

DOCUMENT ROUTING FORM

13/2/13 (L)

NAME OF DOCUMENT: REVISED PUR-5 - Motion to 1) enter into an Interlocal Agreement with Broward County for cooperative purchasing of solid waste disposal support services; 2) a motion to reject all proposals for solid waste processing and disposal services - Request for Proposal (RFP) 635-11066

Approved Comm. Mtg. on June 4, 2013, CAM #13-0770

13 JUN 28 PM 2:58

ITEM: M - PH - O - CR - PUR-5

Routing Origin: CAO ENG. COMM. DEV. OTHER _____

Also attached: copy of CAM copy of document ACM Form 3 originals

By: [Signature] forwarded to: J. Nichols, Public Works- Sustainability
Initials

1.) Approved as to Content: [Signature]
Department Director

Capital Improvements defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED YES NO
Capital Improvement Projects

2.) Approved as to Funds Available: by [Signature] Date: 6/26/13
Finance Director

Amount Required by Contract/Agreement \$ 732,291.53 Dept./Div. PBS/SANITATION
FUNDING SOURCE: Index/Sub-object PBS090201-3228 & 3299 Project # N/A
PBS090301-3255 & 3299

3.) City Attorney's Office: Approved as to Form # _____ Originals to City Mgr. By: _____

Harry A. Stewart _____ Cole Copertino _____ Robert B. Dunckel _____
Ginger Wald _____ D'Wayne Spence _____ Paul G. Bangel PGB
Carrie Sarver _____ DJ Williams-Persad _____

4.) Approved as to content: Assistant City Manager:

By: _____ By: _____
Stanley Hawthorne, Assistant City Manager Susanne Torriente, Assistant City Manager

5.) City Manager: Please sign as indicated and forward 3 originals to Clerk.

6.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

7.) City Clerk: ~~retains one original document and~~ forwards ³ original documents to Rick Andrews _{with exhibits}

Copy of document to Carla Foster Original Route form to Carla Foster
 Attach _____ certified copies of Reso. # _____ Fill-in date

7/2

INTERLOCAL AGREEMENT

between

BROWARD COUNTY

and

PARTICIPATING COMMUNITIES

for

SOLID WASTE DISPOSAL SUPPORT SERVICES

6-4-13
PUC-5

INTERLOCAL AGREEMENT

between

BROWARD COUNTY

and

PARTICIPATING COMMUNITIES

for

SOLID WASTE DISPOSAL SUPPORT SERVICES

This Interlocal Agreement ("Agreement") dated for convenience September 1, 2012, between BROWARD COUNTY, a political subdivision of the state of Florida, its successors and assigns, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY";

AND

The municipalities whose names appear in Exhibit "A" attached hereto and made a part hereof, their successors and assigns, hereinafter referred to as "PARTICIPATING COMMUNITY or COMMUNITIES." It is expected that Broward municipalities may elect to execute this Agreement and become a PARTICIPATING COMMUNITY at different times and throughout the term of this Agreement. At such time as a municipality executes this Agreement or subsequently terminates this Agreement, COUNTY is authorized to add or delete the municipality as a PARTICIPATING COMMUNITY to Exhibit "A." Upon adding or deleting a PARTICIPATING COMMUNITY to Exhibit "A," written notice containing the amended Exhibit "A" shall be sent to all parties to this Agreement.

ARTICLE 1
BACKGROUND

- 1.1 In order to establish the background, context and frame of reference for this Agreement and to provide a general background regarding the objectives and intentions of the COUNTY and the PARTICIPATING COMMUNITIES, the following statements, representations and explanations are predicates for the undertaking and commitments included within the provisions which follow and

shall be construed as essential elements of the mutual considerations upon which this Agreement is based.

- 1.2 COUNTY and the Contract Communities (as such term is defined in the Prior Interlocal Agreement) have previously entered into a Prior Interlocal Agreement dated November 25, 1986, as amended, ("Prior Interlocal Agreement") which authorizes and requires COUNTY to provide for the disposal of solid waste delivered by or on behalf of the Contract Communities through July 2, 2013.
- 1.3 In order to provide for the continuous disposal of all Contract Community solid waste throughout the term of the Prior Interlocal Agreement, COUNTY has entered into an agreement with Wheelabrator South Broward Inc. and Wheelabrator North Broward Inc. dated June 28, 2011, pursuant to which COUNTY will deliver or cause to be delivered, solid waste generated within the Contract Communities, and the above companies will accept responsibility and dispose of such solid waste at its facilities until July 2, 2013.
- 1.4 In order to continue to make available to all Broward municipalities a regional, economic and environmentally sound method of solid waste disposal after July 2, 2013, the Broward County Board of County Commissioners approved on June 26, 2012: (i) an agreement between COUNTY and Sun-Bergeron Solid Waste, J.V. ("Sun-Bergeron" or "Contractor") dated June 26, 2012, for solid waste disposal services; and (ii) an agreement between COUNTY and Wheelabrator Environmental Systems Inc., a Delaware corporation ("Wheelabrator" or "Contractor") dated June 26, 2012, for solid waste disposal services (collectively referred to as the Solid Waste Agreement(s)). The terms of the Solid Waste Agreements require, among other things, Sun-Bergeron and Wheelabrator, for a five year initial term, to accept PARTICIPATING COMMUNITIES' waste and commence disposal operations on July 3, 2013.
- 1.5 In addition to approving the Solid Waste Agreements on June 26, 2012, the Broward County Board of County Commissioners further approved a "Side Letter" dated June 19, 2012, from Wheelabrator Technologies Inc. to Broward County, whereby COUNTY and Wheelabrator agreed to waive, for a limited period of time, COUNTY's right to preferential pricing based on certain third party agreements, in exchange for the company making payments to COUNTY for its exclusive use and benefit. COUNTY agrees to contribute Wheelabrator's payments to its solid waste programs, administration and operations.
- 1.6 It is the intent of this Agreement to offer to all Broward municipalities the option to execute this Interlocal Agreement and elect to become a PARTICIPATING COMMUNITY subject to the terms of this Agreement and the applicable Solid Waste Agreement(s). By electing to become a PARTICIPATING COMMUNITY a municipality has the discretion to select either or both Contractor(s) as its solid waste disposal company and select among the multiple price and waste options contained in the applicable Solid Waste Agreement(s). Participating Communities

have the further right, pursuant to this Agreement, to additional optional County services as provided for herein.

- 1.7. It is further recognized by PARTICIPATING COMMUNITIES and COUNTY that COUNTY is entering into this Agreement both representing the unincorporated County, a waste generation area with solid waste requiring disposal, and as the party that has the ultimate responsibility for disposal of solid waste within Broward County pursuant to Section 403.706(b)(1), Florida Statutes.
- 1.8. This Agreement is an interlocal agreement entered into pursuant to Section 163.01, Florida Statutes, and the Florida Interlocal Cooperation Act of 1969, as amended. Prior to the effectiveness of any provision of this Agreement and subsequent Amendments hereto, this Agreement and any such subsequent amendments shall be filed with the Broward County Clerk of the Circuit Court as provided by Section 163.01(11), Florida Statutes.
- 1.9. The word "shall" as used in this Agreement shall in all cases be construed to be mandatory and to require the action so modified by the word "shall" to be taken without regard to the exercise of discretion.

ARTICLE 2 DEFINITIONS

The following contains the definitions of the terms as applied to this Agreement:

- 2.1. Administrator. The term "Administrator" or "County Administrator" shall mean the County Administrator of the Broward County government by the Charter of Broward County, Florida.
- 2.2. Agreement. The term "Agreement" shall mean this Interlocal Agreement (ILA) between COUNTY and Participating Communities.
- 2.3. Board of County Commissioners. The term "Board of County Commissioners" or "County Commissioners" or "County Commission" shall mean the Board of County Commissioners of Broward County, Florida.
- 2.4. Participating Communities. The term "PARTICIPATING COMMUNITY" OR "PARTICIPATING COMMUNITIES" shall mean the municipal corporation or corporations existing under the laws of the state of Florida, located within the COUNTY and whose names appear in Exhibit "A" to this Agreement.
- 2.5. County. The term "COUNTY" shall mean, depending upon the context, either (a) the geographical area contained within unincorporated Broward County, Florida, a political subdivision of the state of Florida, or (b) the government of Broward County, acting through the County Commission or its designee.

- 2.6 Fiscal Year. The term "fiscal year" shall mean October 1 to September 30 of the following year.
- 2.7 Haulers. The term "haulers" shall mean those persons, firms, corporations or governmental agencies which collect solid waste (either under oral or written contract, license, permit or otherwise) within the geographic boundaries of the PARTICIPATING COMMUNITY(IES) or the unincorporated County, or provide for the transportation and delivery of solid waste.
- 2.8 Residential Waste. The term "Residential Waste" shall have the same meaning as defined in the applicable Solid Waste Agreement.
- 2.9 Commercial Waste. The term "Commercial Waste" shall have the same meaning as defined in the applicable Solid Waste Agreement.
- 2.10 Unincorporated County. The term "unincorporated County" shall mean the geographical areas of COUNTY which are not within the boundaries of any municipal corporation. Unincorporated COUNTY shall be treated in all respects under the terms and conditions of this Agreement as a PARTICIPATING COMMUNITY.
- 2.11 Designated Facility. With respect to the Wheelabrator Solid Waste Agreement, the term "Designated Facility" shall mean either "Disposal Facility" as that term is defined in the Wheelabrator Solid Waste Agreement or "Alternate Disposal Facility" as that term is defined in the Wheelabrator Solid Waste Agreement when the conditions of Section 5.2 have been implemented. With respect to the Sun-Bergeron Solid Waste Agreement, the term "Designated Facility" shall mean "Waste Processing Facility" as that term is defined in that Sun-Bergeron Solid Waste Agreement; however for Additional Waste, the term "Designated Facility" shall refer to the "Material Recovery Facilities", as set forth in Exhibit B of the Sun-Bergeron Solid Waste Agreement.
- 2.12 Disposal Services Fee. The term "Disposal Services Fee" shall have the meaning as defined in the applicable Solid Waste Agreement.
- 2.13 Capitalized terms not otherwise defined in this Agreement shall have the same meaning as defined in the applicable Solid Waste Agreement.

ARTICLE 3

COMMITMENT OF WASTE STREAM

- 3.1 PARTICIPATING COMMUNITY shall select a Solid Waste Agreement Contractor (Wheelabrator or Sun-Bergeron or both) by which it agrees to be bound and the applicable price option and waste option pursuant to said Solid Waste Agreement(s), and furnish COUNTY and the applicable Contractor written notice of its elections, concurrent with the execution of this Agreement in such form and with such information as is contained in Exhibits "B" and "C" attached hereto and

made a part hereof. PARTICIPATING COMMUNITY shall have a continuing obligation to immediately provide to COUNTY, in writing, any amendments it may enter into with the applicable Contractor to the selection of its price or waste options.

- 3.2 During the duration of this Agreement as defined in Article 11 hereof, the PARTICIPATING COMMUNITIES and COUNTY for the unincorporated area shall cause all of the Residential Waste, Commercial Waste and any other designated waste pursuant to Section 3.1, within each of their respective boundaries to be collected, transported, delivered and deposited at the appropriate receiving facilities of Contractor, as the case may be, in accordance with the terms of the applicable Solid Waste Agreement, except for waste or recycling material which is transported outside the state of Florida.
- 3.3 Each PARTICIPATING COMMUNITY agrees to include in any contracts or contract amendments with haulers executed after the effective date of the Solid Waste Agreement, a provision that all Residential Waste, Commercial Waste and any other designated waste shall be delivered to the appropriate receiving facilities of either Wheelabrator or Sun-Bergeron, as the case may be, in accordance with the terms of the applicable Solid Waste Agreement, with an exception for any waste generated in the County which is shown to be destined for recycling or disposal outside the state of Florida.
- 3.4 PARTICIPATING COMMUNITY shall elect to participate in the following optional COUNTY services by marking and initializing the box(es) below as appropriate:

Centralized Billing Services, as described in Article 6.

Flow Control Enforcement Services, as described in Article 7.

ARTICLE 4 PARTICIPATING COMMUNITY'S OBLIGATIONS

- 4.1 Each PARTICIPATING COMMUNITY agrees to include in any hauler agreement for the collection of Residential Waste, including any renewal of an existing hauler agreement, entered into by a PARTICIPATING COMMUNITY and a licensed residential waste hauler after the effective date of the Solid Waste Agreement, the following: (a) the definition of Residential Waste as set forth in the Solid Waste Agreement; (b) the Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste as defined in the applicable Solid Waste Agreement, which is brought to a Designated Facility; (c) the Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering waste on behalf of the PARTICIPATING COMMUNITY; (d) a requirement for the Licensed Residential Waste Hauler(s) to

deliver all collected Residential Waste to the Designated Facilities, and (e) hours of operation for the Designated Facilities during which the Licensed Residential Waste Hauler shall be authorized to deliver waste to the Designated Facilities.

- 4.2 The PARTICIPATING COMMUNITY and the Licensed Commercial Waste Haulers shall execute a license agreement that sets forth the payment procedure in the Solid Waste Agreement for Commercial Waste Disposal Services, and which requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to the Designated Facilities.
- 4.3 If the PARTICIPATING COMMUNITY does not select centralized billing services pursuant to Article 6, it shall require the Licensed Commercial Waste Hauler(s) to provide a performance bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for the PARTICIPATING COMMUNITY, calculated pursuant to terms of the Solid Waste Agreement and based on the 60 day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding the execution of the license agreement between the PARTICIPATING COMMUNITY and the Licensed Commercial Waste Hauler(s) entered into after the Effective Date of the Solid Waste Agreement. The sufficiency of the value of the performance bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations. A Licensed Commercial Waste Hauler providing services for multiple Municipalities which do not select centralized billing services may provide one aggregate bond meeting the requirements set forth herein.
- 4.4 If a PARTICIPATING COMMUNITY does not select centralized billing services pursuant to Article 6, it shall pay the Contractor within thirty (30) days of receipt of a monthly invoice issued by Contractor for Residential Waste Disposal Services. If the PARTICIPATING COMMUNITY disagrees with the amount stated in the invoice, the PARTICIPATING COMMUNITY shall notify the Contractor of such dispute. The PARTICIPATING COMMUNITY shall make payment to Contractor of undisputed invoiced amounts within thirty days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute (for amounts greater than \$25,000) by mediation by a mutually acceptable mediator. In the event the parties are not able to resolve the dispute through mediation within forty-five (45) days, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to the Contractor, or relieve Contractor of its obligations under this Agreement.

- 4.5 If the PARTICIPATING COMMUNITY selects centralized billing services pursuant to Article 6, the PARTICIPATING COMMUNITY agrees to include in any contracts or contract amendments with haulers for residential waste a provision that the hauler shall comply with the following: (1) [insurance and credit requirements as may be required by COUNTY]; (2) Pay COUNTY the full amount of each invoice within thirty days of receipt; (3) Agree to pay interest at the rate consistent with the Florida Prompt Payment Act, Sections 218.70-218.80, Florida Statutes, for late payments; (4) Failure to timely pay is an event of default which if not timely cured within 15 days is an event of termination; (5) In the event the hauler disputes an invoice from COUNTY, the hauler shall first pay the full amount of the disputes charges when due, and shall, within thirty (30) days from the date of the receipt of the disputed invoice, give written notice of the dispute to COUNTY. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The parties agree to work in good faith to settle the dispute. In the event the parties cannot settle the dispute within sixty (60) days from the date of the receipt of the disputed invoice, the hauler may pursue any remedy available at law except withholding payment.
- 4.6 If a Participating Community collects its Residential Waste and hauls the Residential Waste to the Contractor, the PARTICIPATING COMMUNITY shall be responsible for all costs, including removal, transportation and disposal of the Unacceptable Waste brought to a Designated Facility.

ARTICLE 5
OUT OF STATE DISPOSAL AND REPORTING REQUIREMENTS

- 5.1 Any Solid Waste or recyclables generated in Broward County which are shown to be destined for transportation to any destination outside of the State of Florida based on a sworn affidavit of a hauler delivered to the COUNTY and PARTICIPATING COMMUNITY generating the waste and reciting facts which evidence the transportation and disposal of waste outside the state of Florida, are excluded from the flow control restrictions contained in Section 3.2 of this Agreement.
- 5.2 In addition to the affidavit required in Section 5.1, any hauler who elects to transport and dispose of any Broward County waste outside the state of Florida shall provide to COUNTY and PARTICIPATING COMMUNITY generating the waste, a monthly report containing the information listed below so as to enable the County and affected PARTICIPATING COMMUNITY to accurately monitor the collection, flow and disposal of waste.
- 5.3 A monthly report shall be due no later than 30 days after the end of the preceding month, delivered to the Director of Solid Waste and Recycling Services as to the COUNTY, and to the Public Works Director or equivalent position as to any

PARTICIPATING COMMUNITY, certified by the hauler, containing at a minimum the following information and documentation regarding any waste which is collected, transported and disposed of out of the state:

- 5.3.1 The tonnage, origin and type of waste which has been disposed of by the hauler outside the state;
- 5.3.2 The date(s) on which the hauler collected the waste and the location or route of the collected waste;
- 5.3.3 The location of the final disposal facility for the waste, including the location of any other facilities, such as transfer stations where waste is temporarily transported en-route to its final destination out of state;
- 5.3.4 Copies of all receipts, weigh tickets, reports and other written material verifying the collection, transportation and disposal of waste outside the state by the hauler;
- 5.3.5 Such other documentation and information on forms which may be prescribed by, and as the COUNTY or PARTICIPATING COMMUNITY generating the waste may reasonably require to confirm compliance with this section.

ARTICLE 6
OPTIONAL COUNTY CENTRALIZED BILLING SERVICES

- 6.1 Each PARTICIPATING COMMUNITY shall have the right, at its sole option, to participate in a COUNTY centralized billing services program as more particularly described in this article. If PARTICIPATING COMMUNITY elects to participate in the COUNTY centralized billing services program by so indicating in Section 3.4 of this Agreement, said election shall remain in force unless PARTICIPATING COMMUNITY furnishes to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of any Fiscal Year, notifying COUNTY that it elects to discontinue its participation in this program. If PARTICIPATING COMMUNITY elects not to participate in the COUNTY centralized billing services by so indicating in Section 3.4 of this Agreement, PARTICIPATING COMMUNITY may request to participate in a future fiscal year, by furnishing to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of that fiscal year.
- 6.2 If PARTICIPATING COMMUNITY timely notifies COUNTY of its election for centralized billing services, COUNTY shall provide the following services:
 - 6.2.1 Review invoices from and timely pay Contractors.
 - 6.2.2 Process billing statements to the haulers and PARTICIPATING COMMUNITIES, as applicable.
 - 6.2.3 Collect data from load tickets received from disposal and transfer facilities.

- 6.2.4 Provide financial and tonnage reporting for each PARTICIPATING COMMUNITY.
 - 6.2.5 Collect required security deposits from haulers.
 - 6.2.6 Suspend haulers for non-payment.
 - 6.2.7 Institute appropriate collections for delinquent accounts.
 - 6.2.8 Research tonnage discrepancies as appropriate.
 - 6.2.9 Maintain copies of haulers' certificates of insurance.
 - 6.2.10 Issue truck decals and maintain vehicle information.
 - 6.2.11 Disburse Contractor rebates received by County as appropriate in accordance with the Solid Waste Agreements.
 - 6.2.12 Reconcile tonnages to the Contractor's monthly invoices.
- 6.3 All costs and expenses for COUNTY's centralized billing services shall be paid for by PARTICIPATING COMMUNITY at an initial rate of \$0.15 (fifteen cents) per ton of waste generated from the PARTICIPATING COMMUNITY which is received by a Contractor at a Designated Facility. Beginning on October 1, 2014, and on each October 1 thereafter for the initial term of the Solid Waste Agreement, the rate shall be subject to adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%, by multiplying the existing rate by the Service Fee Adjustment Factor, as calculated according to the Solid Waste Agreements. The rate shall be subject to negotiation for any subsequent term.
- 6.4 COUNTY reserves the right, in its sole discretion, to cease providing centralized billing services prior to the commencement of any Fiscal Year, with a minimum of six (6) months written notice to PARTICIPATING COMMUNITY; except for the period beginning on July 3, 2013 and ending September 30, 2013, for which said notice by COUNTY shall be given to the PARTICIPATING COMMUNITIES no later than February 28, 2013.
- 6.5 COUNTY shall invoice PARTICIPATING COMMUNITY for centralized billing services within thirty (30) days of the end of each month. PARTICIPATING COMMUNITY agrees that it shall be required to pay COUNTY within thirty (30) days of receipt of the invoice in order to remain entitled to continuing to receive the service.

ARTICLE 7

OPTIONAL COUNTY FLOW CONTROL ENFORCEMENT SERVICES

- 7.1 Each PARTICIPATING COMMUNITY shall have the right, at its sole option, to participate in a COUNTY flow control enforcement program as more particularly described in this article. If PARTICIPATING COMMUNITY elects to participate in the COUNTY flow control enforcement program by so indicating in Section 3.4 of this Agreement, said election shall remain in force unless PARTICIPATING COMMUNITY furnishes to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of any Fiscal Year, notifying COUNTY

that it elects to discontinue its participation in this program. If PARTICIPATING COMMUNITY elects not to participate in the COUNTY flow control enforcement program by so indicating in Section 3.4 of this Agreement, PARTICIPATING COMMUNITY may request to participate in a future fiscal year, by furnishing to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of that fiscal year.

7.2 Each PARTICIPATING COMMUNITY electing to participate in flow control enforcement agrees to include a requirement that haulers consent to inspection of loads by COUNTY in any agreements, licenses, permits, franchises or other arrangements with haulers entered into after this Agreement.

7.3 COUNTY agrees to provide the following services as part of its flow control enforcement:

7.3.1 Monitor the delivery of waste to the designated Disposal Facilities.

7.3.2 Assist PARTICIPATING COMMUNITY staff in identifying violations of applicable solid waste ordinances, including efforts to avoid payment of franchise fees.

7.3.3 Assist the PARTICIPATING COMMUNITIES with identifying unauthorized haulers providing service within a PARTICIPATING COMMUNITY.

7.3.4 Assist the PARTICIPATING COMMUNITIES WITH identifying commercial businesses with inadequate solid waste services.

7.3.5 Such other services as COUNTY and PARTICIPATING COMMUNITES agree are necessary to monitor adherence to this Agreement.

7.4 COUNTY reserves the right, in its sole discretion, to cease providing flow control enforcement services prior to the commencement of any Fiscal Year, with a minimum of six (6) months written notice to PARTICIPATING COMMUNITY; except for the period beginning on July 3, 2013 and ending September 30, 2013, for which said notice by COUNTY shall be given to the PARTICIPATING COMMUNITIES no later than February 28, 2013.

7.5 COUNTY shall invoice PARTICIPATING COMMUNITY for flow control enforcement services within thirty (30) days of the end of each month. PARTICIPATING COMMUNITY agrees that it shall be required to pay COUNTY within thirty (30) days of receipt of the invoice in order to remain entitled to continuing to receive the service.

7.6 All costs and expenses for COUNTY's flow control enforcement services shall be paid for by PARTICIPATING COMMUNITY at an initial rate of \$0.37 (thirty seven cents) per ton of waste generated from the PARTICIPATING COMMUNITY which is received by a Contractor at a Designated Facility. Beginning on October 1, 2014, and on each October 1 thereafter for the initial term of the Solid Waste Agreement, the rate shall be subject to adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%, by multiplying the existing rate by

the Service Fee Adjustment Factor, as calculated according to the Solid Waste Agreements. The rate shall be subject to negotiation for any subsequent term.

ARTICLE 8
RELATIONSHIPS OF THE PARTIES

Except as set forth herein, no party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, agent, or local representative of any other party or to create any type of fiduciary responsibility or relationship of any kind whatsoever between the parties. The obligations created and imposed by this Agreement are not joint; rather, such obligations are separate and several between each of the PARTICIPATING COMMUNITIES and COUNTY.

ARTICLE 9
INDEMNIFICATION

To the maximum extent permitted by law, COUNTY and each PARTICIPATING COMMUNITY shall indemnify, defend and hold harmless the other, their officers, employees and agents from and against any liability, claims, demands, actions, costs, expenses, losses or damages whatsoever, including the intentional or negligent acts of each arising out of the performance of the obligations under this Agreement of COUNTY and each PARTICIPATING COMMUNITY, except the same shall not include punitive damages or prejudgment interest.

ARTICLE 10
DEFAULT AND TERMINATION

In the event there should occur any material breach in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty (30) days, except for a monetary breach which shall be remedied within fifteen (15) days, after receipt of notice from the non-breaching party specifying such breach, the non-breaching party may, if such breach is continuing, terminate this Agreement upon thirty (30) days' notice to the party in breach.

ARTICLE 11
DURATION

This Agreement shall be effective upon execution by COUNTY and a PARTICIPATING COMMUNITY. This Agreement shall remain in effect concurrently with the term of the Solid Waste Agreements and shall remain in effect so long as COUNTY and any PARTICIPATING COMMUNITY are subject to the Solid Waste Agreement(s). If, for any reason, the Solid Waste Agreements are terminated, this Agreement shall be deemed terminated as of the date of termination of the Solid Waste Agreement(s).

ARTICLE 12
THIRD PARTY BENEFICIARY

Wheelabrator and Sun-Bergeron shall be deemed to be third party beneficiaries to this Agreement entitled to assert any rights which otherwise would be available to COUNTY relating to a PARTICIPATING COMMUNITY'S performance of its obligations pursuant to this Agreement.

ARTICLE 13
MISCELLANEOUS

- 13.1 ASSIGNMENT. This Agreement, or any interest herein, may not be assigned, transferred or otherwise encumbered, under any circumstances by any party without the prior written consent of the other parties to this Agreement.
- 13.2 STATE AND FEDERAL LAWS. The provisions of solid waste disposal services under this Agreement shall comply with all applicable state and federal laws. This Agreement shall be construed in accordance with the laws of the state of Florida.
- 13.3 NOTICES. All notices, consents and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and shall be delivered either by hand with proof of delivery or mailed by first class registered or certified mail, return receipt required, postage prepaid, and in any case shall be addressed as provided in Exhibit "B," which is attached hereto and made a part hereof. Changes in the respective addresses of PARTICIPATING COMMUNITIES provided in Exhibit "B" and of COUNTY provided on the signature page may be made by either party by giving notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the day of dispatch; notices and consents given by any other means shall be deemed to have been given when received.
- 13.4 INCORPORATION OF AGREEMENTS. This document supersedes all prior negotiations, correspondence, conversations, agreements, or understandings, applicable to the matters contained therein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the PARTICIPATING COMMUNITY.
- 13.5 ADDITIONAL PARTICIPATING COMMUNITIES. Any time throughout the term(s) of this Agreement, any municipal corporation existing under the laws of the state and located in COUNTY which is not already a PARTICIPATING COMMUNITY may become a PARTICIPATING COMMUNITY by agreeing to all of the terms and conditions of this Agreement.

13.6 SEVERABILITY. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

13.7 REPRESENTATIONS AND WARRANTIES. Each of the PARTICIPATING COMMUNITIES and COUNTY hereby represents and warrants as to itself as follows:

- (a) It is duly organized and validly existing under the constitution and laws of the state of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder;
- (b) This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by Article X, Section 13 of the Florida Constitution or bankruptcy, moratorium, reorganization or similar laws affecting the right of creditors generally).

13.8 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

13.9 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, PARTICIPATING COMMUNITIES AND COUNTY HEREBY EXPRESSLY**

WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

13.10 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

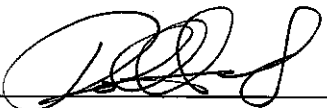
[THE REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 8th day of January, 2013, and each PARTICIPATING COMMUNITY, signing by and through officers duly authorized to execute same.

COUNTY

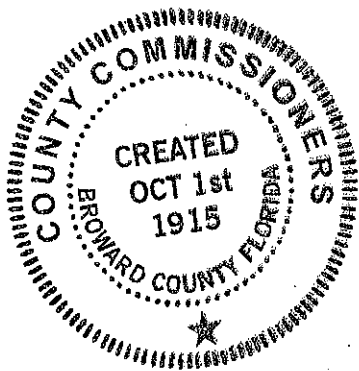
ATTEST:

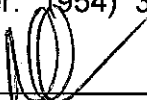
BROWARD COUNTY, by and through its Board of County Commissioners


for Broward County Administrator, as Ex-officio Clerk of the Broward County Board of County Commissioners

By 
for Mayor
3rd day of July, 2013

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968



By 
Noel M. Pfeffer (Date)
Deputy County Attorney

NMP:slw

PARTICIPATING COMMUNITY

CITY OF FORT LAUDERDALE:

By: 
John P. Jack Seiler, Mayor

ATTEST:


Jonda K. Joseph, City Clerk


Lee R. Feldman, City Manager

Approved as to form:


Paul Bangel, Sr. Assistant City Attorney

EXHIBIT A
NAMES OF PARTICIPATING COMMUNITIES

EXHIBIT B
NOTICES FOR PARTICIPATING COMMUNITIES

EXHIBIT C

NOTICE OF MUNICIPAL SELECTIONS FOR SOLID WASTE DISPOSAL

Municipality: City of Fort Lauderdale

Residential Waste and Commercial Waste:

Wheelabrator

Price Option A

Price Option B

Price Option C

Sun-Bergeron

Neither

Both

Describe: _____

Yard Waste

Wheelabrator

Sun-Bergeron

Neither

Bulk Trash

Wheelabrator

Sun-Bergeron

Neither

Construction & Demolition Debris

Wheelabrator

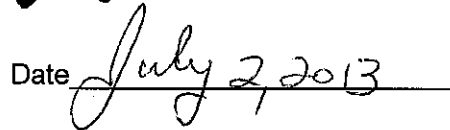
Sun-Bergeron

Neither

Signature of Authorized Official



Date



Executed
Final

**AGREEMENT
BETWEEN
WHEELABRATOR ENVIRONMENTAL SERVICES INC.,
AND
BROWARD COUNTY, FLORIDA
FOR
SOLID WASTE DISPOSAL SERVICES**

This Agreement is made and entered into this 26th day of June, 2012, by and between WHEELABRATOR ENVIRONMENTAL SYSTEMS INC., a Delaware Corporation, (hereinafter referred to as "Contractor"), and BROWARD COUNTY, FLORIDA, a political subdivision and body politic of the State of Florida (hereinafter referred to as the "County").

WHEREAS, Contractor and the County desire to enter into this Agreement (the "Agreement") to provide for the disposal of solid waste generated within unincorporated Broward County and the municipal boundaries of the Participating Communities (as defined below) and to set forth how such solid waste disposal services will be provided; and

WHEREAS, it is the intent of the parties that this Agreement may function as either (i) a form agreement for Broward municipalities to use as a basis for a solid waste contract with Contractor independent of County and independent of the proposed Interlocal Agreement, or alternatively (ii) this Agreement may serve as the basis for an Interlocal Agreement, whereby Participating Communities executing the Interlocal Agreement shall agree, among other things, to be bound by the terms of this Agreement; and

WHEREAS, the County is desirous of securing and maintaining a high level of professional, safe and environmentally sound solid waste disposal services in conjunction and harmony with its environmental protection and conservation policies and fiscal policies of sound, economical management; and

WHEREAS, the County has determined that it is beneficial and in the best interests of the public to enter into this Agreement.

NOW, THEREFORE, in consideration, among other things, for County enabling municipalities to Piggyback on this Agreement immediately, for County's commitment to draft and present an Interlocal Agreement offering centralized billing and other services

to Participating Communities and the mutual covenants, promises, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Contractor and the County do hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

For the purpose of this Agreement, the following definitions shall apply, unless otherwise specifically stated:

"Additional Waste" shall refer to any construction and demolition debris, tropical storm or hurricane related debris, yard-waste, recyclable materials, any large household appliances (commonly referred to as "white goods") including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters and the like, or other items of bulky waste, but in each case excluding any Unacceptable Waste.

"Alternate Disposal Facility" shall mean either: (i) the Monarch Hill Landfill, 2700 Wiles Road Pompano Beach, Florida 33073, (ii) Okeechobee Landfill Facility, 10800 N.E. 128th Avenue, Florida 33972, or (iii) such other disposal facility as may be approved by the County.

"Broward Waste" shall refer to Additional Waste, (as applicable) Commercial Waste and Residential Waste.

"Centrally Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and have elected to have the County perform centralized billing services and are indicated as such on Exhibit "C."

"Commercial Waste" shall refer to waste, refuse, garbage, trash and rubbish generated within unincorporated Broward County and the Participating Communities, excepting therefrom Residential Waste as defined herein and that is capable of being processed at the Disposal Facility, but shall not include Additional Waste, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"Contract Year" means each one year period (or portion thereof, determined on a pro-rata basis) commencing on the Disposal Commencement during the term of this Agreement.

"Directly Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and perform their own billing services and are indicated as such on Exhibit "C."

"Disposal Commencement Date" shall refer to the date upon which the Prior Interlocal Agreement has either terminated or expired.

"Disposal Facility(ies)" shall refer individually to either the North Disposal Facility or South Disposal Facility, and collectively to the North Disposal Facility and the South Disposal Facility together.

"Disposal Services" refers to everything required to be furnished and done by the Contractor pursuant to this Agreement. Disposal Services include, but are not limited to, the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the receipt, processing, and disposal of Broward Waste, and any associated residual materials.

"Disposal Services Fee" shall mean the per-ton rate charged by the Contractor for providing the Disposal Services in accordance with this Agreement.

"Disposal Services Fee Adjustment Factor" shall refer to the adjustment that may be applied to the Disposal Services Charge on an annual basis, as calculated using the Bureau of Labor Statistics Index Series ID CWUR0000SA0, Consumer Price Index - Urban Wage Earners and Clerical Workers.

"Effective Date" shall refer to the date that this Agreement has been executed by both the County and the Contractor.

"Force Majeure" means any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder that is beyond the reasonable control, and not the result of willful or negligent action or omission or a lack of reasonable diligence, of the party relying thereon as justification for not performing. Such events or conditions may include, but shall not be limited to: an act of God, epidemic, hurricane, earthquake, fire, explosion, storm, flood or similar occurrence, an act of war, effects of nuclear radiation, blockade, insurrection, riot, labor unrest (other than with respect to employees of the party claiming relief), civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a Disposal Facility unless knowingly accepted by Contractor. In any event, Force Majeure shall not include the following:

- (a) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure;
- (b) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a Disposal Facility which is the result of any action or inaction or failure of compliance by Contractor or any affiliate;
- (c) any change in law (other than to the extent that Contractor's physical ability to process Broward Waste is eliminated due to a change in law);
- (d) loss or unavailability of personnel desired by Contractor to operate or maintain a Disposal Facility;
- (e) wear and tear or obsolescence of any parts or equipment utilized in or at a Disposal Facility; or

- (f) except as a result of an independent event of Force Majeure, the loss of or inability to obtain or retain any utility services, including water, sewerage, fuel oil, gasoline and electric power necessary for the operation of the Disposal Facility.

"Hazardous Waste" means any waste, substance, object or material deemed hazardous under (i) Section 403.703, Florida Statutes; (ii) RCRA, 42 U.S.C.A § 6901, *et seq.*; (iii) CERCLA, 42 U.S.C.A. § 9601, *et seq.*; (iv) Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*, and in each case, applicable regulations promulgated thereunder.

"Interlocal Agreement" shall mean the Interlocal Agreement to be entered into among County and Participating Communities which provides, at a minimum, a requirement for the County and Participating Communities to be bound by the terms of this Agreement and to perform such obligations as contemplated therein, provides Participating Communities the option to choose from the two approved vendors and vendors price proposals and the option to receive, at the Participating Communities expense, additional County services, including but not limited to, centralized billing services by County, flow control enforcement by County, and other County waste disposal related services.

"Licensed Waste Haulers" shall refer to Licensed Commercial Waste Haulers and Licensed Residential Waste Haulers.

"Licensed Commercial Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Commercial Waste and/or Additional Waste generated from non-residential property within unincorporated Broward County or the Participating Communities and that are directed to deliver the Commercial Waste to the Disposal Facilities pursuant to this Agreement or the Interlocal Agreement.

"Licensed Residential Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Residential Waste and/or Additional Waste within unincorporated Broward County or the Participating Communities and that are directed to deliver the Residential Waste to the Disposal Facilities pursuant to this Agreement or the Interlocal Agreement.

"North Disposal Facility" shall refer to the waste to energy facility located at 2600 Wiles Road, Pompano Beach, Florida, which is owned and operated by WNB, where the Broward Waste may be delivered for final disposal as part of the Disposal Services.

"Participating Community(ies)" shall refer to the municipalities which are listed on **Exhibit "C"**, as updated during the term of this Agreement, and have signed the Interlocal Agreement. Participating Communities may also include the County, as to the unincorporated area of Broward County, in the event County elects to deliver its Broward Waste to Contractor as evidenced by indicating County as a Participating Community on Exhibit "C," in which event the County shall be deemed a Participating Community for the purposes of this Agreement.

"Person" means any individual or business entity, including, without limitation, any corporation, limited liability companies, partnership, business trust or partnership.

"Prior Interlocal Agreement" shall refer to the Agreement between the Broward Solid Waste Disposal District and the Contract Communities consisting of the participating political subdivisions within Broward County.

"Processed Waste" shall refer to Commercial Waste and Residential Waste that is processed at the Disposal Facilities.

"Recycling" shall refer to any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

"Residential Waste" shall refer to waste, refuse, garbage, trash and rubbish generated within the unincorporated County or the Participating Communities from "residential property" (as such term or equivalent term is defined by the County with respect to the unincorporated County and by each Participating Community with respect to waste generated within such Participating Community) and that is capable of being processed at the Disposal Facility, but shall not include Additional Waste, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"South Disposal Facility" shall refer to the waste to energy facility located at 4400 South State Road 7, Davie, Florida, which is owned and operated by WSB, where the Broward Waste shall be delivered for final disposal as part of the Disposal Services.

"Unacceptable Waste" shall refer to: (a) Hazardous Waste, (b) lead acid batteries, (c) nuclear waste, (d) radioactive waste, (e) sewage sludge, (f) explosives, (g) asbestos containing materials, (h) beryllium-containing waste, (i) nickel cadmium batteries, (j) mercury containing devices, (k) untreated biomedical waste, (l) biological waste, (m) appliances containing chlorofluorocarbons (CFC's) or items of waste that a Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Disposal Facility or that are prohibited by state or federal law.

"WNB" shall refer to Wheelabrator North Broward Inc., a Delaware corporation and wholly-owned subsidiary of Contractor.

WSB" shall refer to Wheelabrator South Broward Inc., a Delaware corporation and wholly-owned subsidiary of Contractor.

ARTICLE 2
DISPOSAL SERVICES

2.1 **Contractor Services.** Contractor shall provide solid waste Disposal Services to the Participating Communities and shall accept and weigh all Broward Waste delivered by the Participating Communities and the Licensed Waste Haulers for disposal at the appropriate Disposal Facility(ies) during the term of, and in accordance with, this Agreement.

2.2 **Delivery of Broward Waste.** Participating Communities shall deliver or cause to be delivered to the appropriate Disposal Facility all Commercial Waste and Residential Waste collected by the Participating Communities and the Licensed Waste Hauler(s). Any Licensed Waste Haulers may, but shall not be obligated to, deliver any Additional Waste to the Disposal Facility for disposal by Contractor or its affiliates. The Interlocal Agreement shall include an obligation by the Participating Communities to comply with the applicable provisions of this Section 2.2.

2.2.1 **Residential Waste Delivered by Participating Communities.** If a Participating Community collects the Residential Waste and hauls the Residential Waste to Contractor, the Participating Community shall be responsible for Unacceptable Waste brought to either Disposal Facility by the Participating Community.

2.2.2 **Residential Waste Delivered by Licensed Residential Waste Hauler.** Waste hauling contracts for the collection of Residential Waste, including any renewal of existing waste hauling contracts, entered into by a Participating Community and a Licensed Residential Waste Hauler after the Effective Date of this Agreement shall include the following: (a) the definition of Residential Waste set forth in this Agreement, (b) Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste brought to either Disposal Facility, (c) Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering waste on behalf of the Participating Community, (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Residential Waste to the Disposal Facilities or as otherwise provided pursuant to Section 5.2, and (e) hours of operation for the Disposal Facility during which the Licensed Residential Waste Hauler shall be authorized to deliver Broward Waste to the Disposal Facilities.

2.2.3 **Commercial Waste Delivered by Licensed Commercial Waste Haulers.** Each Participating Community shall require Licensed Commercial Waste Haulers to execute a license agreement with the Participating Community that sets forth the payment procedure in Section 4.6 for Commercial Waste Disposal Services, and requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to the Disposal Facilities as otherwise provided pursuant to Section 5.2. In addition, each Directly Billed Participating Community shall require the Licensed Commercial Waste Hauler(s) to provide a performance

bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for such Directly Billed Participating Community, calculated pursuant to Article 4 and based on the 60 day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding the execution of the license agreement between Participating Community and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations. A Licensed Commercial Waste Hauler providing services for multiple Directly Billed Participating Communities may provide one aggregate bond meeting the requirements set forth herein.

- 2.3 **Weighing Waste.** Contractor shall utilize and maintain motor truck scales at the Disposal Facilities to weigh the Licensed Waste Haulers' vehicles delivering Broward Waste to the Disposal Facility. Contractor shall weigh the Licensed County Waste Haulers' vehicles upon entering and exiting the Disposal Facility site, with the weight difference resulting in the tons of Broward Waste actually delivered.
- 2.4 **Monthly Reports.** Contractor shall provide monthly reports to the County, within sixty (60) days after the end of the subject month, that include the number of tons of Broward Waste actually delivered to the Disposal Facilities for the subject month listing the delivering party's name (County or Licensed Waste Hauler(s)) and the number of transactions for each delivering party. Such reports shall be provided in a form reasonably acceptable to the County. Upon request, the Contractor will provide monthly reports to a Participating Community detailing deliveries of Broward Waste made by or on behalf of such Participating Community.

ARTICLE 3 **TERM OF AGREEMENT**

- 3.1 **Initial Term.** This Agreement shall take effect upon the Effective Date and, beginning upon the Disposal Commencement Date, shall continue for a five (5) year period of time ("Initial Term"), unless renewed or terminated earlier by the parties as set forth herein.
- 3.2 **Renewals.** This Agreement may be renewed for up to three (3) additional, successive five year terms (each renewal is a "Renewal Term") upon the terms set forth herein. The first Renewal Term shall be at the election of the County, and if the County wishes to exercise its renewal right, the County shall provide written notice thereof to the Contractor not less than ninety (90) days prior to the

expiration of the Initial Term. If the County does not elect to exercise its right to the first Renewal Term, this Agreement shall terminate at the expiration of the Initial Term. If the County exercises its right to the first Renewal Term, then, following the first Renewal Term, any additional Renewal Terms shall require mutual written consent by the County and Contractor. The County shall provide notice of its intent to renew not less than eighteen (18) months prior to the expiration of the Initial Term or any Renewal Term (as the case may be). If the Contractor is willing to consent to the renewal, it shall respond in writing within not less than forty-five (45) days. Failure to respond within such period shall be deemed a rejection of the intent to renew. If County and Contractor fail to agree on the terms and conditions of renewal at least twelve (12) months prior to the expiration of a Renewal Term, this Agreement shall expire at the end of such Renewal Term.

3.3 Termination and Extension. This Agreement may only be terminated as provided in Article 6 of this Agreement. In the event that this Agreement is terminated as a result of Contractor's default, or County's default not due to County's non-payment, County shall have the right to an extension of Disposal Services for up to twelve (12) months provided that the County specifies the desired length of the extension in the termination letter, or extension request letter, transmitted to Contractor. In the event County exercises its right to an extension, this Agreement shall be deemed automatically extended for the period specified in the notice transmitted to Contractor. The remunerations to be paid to the Contractor during this extension period shall be based upon the Disposal Service Fees in effect at the time of such termination, which shall be escalated as provided herein as if the term extended through the extension period. County shall not be entitled to an extension of Disposal Services if Contractor terminates this Agreement due to County's default for failure to make payment to Contractor in accordance with this Agreement. Notwithstanding any language herein to the contrary, County and Contractor retain their rights during any such extension to seek damages for material breach or material default of this Agreement by either party.

3.4 Alternate Disposal during Renewal Term. If, during any Renewal Term, the continued operation of the Disposal Facilities have become uneconomic due to increased capital or operating costs attributable to a change in local, state, or federal law or regulation, and, as a result, the Contractor has provided County with written notice that it has decided to cease operation of the Disposal Facilities (which notice shall provide at least nine (9) month's notice of the planned date for cessation of operations), the County may thereafter elect, at its sole option, to terminate this Agreement at any time by providing at least three (3) months' notice, provided that the termination date shall not be later than the planned date for cessation of operations. With the exception of liabilities accrued prior to the effective date of termination, the Contractor shall have no further liability to the County following the effective date of such termination. Should County not elect to terminate this Agreement Contractor shall thereafter be entitled to direct the

Participating Communities to deliver, and require that any Licensed Waste Haulers deliver, any Commercial Waste or Residential Waste to an Alternate Disposal Facility designated by Contractor. In such circumstances, (i) the Alternate Disposal Facility shall be considered to be the "Disposal Facility" for all purposes under this Agreement, and (ii) Contractor shall be responsible for any incremental tipping fees above the Disposal Services Fee, and for any actual reasonable documented incremental cost for transportation of the Commercial Waste and Residential Waste to the Alternate Disposal Facility.

ARTICLE 4 **SERVICE FEE**

- 4.1 Disposal Services Fee. After each operating month, the Contractor shall invoice the County for Centrally Billed Participating Communities and each Directly Billed Participating Community for Residential Waste Disposal Services and the County for Centrally Billed Participating Communities and the Licensed Commercial Waste Hauler(s) for each Directly Billed Participating Community for Commercial Waste Disposal Services based upon the per ton Disposal Service Fee set forth on attached Exhibit "A" and which has been selected by the Participating Community as set forth on Exhibit "C". Any Additional Waste delivered by a Participating Community or any Licensed Residential Waste Hauler shall be included in the tonnage billed to the County (for the Centrally Billed Participating Communities), and the Directly Billed Participating Communities, and any Additional Waste delivered by a Licensed Commercial Waste Hauler shall be included in the tonnage billed to the Licensed Commercial Waste Hauler.
- 4.2 Disposal Services Fee Adjustments. Beginning on the first October 1 after the one (1) year anniversary of the Disposal Commencement Date of this Agreement, and on each October 1 thereafter, the Disposal Services Fee shall be subject to adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%, by multiplying the Disposal Services Fee by the Disposal Services Fee Adjustment Factor. The result of the calculation shall become the maximum Disposal Services Fee permitted to be charged by Contractor to County for the 12 months following the Disposal Services Fee adjustment. The 12 month change (using March of each year as the base month) in the Bureau of Labor Statistics Index Series ID CUUR0000SA0, Consumer Price Index - All Urban Consumers shall be used to calculate the Disposal Services Fee Adjustment Factor subject to and not to exceed the 5% cap and 1% floor for any year.
- 4.3 Most Favored Pricing.
- 4.3.1 In the event that Contractor subsequently enters into an agreement for a term of more than twelve (12) months (including any unilateral renewal and option periods) for the disposal of solid waste generated anywhere within Broward, Miami-Dade or Palm Beach County (an "Eligible Agreement"), Contractor shall provide the County with a copy of the Eligible Agreement within

sixty (60) days of execution thereof. If the County determines that the contract includes a Net Disposal Fee that is less than the Disposal Services Fee set forth herein, the County may provide written notice to Contractor of County's determination, and, if the County does so, the Disposal Services Fee shall automatically be reduced for all Participating Communities to the Net Disposal Fee set forth in the Eligible Agreement, such change to be effective retroactively as of the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower Net Disposal Fee (subject to annual adjustments as provided in Section 4.2).

1.1.1 4.3.2 For the purposes of this Agreement, the "Net Disposal Fee" offered under the Eligible Agreement shall be the actual per-ton cost offered by Contractor to the other party to the Eligible Agreement. In calculating the Net Disposal Fee all "Economic Incentives" which are defined to mean monies, economic benefits and consideration received by the other party of whatever nature (e.g. signing bonus, revenue sharing, other credits, etc.) shall be taken into account by reducing the per-ton cost by the amount of the Economic Incentives to determine the Net Disposal Fee. Any actual costs associated with disposal which are required to be paid by the other party (e.g. pass throughs, etc.) shall be included in the calculation of Net Disposal Fee.

4.4 Discriminatory Tax Adjustments. If the State of Florida, County or a municipality, in the event a Contractor facility located in the unincorporated area of Broward County is subsequently annexed into such municipality, enacts a tax or fee applicable only to the disposal of municipal solid waste, or specifically targeting the ownership or operation of one or both of the Disposal Facilities, then the Disposal Services Fee shall be increased by the pro-rata amount (based upon the amount of Broward Waste as a proportion of all waste delivered to the Disposal Facility) of such tax or fee actually paid by Contractor and attributable to the Disposal of the County's Waste pursuant to this Agreement.

4.5 Payment Procedure.

4.5.1 Each month, Contractor shall calculate the amount of Disposal Service Fees owed to the Contractor by the Centrally Billed Participating Communities and Directly Billed Participating Community for Residential Waste and (if any) Additional Waste Disposal Services, based on the provisions of this Agreement, and shall submit an invoice in substantially the form attached hereto as **Exhibit "E"** to each Directly Billed Participating Community for payment. The invoice to the County shall be due within thirty (30) days of receipt.

4.5.2 On a bi-weekly basis, Contractor shall calculate the amount of Disposal Service Fees owed to the Contractor by the Licensed Commercial Waste Hauler(s) for Commercial Waste and (if any) Additional Waste Disposal Services, based on the provisions of this Agreement, and shall submit an invoice to the Licensed Commercial Waste Hauler(s) for payment. The invoice to the Licensed Commercial Waste Hauler(s) shall be due within fifteen (15) days of receipt.

4.5.3 Residential Waste Disposal Services. If the County or Directly Billed Participating Community (as applicable) disagrees with the amount stated in the invoice provided pursuant to Section 4.5.1, the County or Directly Billed Participating Community (as applicable) shall notify the Contractor of such dispute. The County or Directly Billed Participating Community (as applicable) shall make payment to Contractor of undisputed invoiced amounts within thirty days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute (for amounts greater than \$25,000) by mediation by a mutually acceptable mediator. In the event the parties are not able to resolve the dispute through mediation within forty-five (45) days, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of its obligations under this Agreement.

4.5.4 Commercial Waste Disposal Services. If the Licensed Commercial Waste Hauler(s) disagrees with the amount stated in the invoice provided pursuant to Section 4.5.2, the Licensed Commercial Waste Hauler(s) shall notify the Contractor of such dispute. The Licensed Commercial Waste Hauler(s) shall make payment to Contractor of undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties shall resolve the dispute in a manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or, except as set forth herein, relieve Contractor of its obligations to County under this Agreement. In the event the Licensed Commercial Waste Hauler(s) fails to make payment to Contractor for Commercial Waste Disposal Services as required by this Agreement, Contractor shall notify the County of such non-payment and Contractor shall have the right to make a claim for payment under the performance bond (required by Section 2.2.3) for the properly invoiced outstanding amounts due for Commercial Waste Disposal Services pursuant to this Agreement. If the unpaid amount exceeds 80% of the performance bond provided by the Licensed Commercial Hauler pursuant to Section 2.2.3 and then available to Contractor, Contractor shall be entitled to reject any Commercial Waste delivered by such Licensed Commercial Waste Hauler until such time as all unpaid amounts have been received by Contractor and the Contractor is in possession of a performance bond meeting the requirements of Section 2.2.3.

4.6 Revenue Share

4.6.1 - Applicable to Participating Communities who have selected Pricing Option 1 on Exhibit "A": In the event that the actual annual average electricity revenue dollar per megawatt hour sold during a Contract Year for the Contractor exceeds \$88.00/MwH, adjusted annually consistent with Section 4.2, then in such Contract Year, the Contractor will give a credit to the County (with respect to each Centrally Billed Participating Community) or each Directly Billed Participating Community equal to (a) 25% multiplied by (b) a fraction, the numerator which is the tons of Processed Waste delivered by the Participating Community and the denominator of which is the total tons of Processed Waste delivered to the Disposal Facilities by all Persons during such period multiplied by (c) the total megawatt hours sold by the Contractor during such period multiplied by (d) the difference between the actual annual average revenue dollar per megawatt hour sold during such Contract Year for the Contractor and \$88.00/MwH, adjusted annually consistent with Section 4.2. The revenue dollars above will be calculated net of fees related to power sales (i.e. transmission, distribution, marketing, etc.) The minimum credit due to Participating Community per this paragraph shall be \$0.75, adjusted annually consistent with Section 4.2, times the tons of Processed Waste delivered by such Participating Community.

In the event that the actual annual average revenue dollar per net ferrous metal ton recovered from the ash stream for the Contractor exceeds \$50.00/ton, adjusted annually consistent with Section 4.2, during a Contract Year, then in such Contract Year, the Contractor will give a credit to the County (with respect to each Centrally Billed Participating Community) or each Directly Billed Participating Community equal to (a) 25% multiplied by (b) a fraction, the numerator which is the tons of Processed Waste delivered by the Participating Community and the denominator of which is the total tons of Processed Waste delivered to the Disposal Facilities by all Persons during such period multiplied by (c) the total net ferrous metal tons recovered from the ash stream that are sold by the Contractor during such period multiplied by (d) the difference between the actual annual average revenue dollar per net ferrous metal ton for the Contractor and \$50.00/ton, adjusted annually consistent with Section 4.2. The revenue dollars above will be calculated net of fees related to metals sales (i.e. transportation, marketing, etc.), The "net" ferrous metal ton refers to the intended exclusion of the ash entrained in the outbound metals which does not yield revenue. The minimum credit due to Participating Community per this paragraph shall be \$0.50, adjusted annually consistent with Section 4.2, times the amount of Processed Waste tons delivered by such Participating Community.

The Annual Settlement calculations above will be completed annually within 90 days after the Contract Year and any credit due hereunder shall be paid to the County or any Directly Billed Participating Community within 30 days thereafter.

4.6.2 - Applicable to Participating Communities who have selected Pricing Option 2 on Exhibit "A": In the event that the actual annual average electricity revenue dollar per megawatt hour sold during a Contract Year for the Contractor exceeds

\$25.00/MwH, adjusted annually consistent with Section 4.2, then in such Contract Year, the Contractor will give a credit to the County (with respect to each Centrally Billed Participating Community) or each Directly Billed Participating Community equal to (a) 25% multiplied by (b) a fraction, the numerator of which is the tons of Processed Waste delivered by the Participating Community and the denominator of which is the total tons of Processed Waste delivered to the Disposal Facilities by all Persons during such period multiplied by (c) the total megawatt hours sold by the Contractor during such period multiplied by (d) the difference between the actual annual average electricity revenue dollar per megawatt hour sold during such Contract Year for the Contractor and \$25.00/MwH, adjusted annually consistent with Section 4.2. The revenue dollars above will be calculated net of fees related to power sales (i.e. transmission, distribution, marketing, etc.) This calculation will be completed annually within ninety (90) days after the Contract Year and any credit due hereunder shall be paid to the County or any Directly Billed Participating Community.

ARTICLE 5

OPERATION OF DISPOSAL FACILITY

- 5.1 Personnel and Equipment Requirement. Contractor shall provide, at its sole expense, all necessary personnel, materials and equipment for the operation, maintenance and repair of the Disposal Facilities.
- 5.2 Disposal Locations and Alternate Disposal Facility. In the event that either the South or North Disposal Facility (but not both) is rendered incapable to receive the Broward Waste for any length of time, the Participating Communities and the Licensed Waste Hauler(s) shall be required to dispose of Broward Waste at the other Disposal Facility at no additional disposal expense to the Participating Communities or Licensed Waste Hauler. In the event that both Disposal Facilities are rendered incapable, for any reason, to receive the Broward Waste for any length of time, the Participating Communities and the Licensed Waste Hauler(s) shall be required to dispose of Broward Waste at the Alternate Disposal Facility. In the event that both Disposal Facilities and the Alternate Disposal Facility are rendered incapable, for any reason, to receive the Broward Waste for any length of time, Contractor shall, within twenty-four (24) hours, provide the Participating Communities with another designated Alternate Disposal Facility, subject to Participating Communities approval (which shall not be unreasonably withheld), where the County and the Licensed County Waste Hauler(s) shall be required to dispose of Commercial Waste and Residential Waste. Reimbursements for any incremental tipping fee amount paid that exceeds the Disposal Services Fee, and for any actual and necessary incremental cost for transportation of the Participating Communities Commercial Waste and Residential Waste necessitated by the incapacity of both the Disposal Facilities and the Alternate Disposal Facility shall be determined in accordance with Section 5.3 below. Contractor shall not transport and/or dispose of the Broward Waste at a different

disposal facility, unless approved by the County in its sole and absolute discretion.

5.3 Alternate Disposal Facility Associated Costs.

5.3.1 In the event that the designated Disposal Facility is rendered incapable to receive the Broward Waste for any length of time for any reason except for Force Majeure or the negligence or intentional misconduct of City or City's Licensed Waste Hauler, Contractor shall reimburse the Participating Communities or the Licensed Waste Hauler, as applicable, for any incremental tipping fee amount paid at the Alternate Disposal Facility pursuant to Section 5.2 that exceeds the Disposal Services Fee, and for any actual and necessary incremental cost for transportation of the Participating Communities Waste to the Alternate Disposal Facility necessitated by the incapacity of Contractor's Disposal Facility.

5.3.2 In the event that the designated Disposal Facility is rendered incapable to receive the Broward Waste for any length of time due to Force Majeure or the negligence or intentional misconduct of the Participating Communities or Licensed Waste Hauler, the County and the Licensed Waste Hauler shall not receive any reimbursement for any additional tipping fees paid at the Alternate Disposal facility or, except as set forth herein, incremental transportation costs necessitated by the incapacity of Contractor's Disposal Facility, however, the Participating Communities and the Licensed Hauler shall be reimbursed by the Contractor for any actual and necessary incremental cost for transportation of Commercial Waste and Residential Waste to an Alternate Disposal Facility necessitated by the incapacity of Contractor's Disposal Facility due to Force Majeure.

5.4 **Dates and Hours of Operation.** Contractor shall keep its Disposal Facilities open for the receipt of Broward Waste from the Participating Communities and/or Licensed County Waste Hauler from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 6:00 a.m. to 4:00 p.m. on Saturday, during every day of the year, excluding Christmas and Sundays. To the extent permitted by law and to the extent that capacity is available, Contractor shall use all reasonable efforts to keep the Disposal Facilities open for additional hours to accept Broward Waste.

5.5 **Good Working Order Requirement.** Contractor shall operate and maintain its Disposal Facilities in good working order, and shall timely make all necessary repairs and replacements, consistent with the prevailing standards in the waste-to-energy industry, and consistent with steam and electrical generating plant practices. Contractor shall maintain the safety of its Disposal Facilities consistent with applicable law and prevailing boiler and electrical generating plant practices.

5.6 **Unacceptable Waste.**

5.6.1 The Participating Communities shall institute all reasonable procedures to prevent the delivery to the Disposal Facilities of Unacceptable Waste by the Participating Communities, or its agents or contractors. To the extent such procedures would affect the operation of the Disposal Facilities such procedures shall be reasonably acceptable to the Contractor.

5.6.2 The Contractor shall cooperate with the Participating Communities in connection with all matters regarding Unacceptable Waste under this Agreement. The Contractor shall use all reasonable efforts to identify the source of any Unacceptable Waste delivered to the Disposal Facilities.

5.6.3 Should any Unacceptable Waste be delivered to a Disposal Facility, such Unacceptable Waste shall be removed, transported and disposed of by the Contractor in accordance with applicable law governing such wastes, and the Contractor shall clean up the Disposal Facility to the extent required as a result of any such delivery of Unacceptable Waste. The costs of such removal, transport, disposal and clean-up shall be allocated in the following manner:

- i. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Disposal Facility by or on behalf of the County, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by the County, provided that Contractor shall use all commercially reasonable efforts to collect such amounts from the Person delivering Unacceptable Waste to the Disposal Facility before seeking recovery from the County.
- ii. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Disposal Facility by or on behalf of a Directly Billed Participating Community, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by the Directly Billed Participating Community, provided that Contractor shall use all commercially reasonable efforts to collect such amounts from the Person delivering Unacceptable Waste to the Disposal Facility before seeking recovery from the Directly Billed Participating Community.
- iii. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Disposal Facility other than by or on behalf of the County, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by Contractor.
- iv. Should the Person delivering such Unacceptable Waste be unknown or unidentifiable, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by the Contractor.

5.7 Energy Production and Recycling Guarantee.

5.7.1 Contractor acknowledges that the State of Florida has legislated certain goals with respect to the Recycling of solid waste. As currently drafted, Section 403.706(4)(a), Florida Statutes, provides that each mega-watt hour ("MwH") generated by a waste-to-energy facility using solid waste as fuel shall count as one (1) ton of Recycled material for the purposes of the County's Recycling goals implemented by the State of Florida.

5.7.2 In support of the County's Recycling objectives, the Contractor shall use all reasonable endeavors to operate the Disposal Facilities in such a manner so as to ensure that each ton of Broward Waste processed at the Disposal Facility will result in the production of .50 MwH of electricity.

5.7.3 The Contractor will provide the County with monthly statements indicating the tonnage processed and corresponding energy production, provided however that compliance with Section 5.7.2 will be measured on annual basis (i.e., in each calendar year, the Disposal Facility must produce that number of MwHs as is equal to the total tonnage of Broward Waste processed in such year x .5).

5.7.4 If in any calendar year the Disposal Facility(ies) has not met the energy production requirement specified in Section 5.7.2., the County shall be entitled to a rebate equal to the greater of (i) \$250,000 or (ii) \$.25 per ton of Broward Waste processed at the Disposal Facilities in such calendar year, to be applied in two (2) equal installments against the first two (2) monthly invoices following the determination of a deficiency in energy production.

5.8 For any Disposal Facility or Alternative Disposal Facility within Broward County, which, as of the Effective Date, is not permitted or operational, prior to the Contractor utilizing such Facility under the terms of this Agreement, Contractor shall provide written documentation to the County demonstrating to the County's satisfaction that specific measures have been taken to prevent or minimize impacts upon affected adjacent property within three hundred (300) feet of a boundary of the parcel containing the Alternative Disposal Facility. Affected adjacent property includes land within a residential land use plan category, a residential zoning district, or land currently used for residential, school or medical care purposes. Impacts which the Contractor shall be required to mitigate include the effects of excessive noise, objectionable odors, visible emissions, particulate matter (including dust, smoke, soot, and aerosols), solid wastes, hazardous wastes, fire and explosion. Mitigation may include but is not limited to the provision of adequate setbacks, buffers, landscaping, fencing, walls, enclosed areas, and best available technology. Written documentation for operation and mitigation shall be reviewed by the County within thirty (30) days of submittal. Approval by the County, which shall not be unreasonably withheld, must be obtained prior to such Facility or Alternative Disposal Facility being utilized under the terms of this Agreement. Conversion of any Facility or Alternative Disposal Facility, for treating one type of waste in lieu of another, or for treating additional

types of waste, shall be required to undergo the review required in this paragraph.

ARTICLE 6 **DEFAULT**

In the event there should occur any material breach or material default in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty days after receipt of notice from the non-breaching party specifying such breach or default, subject to the terms and conditions of this Article 6, the non-breaching party may, if such breach or default is continuing, terminate this Agreement upon thirty days notice to the party in breach; provided that if such default is not a payment default and can be cured, and the party in breach shall have commenced to take reasonably appropriate steps to cure such breach or default within a reasonable period of time, the same shall not give rise to a right of termination on behalf of the non-breaching party for so long as the breaching party is continuing to take reasonable steps to cure such default or breach.

ARTICLE 7 **INSURANCE**

- 7.1 **Policy Limits.** Contractor shall not commence performance under this Agreement until Contractor has obtained all insurance required under this section and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the County Administrator.

Contractor shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, single limit, and commencing prior to the commencement of the work and continuing to provide coverage for claims based on occurrences during the term of this Agreement (except for Pollution Liability, which may be provided on a claims made basis) for a minimum of three (3) years from the date of termination or expiration of this Agreement:

General Liability	\$1,000,000/\$2,000,000
Automobile Liability	\$1,000,000/\$2,000,000
Pollution Liability	\$25,000,000/\$50,000,000
Commercial Umbrella	\$25,000,000
Employer's Liability	\$1,000,000
Worker's Compensation	Statutory Amount

- 7.2 **County as Additional Insured.** The County shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation.

- 7.3 Insurance Company Standards. Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with a minimum rating from AM Best Company of A- Excellent: FSC VII.
- 7.4 Notice of Cancellation. Contractor agrees to furnish County with at least 30 days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least ten days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.
- 7.5 Minimum Level of Coverage. To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor's performance under this Agreement, Contractor shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of \$25,000,000 after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the three year period set forth in Article 7.1 of this Agreement.
- 7.6 Premium Payment Responsibility. Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

ARTICLE 8 **LIABILITY**

- 8.1 The County and the Contractor shall each be separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.
- 8.2 The Contractor shall protect, indemnify and hold the County and each Participating Community, their officials, agents, servants and employees, harmless from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the County in any suit, including appeals, for personal injury to or death of any person(s), or loss or damage to property, or pollution or environmental contamination, arising out of the operation of Contractor's Disposal Facilities, or the performance (or non-performance) of Contractor of its obligations under this Agreement. Contractor is not, however, required by this Article 8.2 to reimburse or indemnify for loss or claim due to the negligence or willful misconduct of the County, any Participating Community or any Licensed Waste Hauler(s).

ARTICLE 9
MISCELLANEOUS

- 9.1 **Parental Guaranty.** Contractor shall have its parent company, Waste Management, Inc., guarantee Contractor's performance under this Agreement by executing the Parental Guaranty set forth in **Exhibit "B."** The County's receipt of the Parental Guaranty executed by Waste Management, Inc. is a condition precedent to the effectiveness of this Agreement.
- 9.2 **Joint Preparation.** The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 9.3 **Merger/Amendment.** This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement. Provided however, that Section 2.2 of the Amended and Restated North Solid Waste Disposal Service Agreement between County and Wheelabrator North Broward, Inc., dated as of February 1, 2001 and Section 2.2(b) of the Amended and Restated South Solid Waste Disposal Agreement between County and Wheelabrator South Broward Inc., dated as of February 1, 2001 remain in effect unless and until modified or eliminated by subsequent agreement between County and the companies.
- 9.4 **Assignment.** Except as provided herein, the Contractor may not assign its obligations as set forth in this Agreement without the prior written consent of the County. The Contractor may (i) without the consent of the County, (a) transfer, assign or pledge Contractor's interest in this Agreement in connection with any financing or re-financing activity or (b) assign this Agreement to another affiliate of Contractor (provided that the parent guaranty remains in place); and (ii) with the consent of the County, which may not be unreasonably withheld or delayed, assign this Agreement in connection with a sale or assignment of its interest in the Disposal Facilities, provided that Contractor can reasonably demonstrate to the County that the assignee has a financial strength which is equal to or better than that of Contractor at the time of the proposed assignment, and the proposed assigned (or its affiliates) has a commercially reasonable level of prior experience and/or current capability with respect to the operation of a waste-to-energy facility. This Agreement shall be binding on any and all successors to Contractor.

9.5 **Records.** Except as otherwise provided herein, the County and Contractor shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

9.6 **Audit and Inspection Rights and Retention of Records.** County shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Any Participating Community may participate in any audit performed by the County pursuant to this Section 9.6. Contractor shall keep such books, records, and accounts reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Section 2.4.

Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination of this Agreement, unless Contractor is notified in writing by County of the need to extend the retention period. Any Participating Community may participate in any audit performed by the County pursuant to this Section 9.6. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry. Notwithstanding anything herein to the contrary, for a twenty (20) year period following any termination or expiration of this Agreement, the Contractor shall retain records reasonably documenting environmental compliance at the Disposal Facilities, and documentation concerning any disposal of Broward Waste at an Alternate Disposal Facility; provided however that Contractor shall be relieved of any retention obligation if, prior to any disposal of the relevant records, Contractor has offered the County and the Participating Communities the opportunity to receive copies thereof.

9.7 **Access Rights.** Authorized representatives of County, which may also include any Participating Community, shall have access and the ability to inspect any waste disposal facilities operated by Contractor which are utilized to provide any services pursuant to this Agreement during normal business hours, upon County

giving reasonable advance notice to Contractor, provided that each representative shall comply with all reasonable safety rules and regulations adopted by Contractor and shall not interfere with Contractor's options.

- 9.8 **Permits and Licenses.** Contractor shall be responsible for the maintenance of all permits and licenses associated with the operations of the Disposal Facilities. Contractor shall at its sole cost and expense conduct such tests at the Disposal Facilities from time to time as shall be required by such permits and licenses, and shall send copies of the test results to County, when the test results are submitted to the state or federal regulatory agencies. Contractor also shall make such test results available for review and copying by County during normal business hours. Contractor shall not be deemed to have breached its obligations under the two preceding sentences in respect of any period during which it may in good faith be contesting the necessity of obtaining any such permit or license, or the validity or application of any requirement of or condition contained in any such permit or license, provided that during such period Contractor shall not otherwise be relieved from performing its obligations under this Agreement. Contractor also shall promptly furnish to County copies of any governmental or regulatory complaint, notice of violation or regulatory action upon receipt by Contractor regarding any permit, license or relating in any manner to Contractor's operations or Disposal Facilities pursuant to this Agreement.
- 9.9 **Governing Law and Venue.** This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. If either party is required to enforce this Agreement by court proceedings or otherwise, whether or not formal action is required, each party shall pay its own attorney's fees and costs.
- 9.10 **Severability.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provision shall continue to be effective.
- 9.11 **Independent Contractor.** Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the County. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of Contractor. This Agreement shall not constitute or make the parties a partnership or joint venture.

9.12 Notices. Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

FOR CONTRACTOR:

Wheelabrator North Broward, Inc.
2600 Wiles Road
Pompano Beach, Fl. 33073
Attention: Plant Manager

Wheelabrator South Broward, Inc.
4400 South State Road 7
Ft. Lauderdale, Fl. 33314
Attention: Plant Manager

With a copy to:

Wheelabrator Technologies, Inc.
4 Liberty Lane West
Hampton, NH 03842
Attn: General Counsel

FOR THE COUNTY:

Broward County Governmental Center
Room 409
115 South Andrews Avenue
Fort Lauderdale, Fl. 33301

With a copy to:

Solid Waste and Recycling Division
1 N. University Drive
Suite 400
Plantation, Fl. 33324

9.13 Third Party Beneficiaries. Except as provided herein, neither the County nor Contractor intend that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement, and the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. The Contractor and the County acknowledge and agree that each Participating Community is intended to be a third party beneficiary to this Agreement, and, except where otherwise provided in the ILA, shall be entitled to assert any rights available to the County hereunder.

The County acknowledges and agrees that the ILA shall include (i) an obligation on each Participating Community to comply with the applicable provisions of this Agreement and (ii) a provision making Contractor an express third party beneficiary of the ILA entitled to assert any rights available to the County related to a Participating Communities' performance of the obligations specified in this Agreement or the ILA.

- 9.14 **Priority of Provision.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 12 of this Agreement shall prevail and be given effect.
- 9.15 **Compliance with Laws.** The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 9.16 **Multiple Originals.** This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

ARTICLE 10 REPRESENTATIONS

- 10.1 County is duly organized and valid existing under the constitution and laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and County is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 10.2 Contractor is duly organized and validly existing under the laws of the State of Delaware, with full legal right, power and authority to enter into and perform its obligations hereunder; and Contractor is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 10.3 Except as otherwise disclosed in writing to County prior to the execution of this Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency, public board, regulatory agency or body pending or, to the best of its knowledge, threatened against or affecting the Contractor, WSB or WNB (pending or threatened litigation) with regard to any issue relating to environmental compliance or the operation, permit or licenses of Contractor at any of the facilities utilized to provide services pursuant to this Agreement. Contractor further agrees to a continuing disclosure requirement for the term of this Agreement to notify County with thirty (30) days of any subsequent litigation with regard to any issue relating to environmental compliance at the Disposal Facilities or the

operations, permits or licenses of any facilities utilized to provide services pursuant to this Agreement.

ARTICLE 11 CRIMINAL BACKGROUND DISCLOSURE

- 11.1 Prior to the execution of this Agreement Contractor shall provide a description of all past (within the last five (5) years) and pending litigation and legal claims where the Contractor, WSB, WNB, or any officer, director, executive partner or a shareholder thereof (excluding shareholders of publicly traded corporations) is a named party, whether in the State of Florida or in another jurisdiction, involving allegations that the Contractor has violated or otherwise failed to comply with environmental laws, rules, or regulations or committed a public entity crime as defined by Chapter 287, Florida Statutes, or theft-related crime such as fraud, bribery, smuggling, embezzlement or misappropriation of funds or acts of moral turpitude, meaning conduct or acts that tend to degrade persons in society or ridicule public morals
- 11.2 Prior to the execution of this Agreement, Contractor shall disclose, in writing, to County whether in the last five (5) years the Contractor, WNB, WSB or any officer, director, executive, partner, or a shareholder (excluding shareholders of publicly traded corporations), who is or was (during the time period in which the illegal conduct or activity took place) active in the management of the Contractor was charged, indicted, found guilty or convicted or illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct of activity (1) is considered to be a public entity crime as defined by Chapter 287, Florida Statutes, as amended from time to time, or (2) is customarily considered to be a white-collar crime or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds, etc., or (3) results in a felony conviction where the crime is directly related to the business activities for which the franchise is sought.

ARTICLE 12 PIGGYBACK

- 12.1 Municipalities may elect to Piggyback on in this Agreement upon the written consent of the Contractor. For the purposes of this Agreement "Piggyback" shall mean a procedure whereby municipalities may utilize this County procurement and Agreement as the basis for entering into a solid waste services agreement on substantially the identical terms with Contractor subject to the applicable rules of the municipality. Municipalities which elect to Piggyback shall not be deemed third party beneficiaries to this Agreement or have any rights hereunder. Those municipalities shall have first party rights under such independent Piggyback contracts.

(remainder of page left intentionally blank)

IN WITNESS WHEREOF, the parties have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 26th date of June, 2012, and CONTRACTOR, signing by and through its Vice President, duly authorized to execute same.

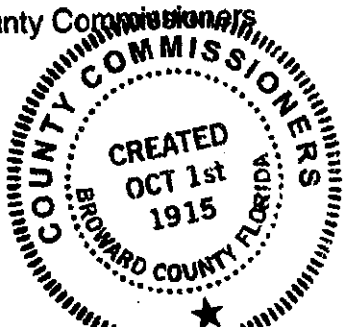
BROWARD COUNTY, by and through its Board of County Commissioners

ATTEST:

[Signature]
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: [Signature]

26th day of June, 2012



Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Office of the County Attorney
for Broward County, Florida
JONI ARMSTRONG COFFEY, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By [Signature]

6/20/12
(Date)

Risk Management Division

Jacqueline A. Binns
Risk Insurance and
Contracts Manager

By [Signature]

6/21/12
Purvi A. Bhogaita (Date)
Assistant County Attorney

By [Signature]

6/26/12
Noel M. Pfeffer (Date)
Deputy County Attorney

AGREEMENT between WHEELABRATOR ENVIRONMENTAL SYSTEMS INC. AND BROWARD COUNTY FOR SOLID WASTE DISPOSAL SERVICES

CONTRACTOR:

WHEELABRATOR ENVIRONMENTAL SYSTEMS INC.

ATTEST:

Secretary

(SEAL)

By: *David Beavers*
Printed Name: David Beavers
Title: Vice President
20th day of June, 2012

OR

WITNESSES:

William B. Roberts
Witness 1 Signature

William Roberts
Witness 1 Print/Type Name

Emily Kahn
Witness 2 Signature

Emily Kahn
Witness 2 Print/Type Name

NMP:PAB:slw
5/31/12
WheelabratorFinal5-30-12

EXHIBIT "A"
DISPOSAL SERVICES FEE

	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>
<i>Term</i>	<i>5 years</i>	<i>5 years + 1 five-year extension (County option) + 2 five-year extensions (mutual)</i>	<i>5 years + 1 five-year extension (County option) + 2 five-year extensions (mutual)</i>
<i>Revenue Share -- Energy</i>	<i>25% above \$88 per megawatt hour with \$0.75/ton floor</i>	<i>25% above \$25 per megawatt hour</i>	<i>N/A</i>
<i>Revenue Share -- Ferrous Metals</i>	<i>25% above \$50 per ton for ferrous metals pricing, with \$0.50 per ton floor</i>	<i>N/A</i>	<i>N/A</i>
<i>Base Price</i>	<i>\$46.25 per ton</i>	<i>\$43.00 per ton</i>	<i>\$42.00 per ton</i>

Pricing for optional yard waste, bulk trash, and construction and demolition debris services are the same as above.

Exhibit "B"

GUARANTY

THIS GUARANTY (this "Guaranty") made as of the ___ day of _____, 2012, by Waste Management, Inc., a Delaware corporation (the "Guarantor"), to and for the benefit of Broward County, Florida, a political subdivision and body politic of the State of Florida (the "County").

WITNESSETH:

WHEREAS, Wheelabrator Technologies Inc., a Delaware corporation and a wholly-owned subsidiary of the Guarantor (the "Company"), is entering into an Agreement for Solid Waste Disposal Services (the "Agreement") with the County dated of even date herewith (each capitalized term used herein and not defined shall have the meaning ascribed to such term in the Agreement);

WHEREAS, the Guarantor is willing to guarantee the performance of the Company under the Agreement pursuant to the terms of this Guaranty; and

WHEREAS, the execution of this Guaranty is a condition precedent to the execution by the Company and the County of the Agreement, and the County would not enter into the Agreement unless the Guarantor provided this Guaranty;

NOW, THEREFORE, as an inducement to the County to enter into the Agreement, the Guarantor agrees as follows:

1. The Guarantor hereby irrevocably, absolutely and unconditionally guarantees the full, prompt and timely performance and discharge of all of the duties, obligations, covenants and agreements of the Company pursuant to and in accordance with the terms and provisions of the Agreement, including but not limited to, the full, prompt and timely payment when due of all sums and amounts payable by the Company, including without limitation, the payment of any and all fines, damages, indemnification obligations and costs and expenses, including without limitation, reasonable fees and expenses of attorneys (collectively, the "Obligations").

2. All obligations of the Guarantor under this Guaranty shall be irrevocable, absolute, unconditional and continuing, and shall remain in full force and effect until all of the Obligations now existing or hereafter incurred shall have been performed, discharged and paid in full in accordance with the terms of the Agreement. The obligations of the Guarantor under this Guaranty shall not be released, discharged, affected, modified or impaired by reason of the happenings from time to time of any event or circumstance, including, without limitation, any one or more of the following:

(i) the compromise, settlement, release, discharge or termination of any or all of the Obligations, by operation of law or otherwise, except by payment and performance in full of the Obligations pursuant to the terms of the Agreement;

(ii) the failure of the County to give notice to the Company or the Guarantor of the occurrence of any Event of Default under the Agreement;

(iii) the waiver of the payment, performance or observance by the County of any of the Obligations;

(iv) the extension of the time (whether one or more) for payment or performance of the Obligations, or the extension or the renewal of any thereof;

(v) the invalidity or unenforceability of any term or provision of the Agreement based on the lack of authority, insolvency, bankruptcy or reorganization of the Company;

(vi) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Company, or its assets, or the Guarantor, or its assets, or any allegation of invalidity or contest of the validity of this Guaranty in any such proceedings;

(vii) the default or failure of the Guarantor to fully perform any of its obligations set forth in this Guaranty, or the occurrence of any Events of Default under the Agreement;

(viii) the failure of any agreement, instrument, certificate, or other document to be executed or delivered in connection with the Agreement; or

(ix) any assignment, amendment, modification, or waiver of, or change in any of the terms, covenants, conditions or provisions of any of the Obligations or the Agreement, or the invalidity or unenforceability of any of the foregoing.

3. This Guaranty shall be construed in accordance with and governed by the internal laws of the State of Florida, without giving effect to any choice or conflict of law provisions or rules (whether of the State of Florida or any other jurisdiction).

4. Subject to the provisions of Section 7 hereof, this Guaranty shall be binding upon and enforceable against the Guarantor, its successors, or permitted assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties or capital stock of the Guarantor), whether or not the Guarantor's obligations hereunder are expressly assumed by such successor, assignee or transferee; and is for the benefit of the County and any of its successors and assigns under the Agreement.

5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate claims may be brought hereunder by the County as each cause of action arises. The Guarantor waives to the greatest extent permitted by law: notice of

acceptance hereof; presentment and protest of any instrument, and notice thereof; notice of default; notice of foreclosure; notice of any modification, release or other alteration of any of the Obligations or of any security therefor and all other notices to which the Guarantor might otherwise be entitled. Should the Company default in the payment or performance of any of the Obligations, the obligations of the Guarantor hereunder with respect to such Obligations in default shall become immediately due and payable to the County without demand or notice of any nature, all of which are expressly waived by the Guarantor. Payments by the Guarantor hereunder may be required by the County on any number of occasions.

6. No failure, omission or delay by the County in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege of the County. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom any such waiver, amendment, release or modification is sought to be enforced.

7. The Guarantor shall not assign its obligations hereunder without first obtaining the express prior written consent of the County, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Guarantor may assign its obligations hereunder in connection with the sale or transfer of all or substantially all of its assets. Any attempted assignment in violation of this Guaranty shall be null and void.

8. The obligations of the Guarantor to the County set forth in this Guaranty are direct, absolute and unconditional without regard to the liability of any other Person; and shall not be subject to any requirement that the County first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from the Company hereunder before proceeding against the Guarantor hereunder, and shall not be subject to any claim of the Guarantor against any other Person including the County. No setoff, counterclaim, reduction, or diminution of any obligation, or any other defense of any kind or nature (excepting payment or performance in fact and any other defenses the Company has under the Agreement) which the Company or the Guarantor has or may have against the County shall limit or in any way affect the Guarantor's obligations under this Guaranty.

9. Each of the Guarantor and the County irrevocably (i) consents that any action or proceeding against it under, arising out of or in any manner relating to this Guaranty shall be brought in the courts in and for Broward County, Florida, and consents to the exclusive jurisdiction of such courts; (ii) assents and submits to the personal jurisdiction of any such court in any such action or proceeding; (iii) consents to the service of summons, notice, or other process relating to any such action or proceeding by delivery thereof by hand or by mail in the manner provided for in Section 13 of this Guaranty and consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Florida, in accordance with applicable laws; (iv) waives any objection, claim or defense which it may have at any time to the laying of venue of any such action or proceeding in any such court; (v) waives any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; and (vi) waives the right to object, with respect to any such action or proceeding brought in any such court, that such court does not have jurisdiction over such party.

10. Upon payment by the Guarantor of any sum to the County hereunder, all rights of the Guarantor against the Company arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinate, junior in right of payment to, and not exercisable until, the prior indefeasible payment and performance in full of all Obligations.

11. This Guaranty may be executed in multiple counterparts, including by way of facsimile or other electronic transmission (i.e., .pdf), each of which shall be deemed an original, but all of which taken together shall constitute one instrument. If any provision of this Guaranty is determined to be unenforceable, the County and the Guarantor hereby agree that such provision may be reformed so that it is enforceable to the maximum extent permitted by applicable laws. In the event that any provision of this Guaranty cannot be reformed, such provision shall be deemed to be severed from this Guaranty, but every other provision of this Guaranty shall remain in full force and effect. This Guaranty is entered into by the Guarantor solely and exclusively for the benefit of the County and may be enforced against the Guarantor by the County and any of its successors and assigns. This Guaranty contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements, representations and understandings of the parties with respect to the subject matter herein.

12. The Guarantor hereby expressly waives notice from the County of its acceptance of and reliance upon this Guaranty, and of any future creation, renewal or accrual of any of the Obligations.

13. All notices hereunder shall be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission or other electronic transmission service is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

If to the County:

Broward Solid Waste Disposal District
Attention: Executive Director
c/o Broward County Waste and Recycling Services
One North University Drive, Suite 400
Plantation, Florida 33324

With a copy to:

**Broward Solid Waste Disposal District
Attention: District Counsel
580 Pebble Creek Way
Plantation, Florida 33324**

If to the Guarantor:

**Waste Management Inc.
1001 Fannin Street, Suite 4000
Houston, TX 77002
Attn: Treasurer**

With a copy (which shall not constitute notice) to:

**Waste Management Inc.
1001 Fannin Street, Suite 4000
Houston, TX 77002
Attn: General Counsel**

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice given to the other party in accordance with this Guaranty.

14. Any termination of this Guaranty shall be applicable only to transactions having their inception after the effective date of such termination and shall not affect rights and obligations arising out of transactions having their inception prior to such date.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Guarantor has executed this instrument the day and year first above written.

WASTE MANAGEMENT, INC.

By: *Cherie C Rice*
Name: Cherie C Rice
Title: Vice President, Finance & Treasurer

By: *Devina Rankin*
Name: Devina Rankin
Title: Assistant Treasurer

Witnesses:

[SEAL]

BROWARD COUNTY, FLORIDA

By: _____
Name: _____
Title: _____

EXHIBIT "C" PARTICIPATING COMMUNITIES

EXHIBIT "D"
FORM INVOICE



Wheelabrator South Broward Inc.
Attn: Accounts Receivable Department
4 Liberty Lane West
Hampton NH 03842

Customer: [REDACTED]
Account Number: [REDACTED]
Invoice Date: 05/22/2012
Invoice Number: 0003466-0911-8
Due Date: Due Upon Receipt
WM ezPay Account ID: [REDACTED]

Date	Ticket	Description	Quantity	U/M	Rate	Amount
05/14/12	165473	Vehicle#:sw1999 Spot msw Ticket Total	13.73	TON		
05/14/12	165581	Vehicle#:sw1750 Spot msw Ticket Total	10.16	TON		
05/14/12	165631	Vehicle#:ja1823 Spot msw Ticket Total	11.61	TON		
05/14/12	165659	Vehicle#:sw1969 Spot msw Ticket Total	11.53	TON		
05/14/12	165834	Vehicle#:sw1988 Spot msw Ticket Total	6.89	TON		
05/15/12	165874	Vehicle#:sw1969 Spot msw Ticket Total	6.20	TON		
05/15/12	165882	Vehicle#:ja1763 Spot msw Ticket Total	5.35	TON		
05/15/12	165976	Vehicle#:sw1988 Spot msw Ticket Total	6.56	TON		
05/15/12	165988	Vehicle#:sw2967 Spot msw Ticket Total	14.01	TON		
05/15/12	165993	Vehicle#:ja1823 Spot msw Ticket Total	13.90	TON		
05/16/12	166189	Vehicle#:sw1999 Spot msw Ticket Total	14.80	TON		
05/15/12	166193	Vehicle#:sw1999 Spot msw Ticket Total	4.73	TON		
05/16/12	166294	Vehicle#:ja1822 Spot msw Ticket Total	9.15	TON		
05/16/12	166311	Vehicle#:sw1969 Spot msw Ticket Total	9.11	TON		

0001080-0000022-0000059



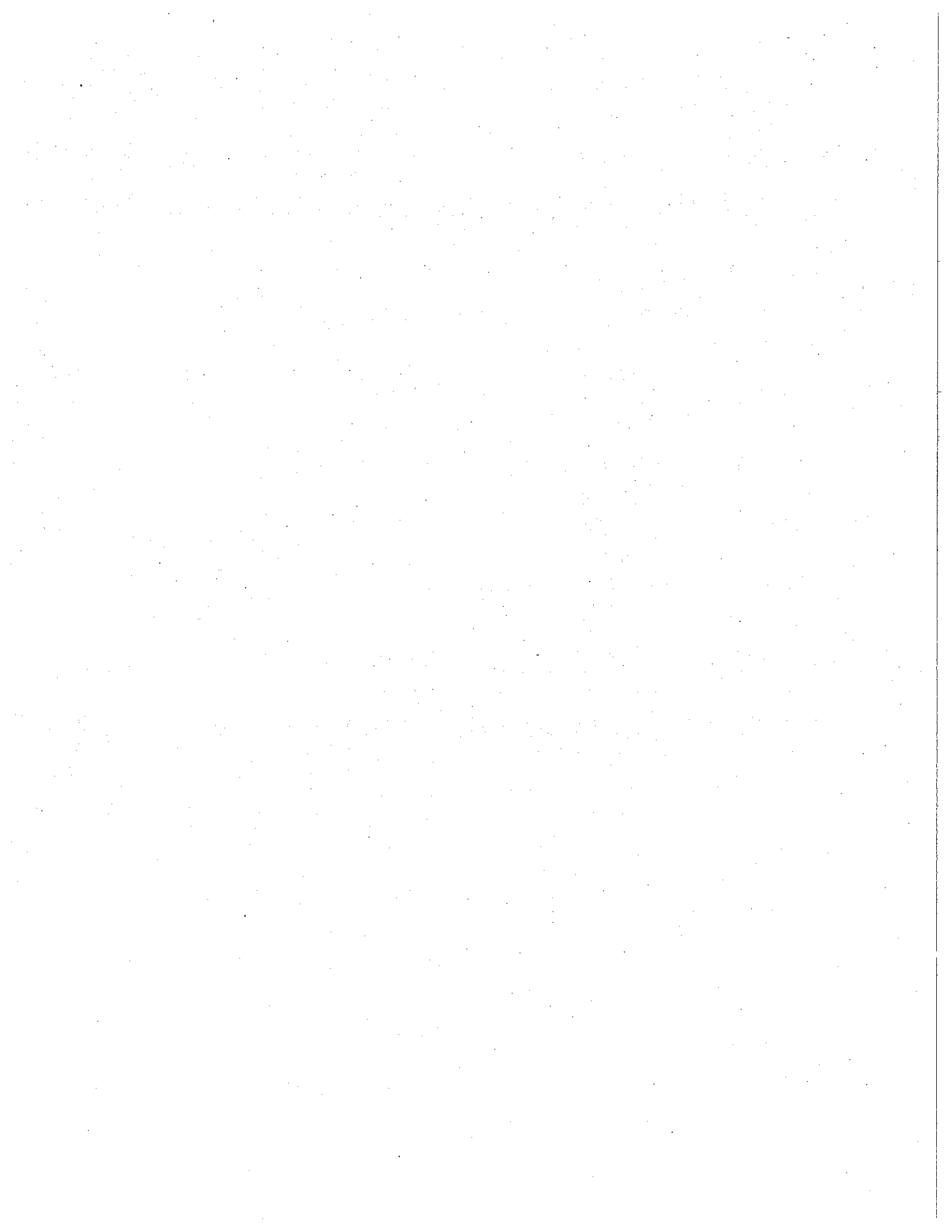
Wheelabrator South Broward Inc.
Attn: Accounts Receivable Department
4 Liberty Lane West
Hampton NH 03842

Customer: [REDACTED]
Account Number: [REDACTED]
Invoice Date: 05/22/2012
Invoice Number: 0003466-0911-8
Due Date: Due Upon Receipt
WM ezPay Account ID: [REDACTED]

Date	Ticket	Description	Quantity	U/M	Rate	Amount
		Spot msw	11.88	TON		
		Ticket Total				
05/19/12	167037	Vehicle#:sw2967				
		Spot msw	11.95	TON		
		Ticket Total				
05/18/12	167091	Vehicle#:sw1350				
		Spot msw	15.16	TON		
		Ticket Total				
05/19/12	167163	Vehicle#:sw1750				
		Spot msw	10.85	TON		
		Ticket Total				
05/19/12	167180	Vehicle#:sw1969				
		Spot msw	11.88	TON		
		Ticket Total				
05/19/12	167189	Vehicle#:ja1763				
		Spot msw	6.84	TON		
		Ticket Total				
04/21/12	167576	Vehicle#:sw3232				
		Spot msw	6.38	TON		
		Ticket Total				
05/22/12		Late fee 1.5% N20				
Total Current Charges						[REDACTED]

05/16/2012 Payment - thank you

Total Payments Received



~~EXPOSED FINAL~~

**AGREEMENT
BETWEEN
SUN-BERGERON SOLID WASTE SERVICES (SUN-BERGERON) JV,
A FLORIDA JOINT VENTURE
AND
BROWARD COUNTY
FOR
SOLID WASTE DISPOSAL SERVICES**

This Agreement is made and entered into this 26th day of June, 2012, by and between Bergeron Environmental and Recycling, LLC, a Florida limited liability company AND Sun Recycling, LLC, a Florida limited liability company, doing business as SUN-BERGERON SOLID WASTE SERVICES ("Sun-Bergeron") JV, a Florida Joint Venture (hereinafter referred to as "Contractor"), and BROWARD COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "County").

WHEREAS, On March 27, 2012, Broward County Board of County Commissioners unanimously voted to authorize negotiations with Wheelabrator Technologies, Inc. and Sun-Bergeron for a solid waste disposal agreement; and

WHEREAS, Contractor and the County desire to enter into this Agreement (the "Agreement") to provide for the disposal of solid waste generated within certain geographic boundaries of Broward County and to set forth how such solid waste disposal services will be provided; and

WHEREAS, it is the intent of the parties Agreement may function as either (i) a form agreement for Broward municipalities to use as a basis for a solid waste contract with Contractor independent of County and independent of the proposed Interlocal Agreement, or alternatively (ii) this Agreement may serve as the basis for an Interlocal Agreement, whereby Participating Communities executing the Interlocal Agreement shall agree, among other things, to be bound by the terms of this Agreement; and

WHEREAS, the County is desirous of securing and maintaining a high level of professional, safe and environmentally sound solid waste disposal services in conjunction and harmony with its environmental protection and conservation policies and fiscal policies of sound, economical management; and

WHEREAS, the County has determined that it is beneficial and in the best interest of the public to enter into this Agreement.

NOW THEREFORE, In consideration, among other things, for County enabling municipalities to Piggyback on this Agreement immediately, for County's commitment to draft and present an Interlocal Agreement offering centralized billing and other services to Participating Communities and the mutual covenants, promises, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Contractor and the County do hereby agree as follows:

ARTICLE 1 DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply, unless otherwise specifically stated:

"Bulk Waste" shall refer to any non-vegetative item that cannot be containerized, bagged, or bundled including, but not limited to, white goods, discarded refrigerators, ranges, pool heaters, water softeners, pianos, washers, dryers, water heaters, bicycles, and other similar appliances, electronics, mattresses, household goods, furniture, large boxes, barrels and crates, and shall not be commingled with vegetative waste or any other type of refuses and as otherwise defined under Section 403.703, Florida Statutes or applicable regulations promulgated thereunder (Class III Waste).

"Broward Waste" shall refer to Commercial Waste and Residential Waste generated within the unincorporated portions of Broward County and those governmental entities listed in Exhibit "D" attached hereto and made a part hereof

"Centrally Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and have elected to have the County perform centralized billing services and are indicated as such on Exhibit "D."

"Commercial Waste" shall refer to all waste, refuse, garbage, trash and rubbish generated within the unincorporated portions of Broward County and the Participating Communities listed on Exhibit "D" from non-residential property and that is capable of being processed at the Waste Processing Facility(ies), but shall not include Residential Waste as defined herein, construction and demolition debris, tropical storm or hurricane related debris, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"Commencement Date" shall refer to the date upon which the Interlocal Agreement has either terminated or expired.

"Construction and Demolition Debris" shall refer to discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from

construction of structures at a site remote from the construction or demolition project site as defined under Section 403.703, Florida Statutes, or applicable regulations promulgated thereunder.

"Directly Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and perform their own billing services and are indicated as such on Exhibit "D."

"Disposal Services" refers to everything required to be furnished and done by the Contractor pursuant to this Agreement. Disposal Services include, but are not limited to, the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the receipt, processing, transferring, transporting and disposal of Broward Waste or Additional Waste, as defined in Section 3.1, and any associated residual materials.

"Disposal Services Fee" shall mean the per-ton (or per cubic yard as appropriate) rate charged by the Contractor for providing the Disposal Services in accordance with this Agreement and set forth on Exhibit "A" attached hereto and made a part hereof.

"Disposal Services Fee Adjustment Factor" shall refer to the adjustment that shall be applied to the Disposal Services Fee on an annual basis, as calculated pursuant to Section 6.2.

"Effective Date" shall refer to the date that this Agreement has been executed by both the County and the Contractor.

"Force Majeure" means any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder that is beyond the reasonable control, and not the result of willful or negligent action or omission or a lack of reasonable diligence, of the party relying thereon as justification for not performing. Such events or conditions may include, but shall not be limited to: an act of God, epidemic, hurricane, earthquake, fire, explosion, storm, flood or similar occurrence, an act of war, effects of nuclear radiation, blockade, insurrection, riot, labor unrest (other than with respect to employees of the party claiming relief), civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a Waste Processing Facility or Materials Recovery Facility unless knowingly accepted by Contractor. In any event, Force Majeure shall not include the following:

- (a) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure;
- (b) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a Waste Processing Facility or Materials Recovery Facility, or Solid Waste

Disposal Facility which is the result of any action or inaction or failure of compliance by Contractor or any affiliate;

(c) any change in law (other than to the extent that Contractor's physical ability to process Broward Waste is eliminated due to a change in law);

(d) loss or unavailability of personnel desired by Contractor to operate or maintain a Waste Processing Facility or Materials Recovery Facility;

(e) wear and tear or obsolescence of any parts or equipment utilized in or at a Waste Processing Facility or Materials Recovery Facility; or

(f) except as a result of an independent event of Force Majeure, the loss of or inability to obtain or retain any utility services, including water, sewerage, fuel oil, gasoline and electric power necessary for the operation of the Waste Processing Facility or Materials Recovery Facility.

"Hazardous Waste" means any waste, substance, object or material deemed hazardous under (i) Section 403.703, Florida Statutes; (ii) RCRA, 42 U.S.C.A § 6901, et seq.; (iii) CERCLA, 42 U.S.C.A. § 9601, et seq; (iv) Toxic Substances Control Act, 15 U.S.C. §2601, et seq., and in each case, applicable regulations promulgated thereunder.

"Interlocal Agreement" shall refer to the Agreement to be entered into among County and Participating Communities which provides, at a minimum, a requirement for the County and Participating Communities to be bound by the terms of this Agreement and to perform such obligations as contemplated therein, provides Participating Communities the option to choose from the two approved vendors and vendors price proposals and the option to receive, at the Participating Communities expense, additional County services, including but not limited to, centralized billing services by County, flow control enforcement by County, and other County waste disposal related services.

"Licensed Commercial Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Commercial Waste generated from non-residential property within the Participating Communities and to deliver the Commercial Waste to the Waste Processing Facility(ies).

"Licensed Residential Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Residential Waste within the Participating Communities and that are directed to dispose of Residential Waste pursuant to this Agreement.

"Licensed Waste Haulers" shall refer to Licensed Commercial Waste Haulers and Licensed Residential Waste Haulers.

"Participating Community(ies)" shall refer to the municipalities which are listed on Exhibit "D" and have signed the Interlocal Agreement. Participating Communities may also include the County, as to the unincorporated area of Broward County, in the event County elects to deliver its Broward Waste to Contractor as evidenced by indicating County as a Participating Community on Exhibit "D," in which event the County shall be deemed a Participating Community for the purposes of this Agreement.

"Person" means any individual or business entity, including, without limitation, any corporation, limited liability companies, partnership, business trust or partnership.

"Residential Waste" shall refer to all waste, refuse, garbage, trash and rubbish generated within the unincorporated portions of the County and Participating Communities listed on Exhibit "D" from "residential property" as such term or equivalent term is defined by the County with respect to the unincorporated County and by each Participating Community with respect to waste generated within such Participating Community) and that is capable of being processed at the Waste Processing Facility(ies), but shall not include construction and demolition debris, tropical storm or hurricane related debris, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"Solid Waste Disposal Facility(ies)" shall refer to any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste, under Section 403.703, Florida Statutes, or applicable regulations promulgated thereunder.

"Unacceptable Waste" shall refer to (a) Hazardous Waste, (b) cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (c) any item of waste exceeding six feet in any one of its dimensions or being in whole or in part 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; (d) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (e) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (f) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; and (g) all other items of waste which a Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Waste Processing Facility(ies) or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations. For purposes of the disposal of Bulk Waste as provided for in Article 3 of this Agreement, any solid waste that otherwise meets the definition of Bulk Waste, may be delivered to Contractor even if it would be otherwise classified as Unacceptable Waste.

"Waste Processing Facility(ies)" shall refer to the facilities set forth on Exhibit "B" attached hereto and made a part hereof.

"Yard Trash" shall refer to any waste, substance, object or material deemed yard trash under Section 403.703, Florida Statutes or applicable regulations promulgated thereunder, including vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

**ARTICLE 2
DISPOSAL SERVICES FOR BROWARD WASTE**

- 2.1 Selection of Waste Services. While Contractor must offer to provide disposal services for Broward Waste under this Agreement, each Participating Community may select Contractor's disposal services for any individual component of its solid waste to be disposed of under this Agreement, including its Broward Waste or individual components of Additional Waste. For example, a Participating Community may select Contractor to provide disposal services for its Additional Waste, or only its Construction and Demolition Debris portion for Additional Waste without also selecting Contractor to provide disposal services for its Broward Waste.
- 2.2 Contractor Services for Broward Waste. Contractor shall, at the option of each Participating Community, provide solid waste Disposal Services to the Participating Communities and shall accept and weigh all Broward Waste delivered by the Participating Communities, and the Licensed Waste Haulers for processing at the Waste Processing Facility(ies) and disposal at the Solid Waste Disposal Facility(ies) during the Initial Term or any Renewal Term of, and in accordance with, this Agreement.
- 2.3 Delivery of Broward Waste. Participating Communities shall deliver or cause to be delivered to the Waste Processing Facility(ies) all Broward Waste collected by the Participating Communities, and the Licensed Waste Hauler(s). The Interlocal Agreement shall include an obligation by the Participating Communities to comply with the applicable provisions of Articles 2 and 3.
- 2.3.1 Residential Waste delivered by Participating Communities. If Participating Communities collect the Residential Waste and haul the Residential Waste to Contractor, Participating Communities, shall be responsible for Unacceptable Waste brought to the Waste Processing Facility(ies).
- 2.3.2 Residential Waste delivered by Licensed Residential Waste Hauler. Waste hauling contracts for the collection of Residential Waste, including any renewal of existing waste hauling contracts, entered into by Participating Communities and a Licensed Residential Waste Hauler after the Effective Date of this Agreement shall include the following: (a) the definition of Residential Waste set forth in this Agreement, (b) Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste brought to Waste Processing Facility(ies), (c) Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering waste on behalf of the Participating Communities, (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Residential Waste to the Waste Processing Facility(ies) or as

otherwise provided pursuant to Section 7.3, and (e) hours of operation for the Waste Processing Facility(ies) during which the Licensed Residential Waste Hauler shall be authorized to deliver Broward Waste to the Waste Processing Facility(ies).

2.3.3 Commercial Waste delivered by Licensed Commercial Waste Haulers. Each Participating Communities shall require Licensed Commercial Waste Haulers to execute a License Agreement that sets forth the payment procedure in Article 6 for Commercial Waste Disposal Services and requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to be processed at the appropriate Waste Processing Facility(ies) or as otherwise provided pursuant to Section 7.3. In addition, each Directly Billed Participating Community shall require the Licensed Commercial Waste Hauler(s) to provide a performance and payment bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for such Directly Billed Participating Community calculated pursuant to Article 6 and based on the sixty (60) day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding the execution of the License Agreement between County and/or Participating Communities and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance and payment bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations hereunder. A licensed Commercial Waste Hauler providing services for multiple Directly Billed Participating Communities may provide one aggregate bond meeting the requirement set forth herein.

2.3.4 For purposes of enforcing the obligations of the Licensed Residential Waste Hauler(s) and Licensed Commercial Waste Hauler(s) in Sections 2.2.2 and 2.2.3 of the Agreement, Contractor shall be considered a third party beneficiary as to any of the Participating Communities.

2.4 Weighing Waste. Contractor shall utilize and maintain motor truck scales at the Waste Processing Facility(ies) to weigh the Licensed Waste Haulers' vehicles delivering Broward Waste to the Waste Processing Facility(ies). Contractor shall weigh the Licensed Waste Haulers' vehicles upon entering and exiting the Waste Processing Facility(ies) site, with the weight difference resulting in the tons of Broward Waste actually delivered. Contractor will keep and regularly maintain accurate and calibrated motor truck scales for the weighing of all Broward Waste. The motor truck scales shall be recalibrated from time to time during the Initial Term and any Renewal Term(s) of this Agreement, in accordance with the requirements of the Florida Department of Agriculture.

- 2.5 **Monthly Reports.** Contractor shall provide monthly reports to the County, within ten (10) days after the end of the subject month, that include the number of tons of Broward Waste actually delivered to the Waste Processing Facility(ies) for the subject month listing the delivering party's name (County or Licensed Waste Hauler(s)) and the number of transactions for each delivering party. Such reports shall be provided in a form reasonably acceptable to the County which form shall be agreed upon by the County and Contractor prior to the Commencement Date. Upon request, Contractor shall provide monthly reports to Participating Communities detailing deliveries of Broward Waste made by or on behalf of such Participating Communities.

ARTICLE 3

DISPOSAL SERVICES FOR BULK, YARD, AND C&D (ADDITIONAL WASTE)

- 3.1 **Contractor Services for Additional Waste.** Contractor may, at the option of each Participating Communities, provide solid waste disposal services for Bulk Waste, Yard Trash, or Construction and Demolition Debris (C&D) (collectively "Additional Waste"), to the County or Participating Communities and shall accept and weigh all Additional Waste delivered by the County, Participating Communities, or the Licensed Waste Haulers for processing at the Material Recovery Facility(ies) during the Initial Term or any Renewal Term of, as set forth in Exhibit B.
- 3.2 **Delivery of Additional Waste.** Participating Communities may deliver or cause to be delivered to the Materials Recovery Facility(ies) Additional Waste collected by the Participating Communities, or the Licensed Waste Hauler(s).
- 3.2.1 If a Participating Community collects the Additional Waste and hauls the Additional Waste to Contractor, the Participating Community shall be responsible for Unacceptable Waste brought to the Materials Recovery Facility(ies).
- 3.2.2 **Additional Waste by Licensed Residential Haulers.** Should the Participating Communities desire to use Contractor for solid waste disposal services for Additional Waste, then Participating Communities' waste hauling contracts for the collection of Residential Additional Waste, including any renewal of existing Additional Waste hauling contracts, entered into by the Participating Communities and a Licensed Residential Waste Hauler after the Effective Date of this Agreement shall include the following: (a) the definition of Additional Waste set forth in this Agreement, (b) Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste brought to Additional Waste Processing Facility(ies), (c) Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering Additional Waste on behalf of the County or Participating Communities, (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Additional Waste to the Materials Recovery Facility(ies) or as otherwise provided

pursuant to Section 7.2, and (e) hours of operation for the Materials Recovery Facility(ies) during which the Licensed Residential Waste Hauler shall be authorized to deliver Additional Waste to the Materials Recovery Facility(ies).

3.2.3 Additional Waste. Should a Participating Community desire to use Contractor solid waste disposal services for Additional Waste, then the Participating Community shall require Licensed Commercial Waste Haulers to execute a License Agreement with the Participating Community that sets forth the payment procedure in Section 6.5 for Additional Waste Disposal Services, and requires the Licensed Commercial Waste Hauler(s) to deliver all collected Additional Waste to the appropriate Materials Recovery Facility(ies) or as otherwise provided pursuant to Section 7.2. In addition, each Directly Billed Participating Community shall require the Licensed Commercial Waste Hauler(s) to provide a performance and payment bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for such Directly Billed Participating Community calculated pursuant to Article 6 and based on the sixty (60) day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding execution of the license agreement between Participating Community and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance and payment bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations hereunder. A licensed Commercial Waste Hauler providing services for multiple Directly Billed Participating Communities may provide one aggregate bond meeting the requirements set forth herein.

3.2.4 For purposes of enforcing the obligations of the Licensed Residential Waste Hauler(s) and Licensed Commercial Waste Hauler(s) in Sections 3.2.2 and 3.2.3 of the Agreement, Contractor shall be considered a third party beneficiary as to any of the Participating Communities.

3.3 Weighing or Measuring Waste. Contractor shall utilize and maintain motor truck scales at the Materials Recovery Facility(ies) to weigh the Licensed Waste Haulers' vehicles delivering Additional Waste to the Materials Recovery Facility(ies). Contractor shall weigh (or measure, if appropriate) the Licensed County Waste Haulers' vehicles upon entering and exiting the Materials Recovery Facility(ies) site, with the weight difference resulting in the tons (or cubic yards, if appropriate) of Additional Waste actually delivered. Contractor will keep and regularly maintain accurate and calibrated motor truck scales for the weighing of all Additional Waste. The motor truck scales shall be recalibrated from time to time during the Initial Term and any Renewal Terms of this Agreement, in accordance with the requirements of the Florida Department of Agriculture.

- 3.4 **Monthly Reports.** Contractor shall provide monthly reports to the County, within ten (10) days after the end of the subject month, that include the number of tons (or cubic yards, if appropriate) of each category of Additional Waste actually delivered to the Materials Recovery Facility(ies) for the subject month listing the delivering party's name (County or Licensed County Waste Hauler(s)) and the number of transactions for each delivering party. Such reports shall be provided in a form reasonably acceptable to the County which form shall be agreed upon by the County and Contractor prior to the Commencement Date. Upon request, Contractor shall provide monthly reports to a Participating Communities detailing deliveries of Additional Waste made by or on behalf of such Participating Communities.

ARTICLE 4 RECYCLING PERCENTAGES

- 4.1 The State of Florida has established a statewide goal to recycle at least 75% of all solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities. As the State recognizes that it will take a comprehensive program to achieve the 75% recycling goal by 2020, Participating Communities may use the disposal services of Contractor for some or all of the disposal services for solid waste under this Agreement, including for Broward Waste, Bulk Waste, Yard Trash, or Construction and Demolition Debris.
- 4.2 Contractor guarantees that it shall achieve an annual recycling rate for all Solid Waste, including Broward Waste and Additional Waste, in excess of 75 percent as defined by Chapter 403, Florida Statutes, and its applicable regulations promulgated thereunder. Such recycling rate shall be verified based upon the policies and procedures of the State of Florida Department of Environmental Protection.
- 4.3 Contractor shall provide evidence of such recycling rate monthly by providing copies of materials required to be submitted to the State of Florida Department of Environmental Protection for such purposes. Should Contractor fail to comply with this recycling guarantee of 75 percent of Contractor's operations on an annual basis, then it shall pay County an annual penalty of \$250,000 within thirty (30) days of the end of the applicable 12 month period, regardless of the number of municipalities or other government entities that may participate under this Agreement. This amount shall not increase based on the participation of other municipalities to this Agreement.

ARTICLE 5 TERM OF AGREEMENT

- 5.1 **Initial Term.** This Agreement shall take effect upon the Effective Date, and the term of the Agreement shall begin upon the Commencement Date and continue

for a five (5) year period of time ("Initial Term"), unless renewed pursuant to Section 5.2 or terminated pursuant to Section 7.

- 5.2 **Renewals.** This Agreement may be renewed for up to three (3) additional five (5) year terms (each renewal is a "Renewal Term") upon mutual written consent by the County and Contractor at least eight (8) months prior to the expiration of the Initial Term or subsequent Renewal Term.
- 5.3 **Termination and Extension.** This Agreement shall only be terminated as provided in Section 5.4 of this Agreement. In the event that this Agreement is terminated as a result of Contractor's material breach or County's material breach not due to County's non-payment, County shall have the right to an extension of Disposal Services for up to twelve (12) months provided that the County specifies the desired length of the extension in the termination letter, or extension request letter, transmitted to Contractor. In the event County exercises its right to an extension, this Agreement shall be deemed automatically extended for the period specified in the notice transmitted to Contractor. The remunerations to be paid to the Contractor during this extension period shall be based upon the Disposal Services Fees in effect at the time of such termination. County shall not be entitled to an extension of Disposal Services if Contractor terminates this Agreement due to County's material breach for failure to make payment to Contractor in accordance with this Agreement. Notwithstanding any language herein to the contrary, County and Contractor retain their rights during any such extension to seek damages for material breach of this Agreement by either party.
- 5.4 **Material Breach.** In the event there should occur any material breach in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty (30) days after receipt of notice from the non-breaching party specifying such breach, the non-breaching party may, if such breach is continuing, terminate this Agreement upon thirty (30) days' notice to the party in breach; provided that if such breach is not a payment breach and can be cured, and the party in breach shall have commenced to take reasonably appropriate steps to cure such breach within a reasonable period of time, the same shall not give rise to a right of termination on behalf of the non-breaching party for so long as the breaching party is continuing to take reasonable steps to cure such breach.

ARTICLE 6 SERVICE FEE

- 6.1 **Disposal Services Fee.** Ten (10) days after the last day of each operating month, the Contractor shall invoice the County for Centrally Billed Participating Communities and Participating Community for Directly Billed Participating Community for Residential Waste Disposal Services and the County for Centrally Billed Participating Communities or the Licensed Commercial Waste Hauler(s)

for Commercial Waste Disposal Services based upon the per ton (or per cubic yard, as appropriate) Disposal Services Fee, as set forth in attached Exhibit "A."

6.2 Disposal Services Fee Adjustment Factor. On the first March 1 after the one year anniversary of the Commencement Date of this Agreement and on each March 1 thereafter, the Disposal Services Fee shall be subject to adjustment with a cap not to exceed 5% and a floor of not less than 1% effective the following October 1, by multiplying the Disposal Services Fee by the Disposal Services Fee Adjustment Factor as set forth in this Section 6.2. The result of the calculation shall become the maximum Disposal Services Fee permitted to be charged by Contractor to County for the twelve (12) months following the Disposal Services Fee adjustment. The twelve (12) month change (using the month of the Commencement Date of each year as the base month) in the Bureau of Labor Statistics Index Series ID CWUR0000SAO, Consumer Price Index – Urban Wage Earners and Clerical Workers, shall be used to calculate the Disposal Services Fee Adjustment Factor subject to and not to exceed the 5% cap and 1% floor for any year.

6.3 Most Favored Price Provision.

6.3.1 In the event that Contractor subsequently enters into an agreement for a term of more than twelve (12) months (including renewal and option periods) for the disposal of solid waste, excluding Additional Waste, generated anywhere within Broward, Miami-Dade or Palm Beach County (an "Eligible Agreement"), Contractor shall provide the County with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the County determines that the contract includes a Net Disposal Fee that is less than the Disposal Services Fee set forth herein, the County may provide written notice to Contractor of such determination, and, if the County does so, the Disposal Services Fee shall automatically be reduced for all Participating Communities to the Net Disposal fee set forth in the Eligible Agreement, such change to be effective retroactively as of the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower Net Disposal Fee (subject to annual adjustments as provided in Section 6.2). Excluded from the definition and calculation of Net Disposal Fee for the purposes of this subsection shall be revenue share, not to exceed \$2 (two) per ton, payable solely to the City of Miramar pursuant to any agreement entered into between Contractor and City of Miramar as a result of Miramar RFP # 11-03-10 ("RFP") so long as the agreement includes an "Unusual Conditions" clause in substantially the form contained in the RFP.

6.3.2 For the purposes of this Agreement, the "Net Disposal Fee" offered under the Eligible Agreement shall be the actual per-ton cost offered by Contractor to the other party to the Eligible Agreement. In calculating the Net Disposal Fee all "Economic Incentives" which are defined to mean monies, economic benefits and consideration received by the other party of whatever nature (e.g. signing bonus, revenue sharing, other credits, etc.) shall be taken into account by reducing the

per-ton cost by the amount of the Economic Incentives to determine the Net Disposal Fee. Any actual costs associated with disposal which are required to be paid by the other party (e.g. pass throughs, etc.) shall be included in the calculation of Net Disposal Fee.

6.3.3 Discriminatory Tax Adjustments. If the State of Florida, Broward County, or any City within Broward County, enacts a tax or fee applicable only to solid waste, or specifically targets Contractor as the owner or operator of one of its Facilities being used under this Agreement, then the Disposal Services Fee shall be increased by the pro-rata amount (or the "net disposal fee" shall be increased, if applicable) (based upon the amount of Broward Waste or Additional Waste as a proportion of all waste delivered to the Facility) of the tax or fee attributable to the disposal of solid waste pursuant to this Agreement. No adjustments shall be made under this Section for any County or City wide ad valorem real or personal property taxes.

6.4 Payment Procedure.

6.4.1 County shall pay for Centrally Billed Participating Communities and Participating Community shall pay for Directly Billed Participating Communities Contractor, on a monthly basis, commencing on the 25th day of the month following the first full month of the Initial Term, and the 25th day of each month, the Disposal Services Fee for Residential Waste (based on actual weights from certified scales) for all Residential Waste that passes over the certified scales during the immediately preceding month.

6.4.2 On the 10th day of each month commencing the month following the first full month of the Initial Term, Contractor shall deliver to County for Centrally Billed Participating Communities and Participating Community for Directly Billed Participating Community a Disposal Services Fee invoice, in substantially the form attached hereto as Exhibit "E," together with a monthly report reflecting the tonnage of Residential Waste for the immediately preceding month. The report shall cover (for each month) from the first day of the month to the last day of the month. The monthly report and the monthly invoices shall be delivered to on the 10th day of each month. All payments due hereunder shall be paid to Contractor without demand, offset or deduction by the 25th day of each month.

6.4.3 Any monthly payment or other payments shown to be due and owing to Contractor in the monthly invoices described herein shall be paid on the 25th day of such monthly invoice. Interest on untimely monthly payments shall be made consistent with the Florida Prompt Payment Act, Florida Statutes 218.70-218.80.

6.4.4 On a bi-weekly basis, Contractor shall calculate the amount of Disposal Services Fee owed to the Contractor by the Licensed Commercial Waste Hauler(s) for Commercial Waste Disposal Services, based on the provisions of this Agreement, and shall submit an invoice to the Licensed Commercial Waste

Hauler(s) for payment. The invoice to the Licensed Commercial Waste Hauler(s) shall be due within fifteen (15) days of receipt.

6.4.5 Residential Waste Disposal Services. If the County or Directly Billed Participating Community, as applicable disagrees with the amount stated in the invoice for Residential Waste Disposal Services, the County or Directly Billed Participating Community, as applicable shall notify the Contractor of such dispute. The County or Directly Billed Participating Community, as applicable shall make payment to Contractor of undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute (for amounts greater than \$25,000) by mediation before a mutually acceptable mediator. In the event that the parties are not able to resolve the dispute through mediation within forty-five (45) days, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of its obligations under this Agreement.

6.4.6 Commercial Waste Disposal Services. If the Licensed Commercial Waste Hauler(s) disagrees with the amount stated in the invoice for Commercial Waste Disposal Services, the Licensed Commercial Waste Hauler(s) shall notify the Contractor of such dispute. The Licensed Commercial Waste Hauler(s) shall make payment to Contractor of undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association and appoint a mutually acceptable mediator. In the event that the parties are not able to resolve the dispute through mediation, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or, except as set forth herein, relieve Contractor of its obligations to County under this Agreement. In the event the Licensed Commercial Waste Hauler(s) fails to make payment to Contractor for Commercial Waste Disposal Services as required by this Agreement, Contractor shall notify the County of such non-payment and Contractor shall have the right to make a claim for payment under the performance and payment bond (required by Article 2.2.3(c)) for the properly invoiced outstanding amounts due for Commercial Waste Disposal Services pursuant to this Agreement. If the unpaid amount exceeds 80% of the performance and payment bond provided by the Licensed Commercial Hauler pursuant to Section 2.2.3 and then available to Contractor, Contractor shall be entitled to reject any Commercial Waste delivered by such Licensed Commercial Waste Hauler until such time as all unpaid amounts have been received by

Contractor and the Contractor is in possession of a performance and payment bond meeting the requirements of Section 2.2.3.

6.4.7 Contractor shall pay any Participating Community the amounts due for revenue share under Exhibit "A" to this Agreement within 5 days of receipt of payment from County or Participating Community for the Disposal Service Fee relating to the Additional Waste processed that causes such revenue share to become due. Payment of such amounts from County or Participating Community is a condition precedent to Contractor being liable for and making any payment of the related revenue share. If such payment of the Disposal Services Fee is being paid by the Participating Community entitled to the revenue share amount, then such Participating Community may deduct such revenue share amount directly from the actual payment to Contractor and the amount of such deduction should be reflected on the payment receipt.

ARTICLE 7 OPERATION OF WASTE PROCESSING AND MATERIALS RECOVERY FACILITY(IES)

- 7.1 Personnel and Equipment Requirement. Contractor shall provide, at its sole expense, all necessary personnel, materials and equipment for the operation, maintenance and repair of the Waste Processing and Materials Recovery Facility(ies).
- 7.2 Alternative Waste Processing or Materials Recovery Facility(ies). It is the intent of this Agreement that Broward Waste and Additional Waste shall be disposed at the most conveniently located Waste Processing or Materials Recovery Facility(ies) of Contractor as identified in Exhibit "B" so as to reduce transportation costs for County. In the event that any of these Waste Processing or Materials Recovery Facility(ies) are rendered incapable, for any reason, to receive the Broward Waste or Additional Waste that is to be delivered under this Agreement for any length of time, the Contractor must identify an alternative Waste Processing or Materials Recovery Facility for the disposal of Broward Waste or Additional Waste (the "Alternative Waste Processing or Materials Recovery Facility"). At the option of the County or Participating Community, rather than deliver its Broward Waste or Additional Waste to an Alternative Waste Processing or Materials Recovery Facility, the County or Participating Community may deliver Broward Waste or Additional Waste to another facility that is more conveniently located than such Alternative Facility. Reimbursements for any incremental tipping fee amount paid that exceed the Disposal Services Fee and for any actual and documented incremental cost for transportation of the Broward Waste or Additional Waste necessitated by the incapacity of any of the Waste Processing or Materials Recovery Facility shall be determined in accordance with Section 7.3 below.
- 7.3 Alternative Waste Processing or Materials Recovery Facility Associate Costs.

7.3.1 In the event that any designated Waste Processing or Materials Recovery Facility is rendered incapable to receive Broward Waste or Additional Waste for any length of time for any reason except for Force Majeure or the negligence or intentional misconduct of a Participating Communities or County's Licensed Waste Hauler, Contractor shall reimburse the Participating Communities or the Licensed Waste Hauler, as applicable, for any incremental tipping fee amount paid at the Alternative Waste Processing or Materials Recovery designated by Contractor pursuant to Section 6.2 that exceeds the Disposal Services Fee, and for any actual and documented incremental cost for transportation of the Broward's Waste or Additional Waste to such facility necessitated by the incapacity of Contractor's Waste Processing or Materials Recovery Facility.

7.3.2 In the event that the designated Waste Processing or Materials Recovery Facility(ies) is rendered incapable to receive the Broward Waste or Additional Waste for any length of time for any reason due to Force Majeure or the negligence or intentional misconduct of Participating Communities or Licensed Waste Hauler, the Participating Communities and the Licensed Waste Hauler shall not receive any reimbursement for any additional tipping fee paid at the Alternate Waste Processing or Materials Recovery Facility(ies) or transportation costs necessitated by the incapacity of Contractor's Waste Processing or Materials Recovery Facility(ies).

7.4 Solid Waste Disposal Facility(ies). Contractor shall utilize any of the Solid Waste Disposal Facility(ies) set forth on Exhibit "C" to this Agreement. Further, Contractor shall be able to add any other legally permitted Solid Waste Disposal Facility to Exhibit "C" during the Initial Term and any Renewal Term of this Agreement with the consent of the Participating Communities, which may not be unreasonably withheld or delayed.

7.5 Dates and Hours of Operation. Contractor shall keep its Waste Processing Facility and Materials Recovery Facility(ies) open for the receipt of Broward Waste and Additional Waste from the County and/or Licensed Waste Hauler from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 6:00 a.m. to 4:00 p.m. on Saturday, during every day of the year, excluding Christmas and Sundays. To the extent permitted by law and to the extent that capacity is available, Contractor shall use all reasonable efforts to keep the Waste Processing and Material Recovery Facility(ies) open for additional hours to accept Broward Waste or Additional Waste.

7.6 Good Working Order Requirement. Contractor shall operate and maintain its Waste Processing and Additional Waste Facility(ies) in good working order, and shall timely make all necessary repairs and replacements, consistent with the prevailing practices and standards in waste disposal industry and consistent with all applicable laws.

7.7 Unacceptable Waste.

7.7.1 The Participating Communities shall institute all reasonable procedures to prevent the delivery to the Waste Processing or Materials Recovery Facility(ies) of Unacceptable Waste by the Participating Communities, or its agents or contractors. To the extent such procedures would affect the operation of the Waste Processing or Material Recovery Facility(ies), such procedures shall be reasonably acceptable to the Contractor.

7.7.2 The Contractor shall cooperate with the Participating Communities in connection with all matters regarding Unacceptable Waste under this Agreement. The Contractor shall use all reasonable efforts to identify the source of any Unacceptable Waste delivered to the Waste Processing or Materials Recovery Facility(ies).

7.7.3 Should any Unacceptable Waste be delivered to a Waste Processing or Materials Recovery Facility(ies), such Unacceptable Waste shall be removed, transported and disposed of by the Contractor in accordance with applicable law governing such wastes, and the Contractor shall clean up the Waste Processing or Materials Recovery Facility(ies) to the extent required as a result of any such delivery of Unacceptable Waste. The costs of such removal, transport, disposal and clean-up shall be allocated in the following manner:

a. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Waste Processing or Materials Recovery Facility(ies) by or on behalf of the Participating Community, the costs associated with such removal, transport, disposal, and Waste Processing or Materials Recovery Facility(ies) clean-up shall be borne by the Participating Community, provided that Contractor shall use all commercially reasonable efforts to collect such amounts from the Person delivering Unacceptable Waste to the Waste Processing or Materials Recovery Facility(ies) before seeking recovery.

b. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Waste Processing or Materials Recovery Facility(ies) other than by or on behalf of the Participating Communities, the costs associated with such removal, transport, disposal and Waste Processing or Materials Recovery Facility(ies) clean-up shall be borne by Contractor.

c. Should the Person delivering such Unacceptable Waste be unknown or unidentifiable, the costs associated with such removal, transport, disposal and Waste Processing or Materials Recovery Facility(ies) clean-up shall be borne by the Contractor.

7.8 Contractor shall ensure that the Waste Processing Facility(ies) and Materials Recovery Facilities will comply at all times with all applicable local, State and

Federal laws, regulations, permits and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions.

- 7.9 Prior to any Participating Community selecting Contractor to provide disposal services of Broward Waste or Additional Waste, such Participating Community shall request in writing that Contractor identify which Waste Processing Facility(ies) or Materials Recovery Facility(ies) will be the location for delivery of such waste. Contractor shall respond to such request within seven (7) business days by identifying in writing which Facility is available to accept such waste.

final Upon written request from any Participating Community, Contractor shall identify in writing within 7 business days the Solid Waste Disposal Facility(ies) used for disposal of any residual waste after such Participating Community's Broward Waste or Additional Waste is processed by Contractor.

ARTICLE 8 CONDITIONS PRECEDENT

- 8.1 The Contractor will deliver on or before December 31, 2012, to County, the following documents. If Contractor fails to timely comply, then the County may terminate this Agreement without any further rights or obligations as to either party.

8.1.1 The Project Guarantee Agreement in a form reasonably acceptable to County executed by Southern Waste Holdings Management, LLC and Southern Waste Systems Holdings, LP and Bergeron Land Development, Inc., the parent companies of Sun Recycling, LLC and Bergeron Environmental and Recycling, LLC, respectively, guaranteeing the performance and obligations of this Agreement.

8.1.2 A fully executed Irrevocable Letter of Credit in a form reasonably acceptable to County in the amount equal to six (6) months of Disposal Services Fees based on the tonnages of Broward Waste.

8.1.3 Evidence acceptable to the County of all rights and approvals that are necessary for the operation of the Solid Waste Management Facility known as Sun Recycling 12 - 2380 College Avenue Materials Recovery Facility for the receipt of 750 tons per day of municipal solid waste (with a pending permit modification to accept up to 2,000 tons per day), as identified on Exhibit "B." The parties recognize that as of the execution of this Agreement several of Contractor's other Waste Processing Facilities are not operational and in the permitting process. Contractor shall timely advise County of the status of each Facility, including the amount of Broward Waste that it is ready to accept, so that other municipalities may determine whether to participate in this Agreement.

- 8.2 The parties acknowledge that County is relying, to its detriment, upon Contractor's ability to perform all conditions precedent. Should Contractor fail to timely satisfy all conditions precedent, County will suffer damages which may not

be readily calculable. Therefore, Contractor agrees that in addition to the right of termination provided for in Section 8.1, upon Contractor's failure to timely perform all conditions precedent, Contractor shall be obligated to pay to County, the sum of \$250,000.00. Any sums due pursuant to this Section shall be paid to County within thirty (30) days of Contractor's failure to timely perform the conditions precedent.

ARTICLE 9 INSURANCE

- 9.1 **Policy Limits.** Contractor shall not commence performance under this Agreement until Contractor has obtained all Insurance required under this Section 9 and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the County Administrator. Contractor shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, single limit, and commencing prior to the commencement of the work and continuing to provide coverage for claims based on occurrences during the Initial Term and any Renewal Term(s) of this Agreement for a minimum of three years from the date of termination or expiration of this Agreement:

General Liability	\$1,000,000/\$2,000,000
Automobile Liability	\$1,000,000/\$2,000,000
Pollution Liability	\$25,000,000/\$50,000,000
Commercial Umbrella	\$25,000,000
Worker's Compensation	Statutory Amount
Employers' Liability	\$1,000,000

- 9.2 **County as Additional Insured.** The County shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation.
- 9.3 **Insurance Company Standards.** Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida with a minimum rating from AM Best Company of A- Excellent; F.S.C. VII.
- 9.4 **Notice of Cancellation.** Contractor agrees to furnish County with at least thirty (30) days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least ten (10) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

- 9.5 **Minimum Level of Coverage.** To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor's performance under this Agreement, Contractor shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of \$25,000,000 after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the three year period set forth in Article 9.1 of this Agreement.
- 9.6 **Premium Payment Responsibility.** Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

ARTICLE 10 LIABILITY

- 10.1 The County and the Contractor shall each be separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.
- 10.2 The Contractor shall protect, indemnify and hold the County and each Participating Community, their officials, agents, servants and employees, harmless from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the County in any suit, including appeals, for personal injury to or death of any person(s), or loss or damage to property, or pollution or environmental contamination arising out of the operation of Contractor's Waste Processing Facility(ies), or the performance (or non-performance) of Contractor of its obligations under this Agreement. Contractor is not, however, required by this Article 9.2 to reimburse or indemnify County or any Participating Community for loss or claim due to the negligence or willful misconduct of County.
- 10.3 To the extent that the Joint Venture is liable to the County under this Agreement, in addition to the liability of the Joint Venture itself and the liability under the Project Guarantee Agreement, each of the Joint Ventures shall be jointly and severally liable to the County.

ARTICLE 11 MISCELLANEOUS

- 11.1 **Joint preparation.** The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 11.2 **Merger/Amendment.** This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the

matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement.

- 11.3 Assignment. Except as provided herein, the Contractor may not assign its obligations as set forth in this Agreement without the prior written consent of the County. The Contractor may (i) without the consent of the County, (a) transfer, assign or pledge Contractor's interest in this Agreement in connection with any financing or re-financing activity or (b) assign this Agreement and performance bond to another affiliate of Contractor (provided that the Project Guarantee Agreement and letter of credit remains in place); and (ii) with the consent of the County, which may not be unreasonably withheld or delayed, assign this Agreement in connection with a sale or assignment of its interest in the Waste Processing or Materials Recovery Facility(ies), provided that Contractor can reasonably demonstrate that the assignee has sufficient financial strength and operating experience reasonably satisfactory to County at the time of the proposed assignment. This Agreement shall be binding on any and all successors to Contractor.
- 11.4 Records. Except as otherwise provided herein, the County and Contractor shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- 11.5 Audit and inspection rights and retention of records. Authorized representatives of County, which may also include any municipality which is a third party beneficiary to this Agreement, shall have the right to audit the books, records and accounts of Contractor reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Article 2.2 during normal business hours, upon County giving reasonable advance notice to Contractor, provided that each representative shall comply with all reasonable safety rules and regulations adopted by Contractor and shall not interfere with Contractor's options. Contractor agrees to keep and maintain records relating to evidence of each of its Waste Processing Facility(ies) environmental compliance and evidence of final disposal of Broward Waste or Additional Waste at the Solid Waste Disposal Facility(ies) used under this Agreement for a period of twenty (20) years. As an alternative to the twenty (20) year requirement, Contractor may delivery to the County copies of the above records upon the termination of this Agreement.

- 11.6 Access. Authorized representatives of County, which may also include any municipality which is a third party beneficiary to this Agreement, shall have access and the ability to inspect the Waste Processing or Materials Recovery Facilities during normal business hours, upon County giving reasonable advance notice to Contractor, provided that each representative shall comply with all reasonable safety rules and regulations adopted by Contractor and shall not interfere with Contractor's options.
- 11.7 Permits and Licenses. Contractor shall be responsible for the maintenance of all permits and licenses associated with the operations of the Waste Processing or Materials Recovery Facilities. Contractor shall at its sole cost and expense conduct such tests at such Facilities from time to time as shall be required by such permits and licenses, and shall send copies of the test results to County, when the test results are submitted to the state or federal regulatory agencies. Contractor also shall make such test results available for review and copying by County during normal business hours. Contractor shall not be deemed to have breached its obligations under the two preceding sentences in respect of any period during which it may in good faith be contesting the necessity of obtaining any such permit or license, or the validity or application of any requirement of or condition contained in any such permit or license, provided that during such period Contractor shall not otherwise be relieved from performing its obligations under this Agreement. Contractor also shall promptly furnish to County copies of any complaint, notice of violation or regulatory action upon receipt by Contractor regarding any permit, license or relating in any manner to Contractor's operations or Waste Processing or Materials Recovery Facilities pursuant to this Agreement.
- 11.8 Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless Contractor is notified in writing by County of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry.
- 11.9 Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. If either party is required to enforce this

Agreement by court proceedings or otherwise, whether or not formal action is required, each party shall pay its own attorney's fees and costs.

- 11.10 Severability. In the event a non-material portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provision shall continue to be effective.
- 11.11 Independent contractor. Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the County. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 11.12 Notices. Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

FOR CONTRACTOR:

Sun-Bergeron Solid Waste Services (Sun-Bergeron) JV
c/o Sun Recycling, LLC
3251 SW 26th Terrace
Dania Beach, FL 33312
Attention: Anthony Lomangino;
Charlie Gusmano; Phillip T. Medico, Jr.

With a copy to:

Sun-Bergeron Solid Waste Services (Sun-Bergeron) JV
c/o Bergeron Environmental and Recycling, LLC
19612 SW 69th Place
Pembroke Pines, FL 33332
Attention: Ronald M. Bergeron, Sr.; Ronald M. Bergeron, Jr; and Lonnie Bergeron

FOR THE COUNTY:

Broward County Governmental Center,
Room 409
115 South Andrews Avenue,

Fort Lauderdale, FL 33301
Attention County Administrator

With a copy to:
Solid Waste and Recycling Division
1 N. University Drive
Suite 400
Plantation, FL 33324
Attention: Director Solid Waste and Recycling Services

- 11.13 **Third Party Beneficiaries.** Neither the County nor Contractor intends that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement unless as provided herein. The parties expressly acknowledge that is not their intent to create any rights or obligations in any third person or entity under this Agreement. Notwithstanding the foregoing, any Participating Communities under this Agreement shall have the same rights of that of the County, unless otherwise stated herein. The County acknowledges and agrees that the ILA shall include (i) an obligation on each Participating Community to comply with the applicable provisions of this Agreement and (ii) a provision making Contractor an express third party beneficiary of the ILA entitled to assert any rights available to the County related to a Participating Communities performance of the obligations specified in this Agreement.
- 11.14 **Priority of Provision.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 14 of this Agreement shall prevail and be given effect.
- 11.15 **Compliance with Laws.** The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations pursuant to this Agreement.
- 11.16 **Further Assurances.** The County and the Contractor agree to execute and deliver any instruments and perform any acts that may be reasonably necessary or reasonably requested in order to give full effect to this Agreement.
- 11.17 **Multiple Originals.** This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

- 11.18 Security. Contractor may request County to reduce, modify or eliminate the Parental Guaranty or Letter of Credit. County may consider such request and the approval or denial of such request shall be in the absolute and sole discretion of County.

ARTICLE 12 PIGGYBACK

- 12.1 Municipalities may elect to Piggyback on in this Agreement upon the written consent of the Contractor. For the purposes of this Agreement "Piggyback" shall mean a procedure whereby municipalities may utilize this County procurement and Agreement as the basis for entering into a solid waste services agreement on substantially the identical terms with Contractor subject to the applicable rules of the municipality. Municipalities which elect to Piggyback shall not be deemed third party beneficiaries to this Agreement or have any rights hereunder. Those municipalities shall have first party rights under such independent Piggyback contracts.

ARTICLE 13 REPRESENTATIONS

- 13.1 County is duly organized and valid existing under the constitution and laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and County is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 13.2 Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and Contractor is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 13.3 Except as otherwise disclosed in writing to County prior to the execution of this Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency, public board, regulatory agency or body pending or, the best of its knowledge, threatened against or affecting the Contractor (pending or threatened litigation) with regard to any issue relating to environmental compliance or the operation, permit or licenses of Contractor at any of the facilities utilized to provide services pursuant to this Agreement. Contractor further agrees to a continuing disclosure requirement for the term of this Agreement to notify County with thirty (30) days of any subsequent pending or threatened litigation with regard to any issue relating to environmental compliance or the operations, permits or licenses of any facilities utilized to provide services pursuant to this Agreement.


ARTICLE 14
CRIMINAL BACKGROUND DISCLOSURE

- 14.1 Prior to the execution of this Agreement Contractor shall provide a description of all past (within the last five (5) years) and pending litigation and legal claims where the Contractor, or an officer, director, executive partner or a shareholder (excluding shareholders of a publicly traded corporation) is a named party, whether in the State of Florida or in another jurisdiction, involving allegations that the Contractor has violated or otherwise failed to comply with environmental laws, rules, or regulations or committed a public entity crime as defined by Chapter 287, Florida Statutes, or theft-related crime such as fraud, bribery, smuggling, embezzlement or misappropriation of funds or acts of moral turpitude, meaning conduct or acts that tend to degrade persons in society or ridicule public morals
- 14.2 Prior to the execution of this Agreement, Contractor shall disclose, in writing, to County whether in the last five (5) years the Contractor or an officer, director, executive, partner, or a shareholder (excluding shareholders of a publicly traded corporation), who is or was (during the time period in which the illegal conduct or activity took place) active in the management of the Contractor was charged, indicted, found guilty or convicted or illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct of activity (1) is considered to be a public entity crime as defined by Chapter 287, Florida Statutes, as amended from time to time, or (2) is customarily considered to be a white-collar crime or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds, etc. or (3) results in a felony conviction where the crime is directly related to the business activities for which the franchise is sought.

IN WITNESS WHEREOF, the parties have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 26th date of June, 2012, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.


BROWARD COUNTY, by and through its Board of County Commissioners

ATTEST:

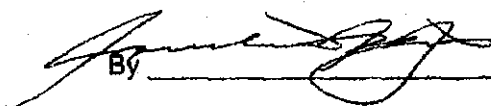
for 
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners



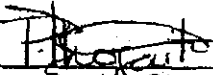
Insurance requirements
approved by Broward County
Risk Management Division


By: 
Mayor
26th day of June, 2012

Approved as to form by
Office of the County Attorney
for Broward County, Florida
JONI ARMSTRONG COFFEY, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By:  6/21/12
(Date)

Risk Management Division
Jacqueline A. Binns
Risk Insurance and
Contracts Manager

By:  6/21/12
Purvi A. Bhogaita (Date)
Assistant County Attorney

By:  6/21/12
Noel M. Pfeffer (Date)
Deputy County Attorney

AGREEMENT BY AND BETWEEN SUN-BERGERON SOLID WASTE SERVICES (SUN-BERGERON) JV, A FLORIDA JOINT VENTURE AND BROWARD COUNTY FOR SOLID WASTE DISPOSAL SERVICES

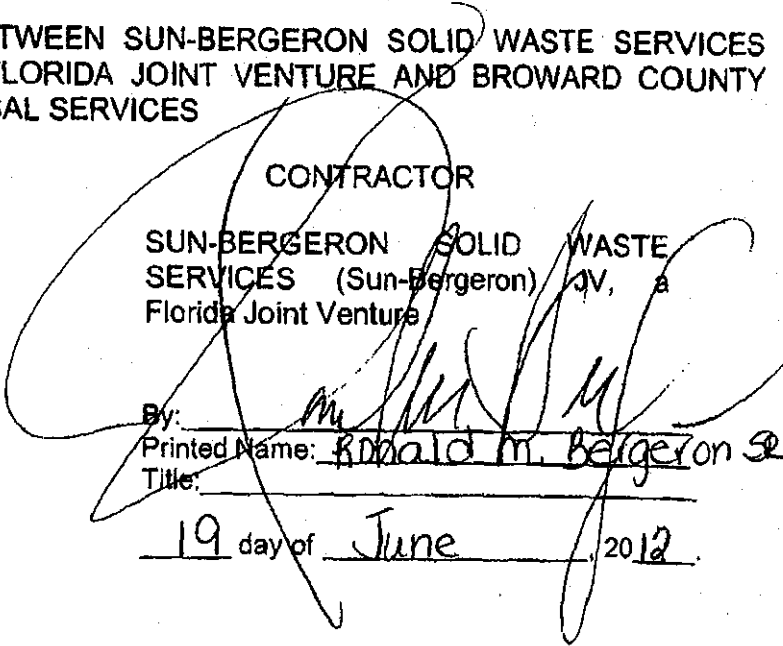
CONTRACTOR

SUN-BERGERON SOLID WASTE SERVICES (Sun-Bergeron) JV, a Florida Joint Venture

ATTEST:

Secretary

(SEAL)

By: 
Printed Name: Ronald M. Bergeron
Title: _____

19 day of June, 2012

OR

WITNESSES:

Jana M. Garcia
Witness 1 Signature

Tina M. Garcia
Witness 1 Print/Type Name

Carole A Woolley
Witness 2 Signature

Carole A Woolley
Witness 2 Print/Type Name

NMP:PAB:slw
6/18/12
Sun-BergeronDisposSrvcFinal6-18-12

INDEX OF EXHIBITS

Exhibit "A" - Disposal Services Fee

Exhibit "B" - Waste Processing and Materials Recovery Facility(ies)

Exhibit "C" - Solid Waste Disposal Facility(ies)

Exhibit "D" - Participating Communities

Exhibit "E" - Disposal Services Fee Invoice

EXHIBIT "A"
DISPOSAL SERVICES FEE

INITIAL TERM

Municipal Solid Waste

Broward Solid Waste on a per ton basis at \$45.25 per ton.

Additional Waste

Bulk Waste on a per ton basis at \$52.00 per ton.

Revenue share for Bulk Waste of \$0.50 on a per ton basis with no minimum annual guarantee.

Construction and Demolition Debris on a per cubic yard basis at \$8.75 per cubic yard or on a per ton basis of \$37 per ton, at the option of each Participating Community.

Revenue share for Construction and Demolition Debris of \$0.25 on a per cubic yard basis or on a 1.00\$ per ton basis , depending on the method of measure by each Participating Community with no minimum annual guarantee.

Yard Trash on a per cubic yard basis at \$6.00 per cubic yard or on a per ton basis of \$28.00 per ton, at the option of each Participating Community.

Revenue share for Yard Trash \$0.25 on a per cubic yard basis or on a \$1.00 per ton basis, depending on the method of measure selected by each Participating Community with no minimum annual guarantee.

County, Participating Communities or Piggyback Communities may select any or all of these disposal services under this Agreement.

EXHIBIT "B"
WASTE PROCESSING FACILITY(IES)

<p>Sun 12 College Avenue Waste Processing Facility 2380 College Avenue, Davie, FL 33317 Currently Permitted</p>
<p>Sun 11 1750 SW 43rd Terrace, Deerfield Beach, FL 33442 Permit Pending</p>
<p>Bergeron Park of Commerce & Industry - North 5904 SW 202 Avenue Pembroke Pines Permit Pending</p>
<p>Choice Environmental Services 1899 SW 31 Ave. Pembroke Park, FL 33009</p>

MATERIALS RECOVERY FACILITY(IES)

<p>Sun 1 2241 NW 15TH Court Dania Beach, FL 33069 Currently permitted and operational for Construction and Demolition Debris, but in process of converting to a Dedicated Metal Processing Facility</p>
<p>Sun 2 2281 NW 16TH Street Pompano Beach, FL 33069 Currently permitted and operational for Construction and Demolition Debris</p>
<p>Sun 3 3251 SW 26th Terrace, Dania Beach, FL 33312 Currently permitted and operational for Construction and Demolition Debris and Yard Trash</p>
<p>Sun 7 1850 S. Powerline Road Deerfield Beach, FL 33462 Currently permitted and operational for Yard</p>

Trash and Bulk Waste

Bergeron Park of Commerce - South

19820 Sylvan Pass

Pembroke Pines, FL 33332

Currently permitted and operational for Yard
Trash

EXHIBIT "C"
SOLID WASTE DISPOSAL FACILITY(IES)

- Monarch Hill Landfill (Central Landfill), 2700 Wiles Road, Pompano Beach, Florida 33073 (Owner: Waste Management Inc. of Florida)
- Okeechobee Landfill Facility, 10800 N.E. 128th Avenue, Okeechobee, Florida 33972 (Owner: Okeechobee Landfill, Inc.)
- The Solid Waste Authority of Palm Beach County (landfill/waste to energy facility), 7501 North Jog Road, West Palm Beach, Florida 33416 (Owner: Solid Waste Authority)
- J.E.D. Landfill, 1501 Omni Way, St. Cloud, Florida 34773 (Owner: Omni Waste of Osceola County, LLC)
- Resources Recovery Center operated by Covanta, 6990 NW 97th Avenue, Doral, Florida 33178 (Owner: Miami-Dade County)
- Wheelabrator North, 2600 NW 48th Street, Pompano Beach, Florida 33073 (Owner: Wheelabrator North Broward, Inc., a Waste Management Company)
- Wheelabrator South, 4400 South State Road 7, Fort Lauderdale, Florida 33073 (Owner: Wheelabrator South Broward, Inc., a Waste Management Company)
- Glades County Landfill, 1940 E State Road 78 NW, Moore Haven, Florida 33471

EXHIBIT "D"
PARTICIPATING COMMUNITIES

EXHIBIT "E"