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July 26, 2005

Chris Kovanes
Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

Monroe Kiar, Esq.
6191 SW 45th Street
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Davie, FL 33314

Re: **Bulk Collection Modification**

Gentlemen:

This responds to your inquiry regarding the modification of the bulk waste service. In lieu of the current service, Waste Management will provide monthly collection. A 15 cubic yard maximum for each residence would apply for each collection. Bulk material will not be required to be tied or bundled or placed in a cart, although use of the cart for twigs, small branches, and clippings is encouraged. In addition, we hereby waive the definitional requirement that vegetative materials must have a diameter greater than 4 inches in order to be collected as Bulk Waste. Accordingly, we will collect as Bulk Waste those vegetative materials less than four inches in diameter provided that the material set out for collection otherwise complies with the definition of Bulk Waste set forth in Section 2E of the Solid Waste, Bulk Waste, Recycling and Construction

and Demolition Debris Collection Contract (the "Franchise Agreement") including, but not limited to, the prohibitions against Contractor-Generated Waste, land clearing debris and Exempt Waste.¹ All bulk waste must be of such nature, size and composition as to be collected by a clam truck. Therefore, logs, stumps and branches of lengths and diameters that cannot be safely handled by a standard clam truck will not be collected.

The modification of bulk service is within the scope of the solicitation (RFP B-04-22) under which Waste Management was awarded the Franchise Agreement. As you know, Form 4 of the Cost Package required each proposer to provide pricing for four separate bulk waste collection scenarios: six, twelve, twenty-four and fifty-two collections per year. See Table 4.3 of the solicitation. Modifications to the collection contract are permitted by Section 33.2 provided that they are in writing and signed by the parties. In the event the Town desires to utilize the monthly bulk collection option, the rate for such service will be reduced by \$.40 per residential unit.

Modifications to the contract are permitted unless they (a) destroy the competitive nature of the solicitation under which it was awarded or (b) violate the Town's charter, ordinances or statutory law. The most commonly articulated test for measuring whether a deviation in a solicitation is sufficiently material to destroy its competitive character is whether the variation gives a "bidder an advantage or benefit not enjoyed by the other bidders." Harry Pepper & Associates v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977). Certainly, the competitive nature of the RFP will not be compromised by utilizing a monthly collection schedule that was contemplated in the original documents. The change does not benefit Waste Management monetarily. The document requires a reduction in rate, not an increase.

Further, the modification is not prohibited by any charter provision, ordinance or statute. Contrast the instant matter with that set forth in Florida Attorney

¹ The definition of Bulk Waste, as set forth in Section 2E is as follows:

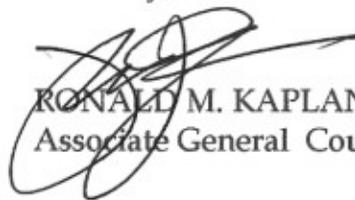
Bulk Waste shall mean any and all non-liquid material which is predominantly noncombustible and therefore, should not be processed in a mass burn resource recovery system or which is not susceptible to normal loading and collection in packer-type sanitation equipment. Bulk Waste includes, but is not limited to furniture and large appliances (with refrigerants properly removed and verified), incidental tires, concrete rubble, mixed roofing materials, noncombustible building debris, lumber, rock, cement, asphalt, tar, gravel and other earthen materials, equipment, wire, cable, **tree branches or trunks with a diameter of more than four inches, or being in whole or in part of a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion**, and Garbage (to the extent that it is contained as an incidental part of Bulk Waste). Bulk Waste must be generated by the customer for whom the Bulk Waste is collected. Bulk Waste does not include items herein defined as Contractor-Generated Waste, or Exempt Waste. Compacting of Bulk Waste containing refrigerants or other potentially harmful fluids or gases is prohibited.

General Advisory Opinion AGO 2003-29. There the City of Mulberry wanted to modify an existing utility operations and maintenance contract that had been negotiated with a vendor. The contract provisions contemplated expansion of the scope of services without requiring competitive bids. The proposed modification would increase the value above of the threshold for no-bid contracts as set in the City charter. The Attorney General opined that the modification could not be made because the "city...by contract may not alter the requirements of the city's charter nor avoid statutorily mandated competitive bidding for capital projects exceeding prescribed limits." We do not have this situation in Davie. The modification here is contemplated in the RFP, does not materially alter the terms of the RFP or the awarded contract, reduces costs to the Town, and is not impacted by charter, ordinance or statutory requirements.

Accordingly, Waste Management is convinced that the bulk collection modifications are permitted by the terms of the RFP and applicable law and will defend the City against any claims, actions or suits brought in relation to the modification.

If you have any questions regarding the above, please contact me or Tony Spadaccia, our Director of Government Affairs.

Sincerely,



RONALD M. KAPLAN
Associate General Counsel-South

Cc: T. Spadaccia
J. Casagrande

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