

Approved Subject to the
Consideration that the County Manager works
with Omni Waste regarding the distribution of

25

**OSCEOLA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA REQUEST**

*non-profit
host fees*

and correcty CU 11-00008 from CU 11-008

DEPARTMENT:	PUBLIC WORKS ADMINISTRATION	MEETING DATE:	12/17/12
DIVISION/OFFICE:	SOLID WASTE	MEETING TYPE:	REGULAR
DIRECTOR/MANAGER:	FRANK RAYMOND	REQUEST TYPE:	CONSENT

AGENDA REQUEST

Approval and authorization for the Chairman/Vice Chairman to sign the Amended Agreement for Solid Waste Management Services By and Between Osceola County, Florida and Omni Waste of Osceola County, LLC. (Contractor), effective October 1, 2012, and contingent upon the approval of the Conditional Use Permit (CU 11-008) by the Osceola County Board of Adjustment. The Amended Agreement terminates on the date the Contractor or its assigns permanently cease to have the legal authority to operate the JED Disposal Facility.

STRATEGIC PLAN

Goal 2 – Cost Effective And High Performing County Government
Objective – To Have Adequate Resources To Support Defined County Services And Service Levels

FINANCIAL INFORMATION

TOTAL REQUESTED AMOUNT: \$

This item does not create a financial liability for the County; instead, it creates the opportunity for future County revenues.

APPROVING DEPARTMENTS

COUNTY ATTORNEY

BACKGROUND INFORMATION

- This agreement amends the existing agreement, approved by the Board on March 25, 2002.
- This agreement provides for the disposal of acceptable waste originating inside and outside of the County
- This agreement provides for the payment of Service Fees to Omni Waste of Osceola County, LLC. by residential service providers and provides for the payment of Host Fees to the County and specified non-profit entities by Omni Waste of Osceola County, LLC., both fees are at rates set forth in the agreement.
- The Contractor agrees to pay the following Host Fees, as outlined in detail in the agreement:
 - \$2.00 to the County for each ton of acceptable waste originating outside of Osceola County,
 - an additional \$1.50 to the County for each ton of acceptable waste, excluding special waste,

originating outside of Osceola County that exceeds an average of 2,000 tons per day, and

- a total of \$0.50 for each ton of acceptable waste regardless of origination, to specified non-profit organizations.

- The four year average historical Host Fees and potential Host Fees, per the terms of the Amended Agreement, are shown in the table below:

Host Fees	Historical 4-yr average	Potential Annual	Potential over 20 Yrs
County	\$3,067,646	\$5,271,841	\$105,436,827
Non-Profits	\$777,014	\$1,154,649	\$23,092,983
Combined:	\$3,844,660	\$6,426,490	\$128,529,810

- The agreement may be terminated at the County's sole and absolute discretion at any time following the seventh anniversary of the effective date if the County determines the Amended Agreement no longer provides the same value to the public as it did on the effective date. The County must first provide written notice to the Contractor specifying the deficient areas and a reasonable attempt to reach resolution between the parties must be made. However, if these negotiations fail, the County may terminate the contract by providing written notice to the Contractor not less than three years prior to the termination date.
- County staff recommends approval of this item.
- Commission District: All
- Project Manager: Danny Sheaffer

revised 25

**OSCEOLA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA REQUEST**

DEPARTMENT:	PUBLIC WORKS ADMINISTRATION	MEETING DATE:	12/17/12
DIVISION/OFFICE:	SOLID WASTE	MEETING TYPE:	REGULAR
DIRECTOR/MANAGER:	FRANK RAYMOND	REQUEST TYPE:	CONSENT

AGENDA REQUEST

Approval and authorization for the Chairman/Vice Chairman to sign the Amended Agreement for Solid Waste Management Services By and Between Osceola County, Florida and Omni Waste of Osceola County, LLC. (Contractor), effective October 1, 2012, and contingent upon the approval of the Conditional Use Permit (CU 11-00008) by the Osceola County Board of Adjustment. The Amended Agreement terminates on the date the Contractor or its assigns permanently cease to have the legal authority to operate the JED Disposal Facility.

STRATEGIC PLAN

Goal 2 – Cost Effective And High Performing County Government
Objective – To Have Adequate Resources To Support Defined County Services And Service Levels

FINANCIAL INFORMATION

TOTAL REQUESTED AMOUNT: \$

This item does not create a financial liability for the County; instead, it creates the opportunity for future County revenues.

APPROVING DEPARTMENTS

COUNTY ATTORNEY

BACKGROUND INFORMATION

- This agreement amends the existing agreement, approved by the Board on March 25, 2002.
- This agreement provides for the disposal of acceptable waste originating inside and outside of the County
- This agreement provides for the payment of Service Fees to Omni Waste of Osceola County, LLC. by residential service providers and provides for the payment of Host Fees to the County and specified non-profit entities by Omni Waste of Osceola County, LLC., both fees are at rates set forth in the agreement.
- The Contractor agrees to pay the following Host Fees, as outlined in detail in the agreement:
 - \$2.00 to the County for each ton of acceptable waste originating outside of Osceola County,
 - an additional \$1.50 to the County for each ton of acceptable waste, excluding special waste,

originating outside of Osceola County that exceeds an average of 2,000 tons per day, and

- a total of \$0.50 for each ton of acceptable waste regardless of origination, to specified non-profit organizations.

- The four year average historical Host Fees and potential Host Fees, per the terms of the Amended Agreement, are shown in the table below:

Host Fees	Historical 4-yr average	Potential Annual	Potential over 20 Yrs
County	\$3,067,646	\$5,271,841	\$105,436,827
Non-Profits	\$777,014	\$1,154,649	\$23,092,983
Combined:	\$3,844,660	\$6,426,490	\$128,529,810

- The agreement may be terminated at the County's sole and absolute discretion at any time following the seventh anniversary of the effective date if the County determines the Amended Agreement no longer provides the same value to the public as it did on the effective date. The County must first provide written notice to the Contractor specifying the deficient areas and a reasonable attempt to reach resolution between the parties must be made. However, if these negotiations fail, the County may terminate the contract by providing written notice to the Contractor not less than three years prior to the termination date.
- County staff recommends approval of this item.
- Commission District: All
- Project Manager: Danny Sheaffer

**AMENDED AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES**

By and Between

OSCEOLA COUNTY, FLORIDA

AND

OMNI WASTE OF OSCEOLA COUNTY, LLC

TABLE OF CONTENTS

	<u>PAGE</u>
SECTION 1.	DEFINITIONS..... 1
SECTION 2.	INTERPRETATION..... 3
SECTION 3.	REPRESENTATIONS OF THE CONTRACTOR..... 4
SECTION 4.	REPRESENTATIONS OF THE COUNTY..... 5
SECTION 5.	RESPONSIBILITIES OF THE COUNTY..... 5
SECTION 6.	RESPONSIBILITIES OF THE CONTRACTOR..... 6
SECTION 7.	SERVICE FEES..... 9
SECTION 8.	HOST FEES..... 9
SECTION 9.	TERM AND TERMINATION..... 10
SECTION 10.	FORCE MAJEURE..... 11
SECTION 11.	INDEMNIFICATION..... 12
SECTION 12.	INSURANCE..... 13
SECTION 13.	NOTICES..... 14
SECTION 14.	WAIVER..... 15
SECTION 15.	SEVERABILITY..... 16
SECTION 16.	SURVIVABILITY..... 16
SECTION 17.	THIRD-PARTY BENEFICIARIES..... 16
SECTION 18.	INDEPENDENT CONTRACTOR..... 16
SECTION 19.	COMPLETE AGREEMENT..... 16
SECTION 20.	COUNTERPARTS..... 16
SECTION 21.	PROFESSIONAL FEES AND COSTS..... 17
SECTION 22.	GOVERNING LAW AND VENUE..... 17

**AMENDED AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES**

THIS AMENDED AGREEMENT FOR SOLID WASTE SERVICES is made and entered into by and between Osceola County, a charter county and political subdivision of the State of Florida (the "County"), and Omni Waste of Osceola County, LLC, a Florida limited liability company (the "Contractor").

WITNESSETH:

WHEREAS, the County and the Contractor entered into an Agreement for Solid Waste Management Services on March 25, 2002 (the "Existing Agreement") whereby Contractor agreed to provide certain Solid Waste (as herein defined) management and disposal services for the County; and

WHEREAS, the County and Contractor desire to amend and extend the Existing Agreement, continuing the County's obligation to deliver or require delivery of Acceptable Waste collected from residential property within the unincorporated area of the County to the JED Disposal Facility and the Contractor's obligation to pay Host Fees (as hereinafter defined) to the County for Acceptable Waste originating outside the County and accepted for disposal at the JED Disposal Facility;

NOW THEREFORE, in consideration of the mutual covenants, terms, and provisions contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS. As used in this Amended Agreement, the following terms shall have the following meanings unless the context hereof otherwise requires:

"Acceptable Waste" means Solid Waste that may be disposed of lawfully in a Class I Landfill under Applicable Law.

"Amended Agreement" means this Amended Agreement For Solid Waste Management Services between the County and the Contractor.

"Applicable Law" means any local, state or federal law, ordinance, judgment, order, Permit, rule, regulation, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect during the Term of this Amended Agreement, or are enacted or enforced by a governmental body in any manner relating to the performance of the County or Contractor under this Amended Agreement.

"Board" means the County's Board of Commissioners.

"Change in Law" means (A) the adoption, promulgation, or modification after the Effective Date of any Applicable Law, or (B) the imposition of any conditions in connection with the issuance, renewal, or modification of any Permit, license, or approval after the Effective

Date, which in the case of either (A) or (B) establishes requirements which significantly affect the Contractor's cost of performance under this Amended Agreement.

"Class I Landfill" has the meaning set forth in Rule 62-701.340(2)(a), F.A.C.

"Conditional Use Permits" means CU00-00035 and CU04-00019, as approved by the Board, letters from the County to the Contractor dated June 27, 2001, August 2, 2004, September 22, 2004 and November 22, 2005 and CU11-00008, amending and restating CU00-00035 and CU04-00019.

"Contractor" shall mean Omni Waste of Osceola County, LLC.

"County" means Osceola County, a charter county and political subdivision of the State of Florida.

"County Manager" means the chief executive officer of the County or such person's designee.

"Effective Date" means October 1, 2012.

"Existing Agreement" means the Agreement for Solid Waste Management Services entered into by the County and the Contractor on March 25, 2002.

"EPA" means the United States Environmental Protection Agency.

"F.A.C." means the Florida Administrative Code.

"FDEP" means the Florida Department of Environmental Protection.

"Force Majeure" means (A) an act of God, including hurricanes, tornadoes, lightning, fire, flood, explosion, sabotage, acts of a public enemy, extortion, war, insurrection, riot, civil disturbance or similar occurrence; (B) the order or judgment of any federal, state or local court, administrative agency or governmental body; (C) the failure to issue, suspension, termination, interruption, denial, or failure of renewal of any Permit, which occurs for reasons beyond the Contractor's control; (D) the failure of any appropriate federal, state, or local public agency or private utility to provide and maintain utilities, services, water and sewer lines, and power transmission lines which are required for the operation of the JED Disposal Facility; (E) any unforeseen condition (including the presence of hazardous waste, as defined by FDEP and EPA) which shall prevent, or require redesign or change in, the construction or operation of the JED Disposal Facility, provided that the condition was actually and constructively unknown to the party claiming a Force Majeure event, and could have not been discovered with reasonable diligence by the party, on or before the Effective Date; (F) the condemnation, taking, seizure, involuntary conversion, or requisition of title to or use of the JED Disposal Facility or any material portion thereof by any federal, state or local agency or authority; or (G) any act, event,

or condition which is of the same general type as those set forth in subparagraphs (A) through (F), above.

"Host Fees" means the amounts payable to the County and its designees pursuant to Section 8 hereof.

"JED Disposal Facility" means the Class I Landfill owned and operated by the Contractor and located approximately five miles south of Holopaw, in Osceola County, Florida.

"Permit" shall mean all governmental permits, licenses, authorizations and approvals required for the performance of the County's and Contractor's obligations under this Amended Agreement.

"Residential Service Provider" means an entity collecting Solid Waste from residential property within a specific service area, pursuant to an agreement with the County entered into under Section 19-41 of the Osceola County Code. If the County elects to provide residential collection services using its own forces, the term "Residential Service Provider" shall include the County.

"Service Fee" shall mean the compensation to Contractor for its services under this Amended Agreement, as set forth in Section 7 hereof.

"Solid Waste" has the meaning set forth in Rule 62-701.200(107), F.A.C.

"Special Waste" has the meaning set forth in Rule 62-701.200(113), F.A.C.

"Term" shall mean the term or duration of this Amended Agreement, as set forth in Section 10 hereof.

"Unacceptable Waste" means any Solid Waste that cannot lawfully be disposed at a Class I Landfill under Applicable Law.

SECTION 2. INTERPRETATION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Amended Agreement; the term "heretofore" shall mean before the date this Amended Agreement is executed; the term "hereafter" shall mean after the Effective Date; the terms "include" and "including" shall be deemed to be followed by the following phrase "without limitation" The words "agree", "agreement", "consent", "establish", and "impose" as used herein shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed" except as specifically noted. Terms that are defined herein by reference to a statute, rule or regulation shall have the meaning ascribed to such word or phrases as of the Effective Date, without regard to subsequent changes in such statutes, rules or regulations.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other parties to this Amended Agreement. All parties have participated in the drafting and preparation of this Amended Agreement, and the provisions hereof shall not be construed for or against any party by reason of authorship.

(C) Any headings preceding the texts of the several sections of this Amended Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Amended Agreement nor affect its meaning, construction or effect.

(D) In the event of any conflict between the provisions of this Amended Agreement and those of any exhibits attached hereto, the provisions of this Amended Agreement shall govern.

SECTION 3. REPRESENTATIONS OF THE CONTRACTOR. The Contractor makes the following representations as the basis for the undertakings on the part of the County herein contained:

(A) The Contractor is duly organized and validly existing in good standing under the laws of the State of Florida and has obtained all authorizations necessary on its part for the due and valid execution and delivery of this Amended Agreement and the assumption of the obligations represented hereby.

(C) The execution and delivery of this Amended Agreement and the performance by the Contractor hereunder will not conflict with or constitute a breach of or default under the Contractor's charter document(s), or any indenture, loan agreement or instrument or agreement to which the Contractor is a party or by which its properties are bound.

(D) No authorization, approval, consent or license of any governmental regulatory body or authority, not already obtained, is required for the valid and lawful execution and delivery of this Amended Agreement by the Contractor or the assumption of the obligations of the Contractor represented hereby.

(E) The Contractor is not a party to any litigation or administrative proceeding, nor so far as is known by the Contractor is any litigation or administrative proceeding threatened against it which in either case would if adversely determined, cause any material adverse change in its ability to perform its obligations under this Amended Agreement.

(F) The County's agreement to deliver or require delivery of Acceptable Waste collected from residential property within the unincorporated area of the County to the JED Disposal Facility pursuant to Section 5(A) hereof and support the Contractor's Major Solid Waste Permit Modification application pursuant to Section 5(D) hereof, together with the County's other obligations hereunder, is adequate consideration for the Contractor's agreement to

pay Host Fees for Acceptable Waste originating outside the County pursuant to Section 8(A) hereof and perform its other obligations hereunder.

The foregoing representations are made as of the date of delivery of this Amended Agreement and all such representations shall survive the execution and delivery of this Amended Agreement.

SECTION 4. REPRESENTATIONS OF THE COUNTY. The County makes the following representations as the basis for the undertakings on the part of the Contractor herein contained:

(A) The County is a charter county and political subdivision of the State of Florida, and has obtained all authorizations necessary on its part for the due and valid execution and delivery of this Amended Agreement and the assumption of the obligations represented hereby.

(C) The execution and delivery of this Amended Agreement and the performance by the County hereunder will not conflict with or constitute a breach of or default under any indenture, loan agreement or instrument or agreement to which the County is a party or by which its properties are bound.

(D) No authorization, approval, consent or license of any governmental regulatory body or authority, not already obtained, is required for the valid and lawful execution and delivery of this Amended Agreement by the County or the assumption of the obligations of the County represented hereby.

(E) The County is not a party to any litigation or administrative proceeding, nor so far as is known by the County is any litigation or administrative proceeding threatened against it which in either case would if adversely determined, cause any material adverse change in its ability to perform its obligations under this Amended Agreement.

(F) The Contractor's agreement to pay Host Fees for Acceptable Waste originating outside the County pursuant to Section 8(A) hereof, together with the Contractor's other obligations hereunder, is adequate consideration for the County's agreement to deliver or require delivery of Acceptable Waste collected from residential property within the unincorporated area of the County to the JED Disposal Facility pursuant to Section 5(A) hereof, support the Contractor's Major Solid Waste Permit Modification application pursuant to Section 5(D) hereof and perform its other obligations hereunder.

The foregoing representations are made as of the date of delivery of this Amended Agreement and all such representations shall survive the execution and delivery of this Amended Agreement.

SECTION 5. RESPONSIBILITIES OF THE COUNTY. The County shall perform the following duties in compliance with all Applicable Law.

(A) To the extent permitted by Applicable Law, the County shall require its Residential Service Providers to deliver all Acceptable Waste collected from residential property within the unincorporated area of the County to the JED Disposal Facility during the Term of this Amended Agreement. Notwithstanding the foregoing, a Residential Service Provider may process Acceptable Waste through a transfer station in lieu of direct delivery to the JED Disposal Facility, if the Residential Service Provider submits documentation to the County demonstrating that an equivalent amount of Acceptable Waste is delivered to the JED Disposal Facility. County agrees that, upon notice by Contractor of non-performance hereunder by any Residential Service Provider, or of a failure to timely submit payment to Contractor under terms of Section 7 hereof, County shall take all actions necessary to enforce the duties of the Residential Service Provider, including but not limited to, demanding prompt performance, declaring breach or default, and bringing suit. Such action shall either be solely in the name of the County or jointly with Omni, as may be deemed necessary and appropriate under the circumstances and in accordance with Florida law. County agrees that the performance of the Residential Service Providers under terms of this Amended Agreement is of critical importance to the Contractor and agrees to exercise the highest level of diligence and good faith in the performance of its actions under this subsection.

(B) The County may divert Solid Waste to any other facility or location of the County's choice for the purpose of recycling, removing recovered materials, or composting. In such event, after the Solid Waste collected from residential property within the unincorporated area of the County is processed in this fashion, the County shall require its Residential Service Providers to deliver all remaining Acceptable Waste to the JED Disposal Facility. Nothing in this Amended Agreement shall be construed to require the Residential Service Providers to deliver a minimum amount of Acceptable Waste to the Contractor on a daily or annual basis.

(C) Residential Service Providers shall be responsible all Acceptable Waste collected from residential property within the unincorporated area of the County until accepted by Contractor at the JED Disposal Facility and shall remain responsible for all Unacceptable Waste collected from residential property within the unincorporated area of the County unless and until it is buried at the JED Disposal Facility.

(D) The County agrees to support the Contractor's Major Solid Waste Permit Modification application submitted to FDEP on February 18, 2011, to laterally expand the JED Disposal Facility and allow for other design modifications, including landfill gas to electrical generation operations and future relocation of the leachate holding and administration facilities.

SECTION 6. RESPONSIBILITIES OF THE CONTRACTOR. The Contractor shall perform the following duties safely, in compliance with the best management practices for the solid waste industry, and in compliance with all Applicable Law. Except as expressly provided herein, the Contractor shall provide all labor, services, supervision, materials, and equipment necessary to discharge its obligations hereunder.

(A) Throughout the Term, the County shall provide and the Contractor shall receive and dispose all Acceptable Waste collected from residential property within the unincorporated area of the County.

(B) In transporting Solid Waste within the County, the Contractor shall comply with all applicable Federal and Florida laws and regulations and with applicable speed limits. Contractor shall comply with reasonable traffic and safety rules established by the County for the JED Disposal Facility. The Contractor shall promptly clean-up any Solid Waste that Contractor spills on the JED Disposal Facility or on roads within the County.

(C) The Contractor shall dispose of all Acceptable Waste that is delivered to the JED Disposal Facility by a Residential Service Provider. The Contractor shall not take the County's Acceptable Waste collected from residential property within the unincorporated area of the County to any facility other than the JED Disposal Facility without written approval from the County Manager.

(D) Residential Service Providers delivering Solid Waste to the JED Disposal Facility shall arrange and pay for the disposal of the Unacceptable Waste delivered to the JED Disposal Facility if such waste is rejected by the Contractor before it is buried at the JED Disposal Facility. The Contractor shall have the right to reject any material if the Contractor reasonably believes such material is not Acceptable Waste.

(E) The County shall have the right to inspect Contractor's equipment and activities at the JED Disposal Facility during normal operating hours. The Contractor may require all persons entering the JED Disposal Facility to comply with reasonable safety rules.

(F) All of the Contractor's employees shall be appropriately trained for the tasks assigned to them. All of the equipment used by the Contractor shall be appropriately designed, maintained and operated. The Contractor shall make arrangements for or have access to additional equipment and workers, as necessary, to ensure that the operation of the JED Disposal Facility are not interrupted or halted.

(G) The Contractor may utilize subcontractors in the performance of the work required hereunder. Nothing in this Amended Agreement shall create any contractual relationship between any subcontractor and the County or any obligation on the part of the County to pay or see to the payment of any monies which may be due to any subcontractor.

(H) The Contractor shall weigh all of the Residential Service Providers' vehicles delivering Solid Waste to the JED Disposal Facility and may use tare weights for this purpose. Hand receipts may be utilized if the Contractor's automated data collection system is inoperable. The Contractor shall provide monthly reports to the County and its Residential Service Providers (as to each Residential Service Provider, limited to the Residential Household Waste delivered by such Residential Service Provider) that summarizes the scale house data concerning the delivery of the Solid Waste collected from residential property within the unincorporated area of the County to the JED Disposal Facility. The Contractor shall be responsible for the operation

and maintenance of the scale house at the JED Disposal Facility and the costs thereof. Access shall be provided to the County and its Residential Service Providers at all reasonable times to observe the operations of the scale house. The Contractor shall perform all required calibration of the scales or shall arrange for such services to be performed by an independent contractor at the Contractor's expense. The scales shall be calibrated at least once every six months.

(I) The Contractor shall develop and implement an organized system for keeping records concerning the Contractor's activities under this Amended Agreement. The Contractor's records shall include copies of all scale house records concerning the delivery of the Solid Waste collected from residential property within the unincorporated area of the County. During normal business hours, the County shall have the right to inspect, copy and audit such records, at the County's expense except for confidential or proprietary information. The Contractor's records and documentation shall be retained by the Contractor for a minimum of seven years. Any audit conducted by the County shall be initiated within three years; provided however, that in the case of fraud on the part of the Contractor, the period for initiating an audit shall be extended to seven years. Any records retained by the Contractor beyond seven years shall be made available to the County to inspection and copying at the County's request.

(J) Except as otherwise provided herein, the Contractor shall secure and pay for all Permits that are necessary for the Contractor's activities under this Amended Agreement, including environmental permits and truck registrations.

(K) The Contractor shall pay all sales, consumer, use, and other taxes and fees required by law for the Contractor's activities under this Amended Agreement. However, the Contractor shall have no liability under this Amended Agreement or otherwise for the payment of any discriminatory taxes, charges, levies or fees of any kind that are imposed by the County on the Contractor's operations only or in any other discriminatory manner on the Contractor's activities under this Amended Agreement.

(L) Contractor may accept and dispose of Solid Waste from any county within the State of Florida; provided that the volume of Solid Waste accepted shall not exceed amounts established or permitted under State or Federal permits, State or Federal law or State or Federal regulation.

(M) The Contractor shall perform its duties under this Amended Agreement safely, in compliance with customary and acceptable practices for the Solid Waste industry, and in compliance with all Applicable Law. Except as expressly provided herein, the Contractor shall provide all labor, services, supervision, materials, and equipment necessary to discharge its obligations hereunder.

(N) Notwithstanding anything else contained herein, the Contractor may recycle or beneficially reuse the Solid Waste and recovered material delivered to the JED Disposal Facility and retain any revenues derived from the Contractor's recycling activities.

SECTION 7. SERVICE FEES.

(A) Commencing on the Effective Date, the Residential Service Providers shall pay to the Contractor an initial Service Fee of \$28.41 for each ton of Acceptable Waste delivered to the JED Disposal Facility by a Residential Service Provider.

(B) The Service Fee shall be adjusted on April 1 of each year, beginning April 1, 2013, to reflect changes in the Consumer Price Index for all Urban Consumers (base year 1984=100) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI-U"), as follows. If the CPI-U published for the month of February (the "February CPI-U") has changed from the CPI-U published for the prior February (the "Prior February CPI-U"), the Service Fee for the twelve-month period beginning on the next April 1 shall be adjusted by multiplying the Service Fee by a fraction, the numerator of which is the February CPI-U and the denominator of which is the Prior February CPI-U. If the CPI-U is discontinued the parties shall select another index, which is representative of the inflationary trends affecting the Contractor's performance under this Amended Agreement, and which is published by the United States government or a reputable publisher of financial and economic indices.

(C) After the Effective Date of this Amended Agreement, if there is a Change in Law which has the effect of establishing requirements which caused or will cause a substantial increase in the Contractor's cost of performing its obligations under this Amended Agreement, then Contractor shall be entitled to an increase in the Service Fee to reflect the increased cost of performing those services that have been or will be affected by such Change in Law. If an adjustment to the Service Fee is made as a result of a Change in Law, the adjustment shall be applied retroactively to the date when the Contractor's costs first changed as a result of the Change in Law. Nothing in this Amended Agreement shall be construed to require the Residential Service Providers to pay more than their proportionate share of any increased cost resulting from a Change in Law. If the Contractor learns that a Change in Law may occur, the Contractor shall promptly notify the County so that the County may take appropriate steps to minimize the potential effects of the Change in Law.

SECTION 8. HOST FEES.

(A) The Contractor agrees to pay the following Host Fees:

(1) \$2.00 to the County for each ton of Acceptable Waste originating outside of Osceola County and accepted for disposal at the JED Disposal Facility;

(2) an additional \$1.50 to the County for each ton of Acceptable Waste, excluding Special Waste, originating outside of Osceola County and accepted for disposal at the JED Disposal Facility that exceeds an average of 2,000 tons per day, such average to be calculated for each calendar quarter; and

(3) a total of \$0.50 for each ton of Acceptable Waste accepted for disposal at the JED Disposal Facility, whether or not such Acceptable Waste originates outside of Osceola County, to non-profit organizations currently funded by the Contractor or other non-profit organizations proposed by the Contractor and approved by the County.

The County Manager is hereby authorized to approve changes to the organizations funded pursuant to clause (3) above, if each organization to receive funding improves the quality of life for citizens of the County by advancing one or more the strategic initiatives approved by the Board.

(B) Host fees shall be paid within 30 days following the end of each calendar quarter.

(C) The Contractor shall provide the County with a quarterly report that identifies: the amount of in-county and out-of-county waste delivered to the JED Disposal Facility and the amount of the Host Fees payable hereunder.

(D) Notwithstanding the provisions of this Section, the Contractor agrees to pay host fees prior to the Effective Date in accordance with the Existing Agreement, including the payments currently made to community organizations. Commencing with the Effective Date, Host Fee payments shall be made in accordance with this Section. The County acknowledges and agrees that (1) all payments of host fees by Contractor and all fees paid to Contractor by County prior to the Effective Date have been correct and in accordance with any and all requirements, whether arising under the Existing Agreement or the Conditional Use Permits, (2) as of the Effective Date, there are no outstanding violations, conditions of default or disputes between the parties arising from said Conditional Use Permits, and (3) both parties hereby waive, relinquish, and release the other of any claims, debts or causes of action arising from or relating to said Conditional Use Permits prior to the Effective Date.

SECTION 9. TERM AND TERMINATION.

(A) Unless terminated earlier in the manner provided herein, this Amended Agreement shall begin upon approval of CU11-00008, but be retroactive to the Effective Date, and terminate on the date the Contractor or its assigns permanently cease to have the legal authority to operate the JED Disposal Facility.

(B) Except as otherwise provided herein, if either party breaches this Amended Agreement or defaults in the performance of any of the material conditions contained herein for ten working days after receiving notice of such breach or default, the other party may terminate this Amended Agreement and exercise any other right or remedy to which it may be entitled at law or in equity. The non-defaulting party's selection of any remedy specified herein shall not be construed as a waiver of any other rights at law or in equity related to the defaulting party's breach. If in the exercise of due diligence during the ten day period a cure cannot reasonably be effected, such ten day period shall be extended to include such additional time as is reasonably necessary to effect a cure, provided the defaulting party diligently attempts to cure the default during the extended cure period. Each of the following shall constitute an event of default:

(1) The persistent, repeated, or substantial failure or refusal by either party to substantially fulfill any of its material obligations in accordance with this Amended Agreement, unless excused or justified by a Force Majeure event, default by the other party, or other legally recognized cause customarily justifying or excusing non-performance; and provided that no such default shall constitute an event of default unless and until (a) the non-defaulting party has given notice to the defaulting party that a default or defaults exist which will, unless corrected, constitute an event of default on the part of the defaulting party, and (b) the defaulting party either has not corrected such default or has not initiated reasonable steps to correct such default within ten days from the date of such notice.

(2) Either party files or there is filed against either party a petition in bankruptcy or a petition or answer seeking reorganization under the Federal Bankruptcy Code or any other applicable statute; or an order is entered adjudicating either party bankrupt or approving an involuntary petition seeking a reorganization of either party under the Federal Bankruptcy Code or any other applicable statute or appointing a receiver, trustee or conservator for all or any substantial part of the property of either party, and the order is not vacated or stayed within one hundred eighty days of entry.

(C) If at any time following the seventh anniversary of the Effective Date, the County determines in its sole and absolute discretion that this Amended Agreement no longer provides the same value to the public as it did on the Effective Date, the County shall provide written notice to the Contractor specifying the area or areas in which the value to the public has changed. Following the provision of such notice, the parties shall meet at reasonable times and places, as mutually agreed upon, to discuss the issues. If a resolution satisfactory to the County, in its sole and absolute discretion, cannot be reached, the County may terminate this Amended Agreement by providing further written notice to the Contractor, not less than three years prior to the termination date.

SECTION 10. FORCE MAJEURE. Notwithstanding any other provision in this Agreement neither the County nor the Contractor shall be liable to the other for any failure or delay in performance of any obligation under this Amended Agreement due to the occurrence of a Force Majeure event. As a condition precedent to the right to claim excuse of performance, the party experiencing a Force Majeure event shall promptly notify the other party verbally and as soon as practical, but in no event more than ten days thereafter, prepare and deliver to the other party a notice with a written description of the commencement of the Force Majeure event, and its estimated duration and Impact on the party's obligations under this Amended Agreement

(A) Whenever a Force Majeure event occurs, the parties shall, as quickly as possible, to the extent reasonable, eliminate the cause therefore, reduce the costs thereof, and resume performance under this Amended Agreement.

(B) In the event that the County or the Contractor reasonably and in good faith determines that a Force Majeure event will prevent or alter performance permanently or for such period of time or at such additional expense as to make performance unreasonable, the County or

the Contractor may declare this Amended Agreement terminated and neither party shall be further obligated to the other except for amounts due upon the date of termination of the Amended Agreement.

SECTION 11. INDEMNIFICATION.

(A) For the separate consideration of ten dollars and other valuable consideration paid to it by the County, receipt of which is hereby acknowledged, the Contractor agrees to indemnify, defend, and hold the County, its commissioners, officers, employees and agents harmless from and against any and all claims, demands, civil or criminal actions (including enforcement proceedings initiated by any government agency), penalties, suits, proceedings and liabilities (including the cost of defense, settlement, appeal, reasonable attorney's fees and disbursements and any other amounts payable to third parties in connection with such matters) and costs and expenses related thereto, that the County, its officers, employees or agents may have alleged against them, incur, become responsible for, or pay out for any reason (1) attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible personal property and (2) is caused by an act, omission, or negligence of the Contractor, except in the event of the County's willful misconduct or gross negligence. The provisions of this subsection are intended to be severable from all other provisions of this Amended Agreement and to survive the termination of this Amended Agreement and not be merged into any termination of this Amended Agreement.

(B) For the separate consideration of ten dollars and other valuable consideration paid to it by the Contractor, receipt of which is hereby acknowledged, the County agrees to indemnify, defend, and hold the Contractor, its officers, employees and agents harmless from and against any and all claims, demands, civil or criminal actions (including enforcement proceedings initiated by any government agency), penalties, suits, proceedings and liabilities (including the cost of defense, settlement, appeal, reasonable attorney's fees and disbursements and any other amounts payable to third parties in connection with such matters) and costs and expenses related thereto, that the Contractor, its officers, employees or agents may have alleged against them, incur, become responsible for, or pay out for any reason (1) attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible personal property and (2) is caused by an act, omission, or negligence of the County, except in the event of the Contractor's willful misconduct or gross negligence. The provisions of this subsection are intended to be severable from all other provisions of this Amended Agreement and to survive the termination of this Amended Agreement and not be merged into any termination of this Amended Agreement. Notwithstanding the foregoing, the County shall not be required to indemnify, defend, or hold the Contractor, its officers, employees and agents harmless from and against any claims, demands, civil or criminal actions (including enforcement proceedings initiated by any government agency), penalties, suits, proceedings or liabilities resulting from the delivery of Solid Waste by Residential Service Providers to the JED Disposal Facility.

SECTION 12. INSURANCE.

(A) The Contractor shall purchase at its cost and maintain, such insurance as will protect the Contractor and the County from the claims, actions, damages or losses described below which may arise out of or result from the design, construction and operation of the JED Disposal Facility, regardless of whether such design, construction and operation is performed by a Contractor or anyone directly (or indirectly) employed by any of them, anyone who any of them are in privity of contract with or anyone for whose acts any of them may be liable:

- (1) claims, actions or liability under workers compensation, disability benefits and other similar employee benefit acts;
- (2) claims, actions or liability for damages due to bodily injury, occupational sickness or disease, or death of employees under any applicable employer's liability law;
- (3) claims, actions or liability for damage due to bodily injury, disease or death of any person other than employees.
- (4) claims, actions or liability for damages insured by usual personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person, or (b) by any other person; and
- (5) claims, actions or liability for damages because of bodily injury or death of any person or property damage arising out of the tenanship, maintenance or use of any motor vehicle.

The County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or subcontractor providing such insurance.

(B) The Comprehensive General Liability Insurance shall include premises-operations (including explosion, collapse and underground coverage) elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage with a maximum coverage of as set forth below.

(C) Unless otherwise approved by the County Manager, the Comprehensive General and Automobile Liability Insurance, as required by subsections (A) and (B) shall be written for not less than the following limits of liability:

- (1) Comprehensive General Liability
 - (a) Bodily Injury \$1,000,000 Each Occurrence
 \$2,000,000 Aggregate
 (Completed Operations)

(b) Property Damage \$1,000,000 Each Occurrence
\$2,000,000 Aggregate
(Completed Operations)

(2) Comprehensive Automobile Liability

(a) Bodily Injury \$1,000,000 Each Person
\$1,000,000 Each Occurrence

(b) Property Damage \$500,000 Each Occurrence

(3) Excess Umbrella Liability in the amount of \$5,000,000 noted to be in "following form" that is not more restrictive than the underlying coverage

(D) Comprehensive General Liability and Automobile Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

(E) The County shall be named as an additional insured on each policy of insurance, excluding workers' compensation insurance.

(F) The Contractor shall furnish evidence of such insurance to the County. The certificate shall contain a statement binding upon the insurance company prohibiting cancellation, termination, or modification of the policy or reduction of coverage without first giving the County 30 days prior written notice of such proposed action.

SECTION 13. NOTICES. Whenever this Amended Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to and received by the party intended to receive it (A) by hand delivery to the person(s) hereinafter designated, or (B) by overnight hand delivery addressed as follows, or (C) through the United States Mail, postage prepaid, certified mail, return-receipt requested, or (D) delivered and received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered to and received by the person to whom it is at the address set forth opposite the party's name below:

County:

Osceola County Manager
1 Courthouse Square
Suite 4700
Kissimmee, FL 34741
Phone: (407) 742-2385
Fax: (407) 742-3291

with a copy to:

Osceola County Attorney
1 Courthouse Square
Suite 4200
Kissimmee, FL 34741
Phone: (407) 742-2200
Fax: (407) 742-2217

Contractor:

William P. Hulligan, President
Omni Waste of Osceola County, LLC.
2893 Executive Park Dr.
Suite 305
Westin, FL 33331
Phone: (954) 888-4303
Fax: (954) 888-4320

with a copy to:

Dennis Pantano
Senior Area Manager
1099 Miller Dr.
Altamonte Springs, FL 33701
Phone: (407) 261-5032
Fax: (407) 831-7506

Either of the above parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission or three days after the date mailed.

SECTION 14. WAIVER. Unless otherwise specifically provided by this Amended Agreement, no delay or failure to exercise a right under this Amended Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the County or Contractor at any time to

require performance by the other party of any term in this Amended Agreement shall in no way affect the right of the County or Contractor thereafter to enforce same: nor shall waiver by the County or Contractor of any breach of any term of this Amended Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Amended Agreement.

SECTION 15. SEVERABILITY. If any term, condition, covenant or obligation of this Amended Agreement is declared illegal, void or unenforceable, the remaining terms will not be affected but will remain in full force and effect, and this Amended Agreement shall be construed as if such illegal, void, or unenforceable provision had never been contained herein.

SECTION 16. SURVIVABILITY. Any term, condition, covenant, or obligation which requires performance by a party subsequent to termination of this Amended Agreement shall remain enforceable against such party subsequent to such termination.

SECTION 17. THIRD-PARTY BENEFICIARIES. Except for the County Service Providers, which are hereby designated as third-party beneficiaries of Section 7 hereof, it is agreed between the parties hereto that no provision of this Amended Agreement is intended to create any third-party beneficiaries hereunder, or to authorize anyone not a party to this Amended Agreement to maintain an action pursuant to the terms or provisions of this Amended Agreement.

SECTION 18. INDEPENDENT CONTRACTOR. When performing the activities required by this Amended Agreement, the Contractor will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or associate of the County. The Contractor shall be solely responsible for the means, methods and procedures used by the Contractor to perform under this Amended Agreement. Neither the Contractor nor any of its employees, officers, agents or subcontractors shall represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the County. The Contractor shall have no authority to bind the County to any agreement or contract. No person performing any work or services for the Contractor under this Amended Agreement shall be entitled to any benefits available or granted to employees of the County.

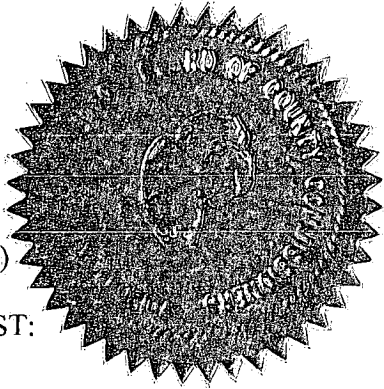
SECTION 19. COMPLETE AGREEMENT. This Amended Agreement embodies all of the agreements of the parties relating to its subject matter, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by all of the parties.

SECTION 20. COUNTERPARTS. This Amended Agreement may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this Amended Agreement, so that in making proof of this Amended Agreement, it shall only be necessary to produce or account for one such counterpart.

SECTION 21. PROFESSIONAL FEES AND COSTS. Each party shall be responsible for securing its own counsel for representation relative to all matters associated with performance, cancellation or closing hereunder, unless otherwise specified herein, and each party shall be responsible for the payment of the fees of its own attorneys and other professional advisors or consultants in connection therewith.

SECTION 22. GOVERNING LAW AND VENUE. This Amended Agreement and all agreements entered into in connection herewith will be performed in Osceola County. The laws of Florida shall govern the validity, construction, enforcement and interpretation of this Amended Agreement. In the event of litigation among the parties hereto, their successors or assigns, with regard to this Amended Agreement and any subsequent supplementary agreements or amendments, venue shall lie exclusively in Osceola County.

IN WITNESS WHEREOF, the Board of County Commissioners of Osceola County, Florida has caused this Amended Agreement to be executed and delivered as of the day and year first above written.



(SEAL)

ATTEST:

OSCEOLA COUNTY, FLORIDA

By: Frank Attkisson
Chairman/Vice Chairman
Board of County Commissioners

Paula J. Carpenter
Clerk/Deputy Clerk

BCC approved 12/17/12

IN WITNESS WHEREOF, Omni Waste of Osceola County, LLC has caused this Amended Agreement to be executed and delivered as of the day and year first above written.

OMNI WASTE OF OSCEOLA COUNTY, LLC

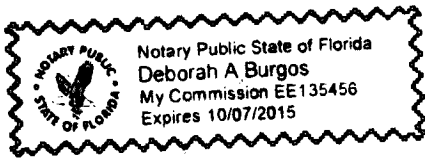
By: William P. Hulligan
William P. Hulligan, President

WITNESSES:

Richard M. Johnson
[Signature]

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this 2 day of January, ~~2012~~ 2013 by William P. Hulligan President of Omni Waste of Osceola County, LLC, on behalf of the corporation. He is personally known to me or has produced _____ as identification.



Deborah A. Burgos
Notary Public - State of Florida
Print Name: Deborah A. Burgos
Commission Number: EE135456
Commission Expiration Date: 10/07/2015