

SANITATION SERVICE CONTRACT

This Agreement is entered into by and between the City of Springdale, Arkansas, hereinafter referred to as "City", and Sun-ray Services, Inc., hereinafter referred to as "Contractor".

RECITALS

It is the intent and purpose of this Agreement to provide for the efficient, healthful, and aesthetic operation of a collection, recycling, transfer, and disposal service for solid waste for City through services of Contractor. City desires to increase its solid waste recycling and composting efforts and abide by all applicable federal, state, and local laws and regulations. Contractor desires to assist the City in the collection, recycling, composting, transfer, and disposal of City's solid waste and the City's recycling and composting efforts and by this contract agrees to do so. City, by this Agreement, grants Contractor the exclusive right to operate a collection, recycling, composting, transfer, and disposal service for solid waste for City, other than the existing recycling facilities within the City as currently operating and under the present ownership.

City has previously entered into and presently operates under an Agreement dated November 20, 1987 with the Contractor for the collection and disposal of solid waste for the City. Notwithstanding the terms and provisions of said Agreement, the parties hereto have agreed to the cancellation of said Agreement in consideration of a new Agreement for the collection, recycling, composting, transfer, and disposal of solid waste to become effec-

tive on January 1, 1996, which new Agreement, upon its effective date, will supersede the present Agreement and constitute a novation entered into by and between the parties hereto.

City deems it necessary to incorporate any savings realized through recycling efforts into its present residential collection, transfer, and disposal rate structure. To further reduce rates, the City desires to initiate a volume based rate system for household waste collection, yard waste collection, and composting; and to add a program for curbside collection of recyclable material. City deems this to constitute an exceptional situation whereby a competitive bidding procedure would not be feasible or practical. This determination is based upon City's knowledge of Contractor's thorough, competent, and qualified services in the past assisting City with the collection, recycling, and disposal of City's solid waste; Contractor's extensive experience and resources regarding not only collection, transfer, and disposal of solid waste, but recycling and composting thereof; and City's knowledge and belief that Contractor is ready, willing, and able to provide such continued services to City and to assist City in promptly increasing its recycling and composting efforts. Further, Contractor has obtained a long term disposal contract with the most accessible, permitted solid waste disposal facility outside the four (4) county regional solid waste management district existing pursuant to Arkansas Act 752 of 1991; Contractor also owns a permitted transfer station, permitted Class IV landfill, and a permitted composting facility from the applicable Arkansas authorities as

contingent alternatives; and Contractor is in the best position to ensure payment of all applicable solid waste collection, recycling, and disposal fees to the State of Arkansas, including, but not limited to all post-closure trust funds fees, disposal fees, and recycling fees required pursuant to Arkansas Acts 747, 754, and 755 of 1991, and Arkansas Act 1127 of 1993 and any and all existing and future fee requirements by the United States, Arkansas and local laws, ordinance and regulations. Finally, City deems the thoroughness, experience, resources, competence, and quality of the services to be provided and the provider of those services to be of utmost importance and deems Contractor to be the person and/or entity best able to provide such services. Accordingly, City deems this new Agreement to be in the best interest of the citizens of the City of Springdale and the parties hereto.

#### TERMS AND CONDITIONS

Now, therefore, for and in consideration of the recitals set forth above and the terms and conditions set forth below, all of which constitute good and valuable consideration, it is agreed:

(1) DEFINITIONS: For purposes of this Agreement the terms set forth below should be understood to mean the following:

(a) "Solid waste" shall refer to "refuse", "garbage", "rubbish", and "trash", which words and such other words as "residential" shall be defined herein as they are defined in Chapter 102 of the City of Springdale Municipal Code; but excluding yard waste as defined below and further provided that solid waste shall not include radioactive, toxic, corrosive, volatile, flammable, explosive, or hazardous material.

(b) "Recyclable materials" shall refer to those items or classes of items within the residential, commercial, and industrial solid waste stream which can be processed and

reused in some significant way in an economically feasible manner. Those recyclable items or classes of items identified for recycling by Contractor are subject to change with the mutual consent of Contractor and City.

(c) "Yard waste" shall refer to grass clippings, leaves, and shrubbery trimmings as defined by Arkansas Act 479 of 1993.

(d) "Hazardous material" shall include but not be limited to, any waste listed or characterized at any time during the terms of this Agreement as hazardous by any federal, state or local law, ordinance or regulation, including, but not limited to the Resource Conservation and Recovery Act of 1976 as amended, the Arkansas Hazardous Materials Transportation Act of 1977 as amended and the Arkansas Waste Management Act of 1979 as amended.

(e) "Disposal" shall refer to those practices and procedures in accord with the Resource Conservation and Recovery Act of 1976, as amended, and all other applicable United States, Arkansas, and local laws, ordinances and regulations.

(2) SCOPE OF SERVICES: Contractor shall:

(a) Collect and dispose of solid waste from all residential units using suitable equipment and methods of collecting, recycling, and disposing of the same and obtain all licenses and permits required under all federal, state, and local laws and regulations to operate said collection, recycling, and disposal service; provided that the solid waste to be collected, recycled, and disposed of by Contractor pursuant to this Agreement excludes radioactive, toxic, corrosive, volatile, flammable, explosive, and hazardous material. The Contractor shall have no liability for nor receive title to such waste excluded herein, and City expressly agrees to defend, indemnify, and hold Contractor harmless from and against any and all damages, penalties, fines, and liabilities resulting from or arising out of the collection, recycling, and disposal of such waste excluded hereinabove. Provided, further, that an owner having a legal or beneficial interest in five (5) or more rental units shall be excluded from being considered a residential unit as defined herein.

(b) Provide, operate, and maintain a transfer point in and around the City. The Contractor will keep open and operate said transfer point between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and 8:00 a.m. until noon on Saturday. The transfer point may be closed on all legal holidays. Contractor shall be entitled to make reasonable charges to any entity disposing of trash at the transfer point, excluding trash brought there by City.

(c) Provide, operate, and maintain its present permitted yard waste composting facility and cause the yard waste hereunder to be delivered to such facility.

(d) Use equipment in the collection of said solid waste which is of all metal construction, completely enclosed, and which has a packer-type refuse body.

(e) Make collection of said solid waste at all residential housing units within the city limits once each week. Weekly collections shall satisfy the following conditions:

(1) Each residential unit may dispose at least one (1), but not more than four (4) approved containers limited to thirty (30) gallons each in size and weighing not more than fifty (50) pounds each, when full. Said container shall be emptied or collected by the Contractor and shall be located in accordance with the provisions of Section 102-4(3) of the Springdale Municipal Code. The determination as to whether a residential customer shall be exempt from the requirements of the aforesaid section shall be jointly determined by Contractor and City in a fashion consistent with the terms and provisions of this agreement.

(2) When the resident finds it necessary to dispose of additional household waste, trash, rubbish, or garbage, all such waste shall be emptied at no additional cost to the resident, provided the refuse is placed in disposable containers or tied in bundles not longer than four (4) feet in length and not more than fifty (50) pounds each, and is placed in accordance with applicable City ordinances.

(3) The day of the week chosen by Contractor for said collection shall be made known by publication or otherwise to each resident household in City. Contractor shall have the right to change the date from time to time so as to provide a more efficient and orderly collection.

(f) Cooperate with City in all cleanup campaigns at no charge to the City so long as the City continues to utilize the Tontitown Class IV landfill.

(g) Make such collections in a neat, clean, orderly, and workmanlike manner and to maintain the equipment and personnel as clean as practicable under the circumstances.

(h) Maintain an office in or around the City for telephone service to receive calls pertaining to such collection

services. Office hours shall be maintained from 8:00 a.m. to 5:00 p.m., Monday through Friday.

(i) Indemnify and hold harmless City from any and all liabilities, obligations, suits, costs or defending suits or damages resulting from the operation of Contractor, its agents, or employees in performance of this Agreement:

(1) to carry workers' compensation insurance on its employees and keep in force and effect during the life of this Agreement public liability and property damage insurance in the minimum amount of \$2,000,000 aggregate, \$1,000,000 for each such accident and \$1,000,000 for property damage; and,

(2) provide to the City a performance bond and/or irrevocable letter of credit for the faithful performance of this contract, as amended and extended and all obligations arising hereunder in the principal amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). Said bond or irrevocable letter of credit shall be executed by a surety company or banking institutions licensed to conduct business in the State of Arkansas.

(j) Operate a recyclable drop off station for the benefit of the residents of City.

(k) Operate weekly curbside collection of recyclable materials for those residents desiring such service. The fees for such collection will be paid only by those residents who utilize the service. The curbside collection of recyclable materials will be limited to those items deemed marketable by the Contractor, but shall include but not be limited to, newsprint, clear glass, aluminum beverage containers, H.D.P.E. plastic milk containers and P.E.T. plastic soft drink containers. Such recyclable materials must be separated and in a thoroughly cleaned condition with all caps and neck rings removed.

(l) Operate weekly curbside yard waste collection. The fees for such collection will be volume based and paid only by those residents desiring such service, and to sell yard waste bags for curbside collection and to provide a drop-off point at the recycling and transfer facility for those who wish to haul their own yard waste for additional savings, in accordance with paragraph 3(b) below.

(m) To sell specially-marked household waste bags to any residential customer who desires to have a volume based rate system for the weekly curbside collection of household waste in lieu of the related monthly service charge.

(n) Dispose of the solid waste collected, but not recycled or composted at a final disposal facility and cause all fee payments to be remitted to the State of Arkansas, including, but not limited to, all post-closure trust funds fees; disposal fees and recycling fees required pursuant to Arkansas Act 747, 754, 755 of 1991, and Arkansas Act 1127 of 1993, and any and all other existing and future fee requirements by the United States, Arkansas, and local laws, ordinance and regulations.

(o) Allow the City the option to elect to require either or both recycling or mandatory yard waste collection at an adjusted base rate of an increase of 50% of the individual unit rate. It is agreed that the City may unilaterally execute this option but shall be required to give six (6) months advance notice prior to mandatory city-wide recycling and yard waste collection being instituted by the Contractor.

(p) To provide certain additional services to City-owned establishments and parks as herein immediately specified. The Contractor agrees to service, upon request, all city-owned establishments and parks without charge to the City, with containers to be provided by Contractor, which upon execution of this contract consists of the following:

<u>Location</u>	<u>Number of Containers</u>	<u>Size of Containers</u>	<u>Frequency of Pick-up*</u>
City Hall	1	4 yd.	3 x week
Fire Dept.	1	2 yd.	1 x week
City Park (Murphy)	1	6 yd.	2 x week
City Pool & Youth Ct.	1	2 yd.	2 x week
Adopt-A-Pet	1	2 yd.	5 x week
Central Jr. High			
Ball Park	1	2 yd.	2 x week
Grove Street Ball			
Park	1	2 yd.	3 x week
Youth Center Park St.	1	6 yd.	1 x week
Springdale Airport	1	2 yd.	1 x week
Senior Citizen			
Park St.	1	2 yd.	1 x week
Bobby Hopper Park	1	4 yd.	1 x week
Randall Tyson Park	2	4 yd.	2 x week
White Addition Fire	1	40 gal. bags	1 x week
Station			(by hand)
Sanders Street Fire	1	40 gal. bags	2 x week
Station			(by hand)
Downtown	Approx. 20	40 gal.	2 x week
			(by hand)
New Facilities	As Req.	As req.	As req.

\* Frequency of pick-up will need to be adjusted depending on demand and usage.

(3) RATES, COMPENSATION AND CITY OBLIGATIONS:

(a) Contractor shall have the sole and exclusive right to collect solid waste as defined above in paragraph (1)(a), (b), and (c) within the city limits of Springdale, Arkansas, from all residential units within said city limits, other than the existing recycling facilities with the City as currently operating and under the present ownership.

(b) Contractor shall charge residential customers for residential curbside household waste collection at the rate of \$7.75 per month for each residential housing unit.

Contractor shall charge residential customers for curbside recyclable material collection at the rate of \$2.00 per month for each residential housing unit utilizing such service.

Contractor shall sell bags in accordance with the following rates per bag:

HOUSEHOLD WASTE BAGS

<u>Minimum bags purchased</u>	<u>Total price</u>
4	\$ 5.00
13	\$15.00
30	\$30.00

YARD WASTE BAGS

4	\$ 4.00
13	\$11.00
30	\$20.00

Those residents of City so choosing, rather than purchasing Contractor yard waste bags in accordance with this schedule, may instead use their own yard waste bags, not to exceed forty (40) gallons each, and transport said yard waste to Contractor's drop-off point at the recycling or transfer facility for disposition at the cost of \$.50 per yard waste bag.

This provision is subject to the provisions set forth hereinafter in paragraph 4(b). Contractor shall be responsible for all billings to and collections from residential

customers under this agreement.

(c) Contractor shall pay City a franchise fee in the amount of four percent (4%) of the total collected receipts, excluding the franchise fee collected, from residential units. Said fee shall be due and payable to City by Contractor not later than the twentieth (20th) day of the month following said collection by Contractor.

(4) TERM, RATE, AND COMPENSATION ADJUSTMENTS: This Agreement shall be in full force and effect during the period commencing January 1, 1996, and shall continue through December 31, 2000. Thereafter, this Agreement shall continue and remain in full force and effect for five separate and additional one-year extension periods if mutually agreed upon by and between the Contractor and the City. Termination by the City may be executed by giving sixty (60) days' written notice prior to the end any one-year extension period. The parties hereto specifically agree as follows:

(a) The fees or compensation payable to Contractor for the entire term of this contract will be adjusted upward or downward to reflect changes in the costs of doing business, as measured by fluctuations in the Consumer Price Index (CPI-U) published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Southern Region of the United States. At the start of the second year of the contract and every year thereafter, the fees or compensation shall be increased or decreased by a percentage amount equal to the net percentage in the CPI-U computed as follows:

The net changes shall be the difference between the said CPI-U for the last full month preceding the contract and the last month of the last contract year prior to the requested adjustment. Subsequent years of the contract may be adjusted annually based upon the net change for the proceeding twelve (12) month contract period.

(b) Contractor may petition City for rate adjustments at reasonable times on the basis of unusual changes in its cost of doing business, such as revised laws, ordinances or regulations; changes in location of disposal sites; or changes in disposal charges. City reserves the right to

refuse to grant such rate adjustments. Upon such refusal and for a period of sixty (60) days thereafter, Contractor may terminate this contract with sixty (60) days' notice to City.

(c) Contractor represents that it has made application for a Class I landfill (as defined) within the four (4) county solid waste management district. In this connection, Contractor represents to the City that upon said Class I landfill opening for business and accepting solid waste from the municipality of Springdale that Contractor shall promptly seek an appropriate residential unit rate adjustment with the City of Springdale, said rate adjustment to be based upon actual prevailing market factors.

(5) STATUS OF CONTRACTOR: Contractor shall be in all respects an independent contractor as to the work done and services rendered, and shall be in no respect an agent, servant, or employee of City. The provisions set forth herein state the work to be done and the services to be rendered by Contractor, but the method to be employed to accomplish the work and provide the services shall be the responsibility of Contractor, unless provided in this agreement.

(6) STATUS OF SOLID WASTE, YARD WASTE, AND RECYCLABLE MATERIALS: Title to the solid waste, recyclable materials, and yard waste collected and received by Contractor for the purposes specified herein shall pass to Contractor when collected as provided herein, and shall be disposed of by Contractor in a manner authorized by all applicable federal, state, and local laws and regulations, and in such a manner so as to cause all applicable solid waste collection, recycling, and disposal fees to be collected and remitted to all applicable federal, state, and local governmental agencies. Contractor shall have absolute right to any proceeds from the sale or other disposition of recyclable materials or yard

waste compost.

(7) MUTUAL COVENANTS: City and Contractor mutually covenant and agree as follows:

(a) Contractor is only obligated to collect solid waste that is packaged, stored, and located as defined in this Agreement and by ordinance and is not obligated to cleanup or otherwise maintain the area in which containers are located except for spillage from the containers caused by Contractor.

(b) Contractor shall service, upon request, all City establishments and parks with large metal containers suitable for mechanical servicing without charge to City.

(c) In the event Contractor fails to faithfully perform all of its covenants as herein provided or it is proven by City that Contractor is creating a public health hazard due to negligence of duties of Contractor, written notice shall be given Contractor ordering correction of such default within ninety (90) days. In the event the default is not corrected within ninety (90) days, City shall have the right to employ any other person, partnership, or firm for the performance of this contract; and Contractor and/or its surety bond company shall be liable for such damages as are afforded at law or in equity.

(d) In the event of the insolvency, threat of insolvency, liquidation, or other act of any nature whatsoever on the part of Contractor resulting in an emergency condition or creating a reasonable doubt as to ability of Contractor to perform the terms and conditions of this Agreement, then City shall have the right to immediately assume operation of the solid waste collection, recycling, and disposal service contemplated herein and operate such service on its own behalf or through an agent, to insure the uninterrupted continuance of necessary services to residents to City. Contractor agrees that City shall, for a rental fee, have the right to use the equipment and disposal areas provided by the Contractor pursuant to this Agreement temporarily while such emergency or other conditions exist. Any action taken by City pursuant to this provision shall be by written resolution of the Springdale City Council at a meeting called for that purpose. It is specifically understood that within the terms of this paragraph that City may substitute a separate contractor in the event that Contractor becomes insolvent, is threatened with insolvency, bankruptcy, or liquidation or other act. Nothing contained in this provision shall deprive either party from any other remedies afforded either in law or in equity.

(e) This contract shall not be assigned, sold, nor transferred in any manner whatsoever, without prior consent of City pursuant to a written resolution of the Springdale City Council. The term transfer included any change of ownership interest resulting from operation of law or private transaction.

(8) APPLICABLE STATE LAW: This Agreement is made and entered into in the State of Arkansas, the parties hereto are all domiciled in or do business in Arkansas, this Agreement shall be governed by and interpreted under the laws of the State of Arkansas and litigation relevant hereto shall be subject to the jurisdiction of the Arkansas courts.

(9) TIME OF ESSENCE: The time of the keeping of the covenants herein is of the essence of this Agreement, and the parties hereto so agree.

(10) BINDING EFFECT: This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors, representatives, heirs, and assigns, except as expressly limited otherwise herein.

(11) SEVERABILITY: Each paragraph, portion or clause of this Agreement is severable from all other paragraphs, portions, and clauses. In the event any court of competent jurisdiction determines that any paragraph, portion or clause is invalid or unenforceable for any reason, all remaining paragraphs and portions shall remain in full force and effect.

(12) ENTIRE AGREEMENT: This Agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding upon the parties hereto. This agreement supersedes all prior agreements, contracts, and understand-

ings of any kind between the parties relating to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto subscribe their names and in their representative capacities for City and Contractor on this 12<sup>th</sup> day of December, 1995.

CITY OF SPRINGDALE, ARKANSAS

BY: Charles N. McKinney  
Charles N. McKinney, Mayor

ATTEST: Minda Neff  
Minda Neff, City Clerk

SUNRAY SERVICES, INC.

BY: Glenn R. Holcomb 12/13/95  
Glenn R. Holcomb, President

ATTEST: Henry Morris

**AMENDMENT TO SANITATION SERVICE CONTRACT**

This Amendment, entered into this 13 day of March 2007 by and between the City of Springdale, Arkansas (the "City") and Waste Management of Arkansas, Inc. (the "Contractor") amends a certain Sanitation Service Agreement between the parties first dated December 12, 1995.

**RECITALS**

WHEREAS, pursuant to Ordinance No. 2442 and Ordinance No. 2811, the City is a party to the Sanitation Services Contract dated December 12, 1995 (the "Contract") with Sunray Services, Inc. for the purposes of collection, recycling, transfer and disposal of solid waste for the City;

WHEREAS, as a matter of Arkansas law due to a statutory merger in 1998, Waste Management of Arkansas, Inc. (the "Contractor") is the successor-in-interest to Sunray Services, Inc; and

WHEREAS, the parties desire to make certain amendments to the Contract.

NOW, THEREFORE, in consideration of the above Recitals and Terms and Conditions below, all of which constitute good and valuable consideration, the said Contract is amended as follows:

**TERMS AND CONDITIONS**

1. Paragraph 2(p) is amended to supplement and restate the following listing of City establishments and parks to be serviced by Contractor at no additional charge, as set forth therein:

<u>Location</u>	<u>Number of Containers</u>	<u>Size of Containers</u>	<u>Frequency of Pickups</u>
City Hall	1	4 yd.	3 x week
	1	6 yd.	3 x week
	1	4 yd. OCC	1 x week
Fire Dept.	1	2 yd.	1 x week
City Park (Murphy)	1	6 yd.	2 x week
City Pool & Youth Ct.	1	8 yd.	6 x week
Adopt-A-Pet	1	2 yd.	5 x week
Central Jr. High Ball Park	1	2 yd.	2 x week

Grove Street Ball			
Park	1	2 yd.	3 x week
John Powell Center	1	8 yd.	3 x week
Springdale Airport	1	2 yd.	1 x week
	1	6 yd.	3 x week
Senior Citizen			
Park St.	1	2 yd.	1 x week
Bobby Hopper Park	1	6 yd.	1 x week
Randall Tyson Park	2	4 yd.	2 x week
Public Works	2	6 yd.	5 x week
Appliance R/O			
Container	1	40 yd.	on call
Springdale Library	2	4 yd.	1 x week
Springdale Water			
Dept.	2	4 yd.	1 x week
Wastewater			
Treatment	1	6 yd.	1 x week
White Addition Fire			
Station	1	40 gal. bags	1 x week (by hand)
Sanders Street Fire			
Station	1	40 gal. bags	2 x week (by hand)
Downtown	Approx. 20	40 gal.	2 x week (by hand)
New Facilities	As Req.	As Req.	As Req.

- Frequency of pick-up will need to be adjusted depending on demand and usage, but shall not include construction and demolition service.

2. Paragraph 3(b) is restated, to reflect the rates in effect as of January 1, 2007 and to read as follows:

(b) Contractor shall charge residential customers for residential curbside household waste collection at the rate of \$9.92 per month for each residential housing unit.

Contractor shall charge residential customers for curbside recyclable material collection at the rate of \$2.13 per month for each residential housing unit utilizing such service.

Contractor shall sell bags in accordance with the following rates per bag:

HOUSEHOLD WASTE BAGS

<u>Minimum bags purchased</u>	<u>Total price</u>
4	<u>\$ 5.20</u>
13	<u>\$15.60</u>
30	<u>\$31.20</u>

YARD WASTE BAGS

4	<u>\$ 5.20</u>
13	<u>\$14.30</u>
30	<u>\$25.93</u>

Those residents of City so choosing, rather than purchasing Contractor yard waste bags in accordance with this schedule, may instead use their own yard waste bags, not to exceed forty (40) gallons each, and transport said yard waste to Contractor's drop-off point at the recycling or transfer facility for disposition at the cost of \$.65 per yard waste bag.

This provision is subject to the provisions set forth hereinafter in paragraph 4(b).

3. Paragraph 3(c) is restated in its entirety to read as follows:

(c) The City shall retain a franchise fee equal to four percent (4%) of the total collected receipts from residential units, excluding sales tax.

4. A new Paragraph 3(d) is added to provide for billing by the City as follows:

(d) This provision is subject to the provisions set forth hereinafter in paragraph 4(b). Contractor shall be responsible for all billings to and collections from residential customers that are not customers of the City's water department, under this agreement. Contractor shall pay City a franchise fee in the amount of four percent (4%) of the total collected

receipts from these residential customers. Said fee shall be due and payable to City by Contractor not later than the twentieth (20<sup>th</sup>) day of the month following said collection by Contractor.

- (1) The City, acting through its municipal water department, commencing on July 1, 2007, will provide the Contractor billing and collection services for residential customers in the corporate limits of the City of Springdale, Arkansas, that are also customers of the municipal water department. All refunds deemed necessary by Contractor will be made directly to the customer by Contractor.
- (2) The City will initiate billing for new customers and bill all customers on a monthly basis at the basic rate plus applicable sales taxes, unless notified by Contractor in writing that a customer qualifies for another rate. City will also furnish new customers with service literature provided by Contractor. The City, acting through its municipal water department, will provide the Contractor daily an electronic list of new and disconnected accounts for the previous business day.
- (3) The City, acting through its municipal water department, will provide Contractor with a digital summary of all sanitation collections made in the preceding month. In addition to said summary, a digital monthly listing will be provided of all sanitation customers that are delinquent in their payment and a monthly detailed digital billing report listing all water customers being billed for sanitation services. The billing report will identify each water customer within the corporate city limits and the amount being billed for sanitation services. All digital reports will be prepared in Excel format. The Contractor will pay a fee of \$125.00 for any additional copies of the above monthly reports requested.
- (4) Contractor will provide written notification to the City's water department of the name and address of all customers to be billed at any rate other than the basic monthly rate.
- (5) Contractor will reimburse the City for all computer programming costs associated with adding monthly sanitation charges to water bills and will also pay the City \$0.50 for each water bills that includes charges being collected for the Contractor. Prior to any

programming for the implementation and prior to any recurring programming of the billing of the sanitation fee a cost estimate shall be presented to Waste Management for their review.

- (6) It is specifically agreed and understood by the Contractor that the City, acting through its municipal water department, will be providing only the billing and collection services as set forth herein. Contractor shall be responsible for maintaining an adequate staff to address all customer service issues. Customer service calls received at the municipal water department shall be transferred directly to Contractor's staff for immediate resolution. Contractor will initially provide the water department with two direct telephone lines allowing all sanitation related calls received by the water department to be directly transferred to Contractor's customer service representatives. Contractor will be responsible for paying all costs for maintaining the direct telephone lines and will add or delete lines in the future with the approval of the City. Contractor further agrees to maintain an adequate staff of customer service representatives in accordance with paragraph 2(g).
- (7) The City, acting through its municipal water department, will remit monthly sanitation payments collected for the Contractor by the 15<sup>th</sup> day of each month. Monthly payments to the Contractor shall represent any sanitation payments received in the prior month, as well as all sales tax collected (see Paragraph (3)(d)(8)). The City shall deduct from each monthly payment to the Contractor its \$0.50 handling fee as set forth herein and the franchise fee authorized in paragraph 3(c).

- (8) The State of Arkansas, through its gross receipts rules, requires the Contractor to remit tax collections directly to the State. Therefore, the Contractor will remit monthly sales taxes and related reports directly to the State of Arkansas in compliance with state requirements. Any sales tax discounts received will be retained by the Contractor.
- (9) The water department shall only be responsible for providing billing services to Contractor, i.e. sending a monthly statement to the regular customers of the water department. The water department shall not be called upon to act as a collection agency to collect delinquent accounts for Contractor. As to customers who only make partial payment, the water department shall be entitled to apply such partial payments first to its fees and late charges. As to those customers who fail to pay their monthly statements, the water department shall provide a shut off notice and may, in its sole discretion, terminate water service. In no event shall the water department be required to apply its customers' deposit towards any amount owed to Contractor. As to the delinquent accounts of Contractor's customers for sanitation services, those accounts shall be turned over to Contractor who shall be responsible for any efforts to collect such accounts. The water department shall be responsible for the collection efforts necessary to collect the delinquent accounts of the water department's customers.
- (10) The Contractor shall pay the expenses of the water department necessary to reestablish authorizations for automatic withdrawal for all water department customers currently enrolled in the program.
5. A new Paragraph 3(e) is added to read as follows:
- (e) Rates included in this agreement do not include sales tax. Appropriate sales tax will be added by the City to these rates at the time of billing.
6. Paragraphs 4(a) and 4(b) are amended to read as follows:
- (a) The fees or compensation payable to Contractor for the entire term of this contract will be adjusted upward or downward to reflect changes in the costs of doing business, as measured by fluctuations in the Consumer Price Index (CPI-U) published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Southern Region of the United States. On April 1, 2007 and every April 1<sup>st</sup> thereafter, the fees or compensation shall be increased or decreased by a percentage amount equal to the net percentage change in the CPI-U during the previous calendar year.

- (b) Contractor may petition City for rate adjustments at reasonable times on the basis of unusual changes in its cost of doing business, such as revised laws, ordinances or regulation; changes in location of disposal sites; or changes in disposal charges. Upon such refusal and for a period of one hundred eighty (180) days thereafter, Contractor may terminate this contract upon one hundred eighty (180) days prior written notice to City.

7. A new subparagraph 7(f) is added to read as follows:

- (f) The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of a party. Such causes shall include, but not be limited to, acts of God, acts of war, riot, fire, explosion, accident, flood or sabotage; lack of adequate fuel, power, or raw materials; judicial or governmental laws, regulations (provided that neither party shall be required to settle a labor dispute against its own best judgment).

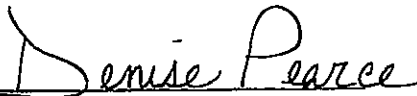
8. Contractor agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees and representatives from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense and reasonable attorneys' fees), to the extent directly caused by any litigation arising from any legal challenge to this Amendment or to the billing of customers by the City for the solid waste fees provided for hereunder, provided that any cost of settlement shall be approved by Contractor in its sole discretion. Notwithstanding such indemnification, in the event of any such legal challenge, Contractor may elect to terminate the Contract upon giving one hundred eighty (180) days prior written notice of such termination. Such termination shall not relieve Contractor of its duty to protect, indemnify, defend and hold harmless the City as provided herein.

9. In all other respects not inconsistent herewith, said Contract is approved and ratified in its entirety.

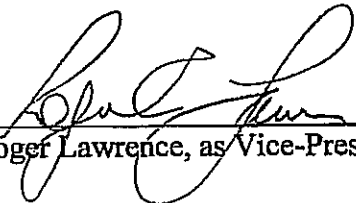
IN WITNESS WHEREOF, the parties hereto subscribe their names in their representative capacities for City and Contractor this 13 day of March 2007.

**CITY OF SPRINGDALE, ARKANSAS**

By:   
Honorable Jerre Van Hoose, Mayor

ATTEST:   
City Clerk

**WASTE MANAGEMENT OF ARKANSAS, INC.**

By:   
Roger Lawrence, as Vice-President

## **SECOND AMENDMENT TO SANITATION SERVICE CONTRACT**

This Second Amendment to Sanitation Service Contract (hereafter "Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Springdale, Arkansas (the "City") and Waste Management of Arkansas, Inc. (the "Contractor").

### **RECITALS**

WHEREAS, pursuant to Ordinance No. 2442 and Ordinance No. 2811, the City is a party to a Sanitation Services Contract dated December 12, 1995 with Sunray Services, Inc. for the purposes of collection, recycling, transfer and disposal of primarily residential solid waste for the City, as amended on March 13, 2007 (the "Contract");

WHEREAS, as a matter of Arkansas law due to a statutory merger in 1998, Waste Management of Arkansas, Inc., the Contractor, is the successor-in-interest to Sunray Services, Inc.;

WHEREAS, the parties desire to make certain amendments to the Contract, and

NOW, THEREFORE, in consideration of the above Recitals and Terms and Conditions below, all of which constitute good and valuable consideration, the said Contract is amended as follows:

### **TERMS AND CONDITIONS**

1. The City and Contractor agree that the "Effective Date" of the Amendment shall mean the date that both the 96-gallon garbage polycarts and the 18-gallon recycle bins are delivered to the 17,008 residential housing units.
2. The City and Contractor agree to extend the term of the Contract for five years from the Effective Date.
3. The City and Contractor agree to restate the terms of Paragraph 3(b) as follows:

3.(b) Contractor shall charge residential customers for residential curbside household waste collection and residential curbside recyclable material at the Base Rate of \$11.99 per month for each residential housing unit for the first twelve (12) months after the Effective Date.

Contractor will begin providing citywide residential recycling services on March 1, 2010 or within 60 days of the date that this Amendment is signed by both parties.

Contractor will provide Household Waste Bags [Yellow Bags] for Senior Citizens [65 years or older] as a part of the residential curbside waste collection program. Qualifying citizens will be required to purchase packages of ten bags at \$2.25 per bag plus sales tax. As a part of the residential curbside recyclable material collection program, the Yellow Bag customers will be provided an 18-gallon recycle bin, and will be charged \$2.29 per month on their Springdale Water Utilities bill. This recycle charge will be exempt from any price increases during the five-year term of this contract.

Contractor will provide Yard Waste Bags [Green Bags] for all citizens as a part of the residential curbside household waste collection program. Citizens using this program will be

required to purchase a minimum of one roll of 30 bags at a price of \$27.97 with no sales tax required.

4. The City and Contractor agree to modify the terms of Paragraphs 4(a) and 4(b) as set forth in the Contract and First Amendment as follows:

- At twelve months from the Effective Date of this Amendment and at twenty-four months from the Effective Date, the Base Rate to Contractor shall be increased by fifty cents (\$0.50) plus the percentage amount equal to the net percentage change in the Consumer Price Index (CPI-U – Garbage and Trash) published by the U. S. Department of Labor Statistics, for the Southern Region of the United States during the immediately preceding January 1 to December 31 calendar year.
- At the end of thirty-six months and at the end of forty-eight months from the Effective Date, the Base Rate payable to Contractor will be adjusted by the percentage amount equal to the net percentage change in the CPI-U – Garbage and Trash) during the prior January 1 to December 31 of the immediately preceding calendar year.
- At the end of each twelve-month period from the Effective Date, the price for Yellow Bag service and Green Bag service will be adjusted by the percentage amount equal to the net percentage change in the CPI- U – Garbage and Trash) during the prior January 1 to December 31 of the immediately preceding calendar year.

5. Nothing contained herein shall be deemed to amend or modify the Contract or the prior Amendment dated March 13, 2007, except as expressly set forth herein. In the event of a conflict between the terms of the Contract and this Amendment, the terms of this Amendment shall control.

**IN WITNESS WHEREOF**, this Amendment has been executed as of the date first set forth above.

**CITY:**

**CONTRACTOR:**

**CITY OF SPRINGDALE, ARKANSAS**

**WASTE MANAGEMENT OF ARKANSAS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_