **ASSIGNMENT.** Customer agrees to assign the...
9. **ASSIGNMENT.** Customer agrees to assign the...
10. **ASSIGNMENT.** Customer agrees to assign the...
11. **ASSIGNMENT.** Customer agrees to assign the...
12. **ASSIGNMENT.** Customer agrees to assign the...
13. **ASSIGNMENT.** Customer agrees to assign the...
14. **ASSIGNMENT.** Customer agrees to assign the...
15. **ASSIGNMENT.** Customer agrees to assign the...
16. **ASSIGNMENT.** Customer agrees to assign the...
17. **ASSIGNMENT.** Customer agrees to assign the...
18. **ASSIGNMENT.** Customer agrees to assign the...
19. **ASSIGNMENT.** Customer agrees to assign the...
20. **ASSIGNMENT.** Customer agrees to assign the...

WMA-000000

8037899110 P.000

WASTE MANAGEMENT MAR-05-2009 13:43

8037899110 P.006

WASTE MANAGEMENT MAR-06-2009 13:43

20068



SERVICE AGREEMENT
NON HAZARDOUS WASTES

Customer Account Number:	800
Reason Code/T or P/Contract Terms:	NBW P 38
Effective Date:	10/21/10
Last API Date:	N/A
SIC Code (Primary):	8199-General
SIC Code (Secondary):	9 - PUBLIC SECTOR
Municipality Code:	NONE
County Code:	RICHLAND
Container Owned By:	WM
Composter Owned By:	N/A

Waste Management of Columbia
1047 Highway Church Road
Eglin, SC 29045

SERVICE NAME	ADJUTANT GENERAL OF SC	BILLING NAME	RL MCCREADY TRAINING CENTER
ADDRESS	6401 LEEBURG RD	ADDRESS	1 NATIONAL GUARD RD
CITY, ST, ZIP	HOPKINS, SC 29091	CITY, ST, ZIP	COLUMBIA, SC 29201
CONTACT	CURTIS HOLLOWAN	CONTACT	CURTIS
PHONE	803-806-2225	FAX	803-806-1777
E-MAIL		E-MAIL	

Master Acct #		Signed Ticket	
Job #		Disposal Site	UTT
POC		Deposit	
Approval & exp date		Enter Customer Type	RollOff

QTY	SIZE	FREQ	OG	M	T	W	TH	F	S	SU	LEAR, WHLS, LIDS	CHARGE(S)
1	30YD CAD	ON CALL										\$ 90.00 PER MONTH
												\$ 125.00 PER HAUL
												\$ 22.00 PER TON
												\$ -
												TOTAL \$ -

QTY	SIZE	FREQ	OC	M	T	W	TH	F	S	SU	LEAR, WHLS, LIDS	CHARGE(S)
												\$ -
												\$ -
												\$ -
												\$ -
												TOTAL \$ -
												NET \$ -

BY SHOP, NEAR 3750

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.

Pull-push out required?	No	Customer's Waste does not exceed an average weight of	lbs/yard
Behind gate or enclosure?	No		

* A fuel surcharge and environmental compliance 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.

The undersigned individual, signing this agreement on behalf of the 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:	ADJUTANT GENERAL OF SC
Authorized Signature	<i>Ginny Morgan</i>
Name (Print or Type)	Ginny Morgan
Title	Procurement Director
Date	10-21-10
WM Signature	<i>Sumner Zolecki</i>
Date	10-25-10
WM Representative	SUMNER ZOLECKI

Container Usage Fee	\$ 90.00	N/A
Lock Bar Charge Install	\$ 90.00	N/A
Lock Bar Charge Monthly	\$ 15.00	N/A
Overage Charge	\$ -	
Extra Pick Up Fee	\$ 150.00	N/A
Minimum Tons (RO)	4 tons	PER HAUL
Inactivity Fee (RO)	100%	N/A
Admin Fee	\$ 3.00	PER MONTH
Delivery Charge	\$ 125.00	EACH
Container Exchange Charge	\$ 125.00	N/A
Trip Charge (Unable to Service)	\$ 150.00	EACH
Removal / Relocate Fee	\$ 125.00	N/A
Customer Serv Assisted Payment Charge	\$ 7.95	IF APPLICABLE
Resume Fee	\$ 35.00	IF APPLICABLE
	\$ -	



**SERVICE AGREEMENT
NON-HAZARDOUS WASTES**

**Roll-Off 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 waste 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 at Customer's Service Address. Waste Materials includes Special Waste, such as industrial process wastes, asbestos-containing material, petroleum-contaminated soils, hydraulic-characterized wastes, and non-hazardous liquids, 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, regardless of volume, contains, contains, or consists of, toxic substances or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or Special Waste not accepted in writing by Company (collectively, "excluded wastes"). 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 twelve (12) months each ("Renewed Term") unless either party gives to the other party written notice (See Section 10(a)) of termination of 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(a)), 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 its termination. Also, if such termination is in breach of 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 hereon (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 those agreed upon; (b) for any changes or modifications to the fee schedule on the first page; (c) for any increase in the composition of the Waste Materials or if the average weight per unit of Customer's Waste Materials exceeds the amount specified on the first page; (d) for any increase in or other modification to the fuel or environmental cost recovery charges; (e) to cover any increase in disposal and/or third party transportation costs; (f) 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 (g) no more than ten percent (10%) of the Consumer Price Index plus four percent of the then current Charges. Any increase in Charges enumerated in clauses (a) through (g) 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 Resident 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 invoices 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 next due balance is paid in full. In the event that service is suspended for a period 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 used for its collection under this Agreement. Customer shall not overuse, 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 unrestricted 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. IMMINENT 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 requested 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 Renewed 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 Renewed 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 Renewed Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to estimate and is an agreed upon fee and is not imposed as a penalty. Customer shall pay estimated damages of \$100 for every Customer waste bin 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 injury (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 Collected 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 injury (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 subcontractors 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, heirs 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 to comply 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 license or official or unenforced laws or orders 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 attorney's fees and court costs.