



# AGENDA ITEM MEMORADUM

**Town Manager's Office**

**Bud Bentley**

Department

Assistant Town Manager BB

<b>COMMISSION MEETING DATE - 7:00 PM</b>	<b>Deadline to Town Clerk</b>
<b>August 21, 2012</b>	

- Presentation       Reports       Consent       Ordinance
- Resolution**       Quasi-Judicial       Old Business       New Business

**SUBJECT TITLE: Resolution 2012-32 Authorizing Town Participation in the Broward County Recycling Interlocal Agreement**

**EXPLANATION:** Approval of the attached Resolution 2012-32 (**Exhibit 1**) and Interlocal Agreement (**ILA**) will authorize the Town's participation in the County recycling program for 10 years, starting July 3, 2013.

Broward County has completed a Request For Proposal (**RFP**) process for recycling services. The County received proposals from ReCommunity and Waste Management and has selected ReCommunity as the first ranked proposer. The County notes that the proposal submitted by ReCommunity includes geographically dispersed reception sites, a central processing facility, and an average return to participating communities that should exceed the current recycling revenues.

**The most pertinent contract terms and conditions:**

1. Term: 10 years (July 3, 2013 to September 30, 2023)
2. Payment: County pays the Town quarterly the net revenues (48.69%) generated from the sale of recyclables based on the Town's actual tonnage and composition of the recycling materials delivered less a 10% Recycling Program Support Fee that the County keeps to cover their costs. The Base Monthly Value (**BMV**) of recyclable materials will be calculated monthly in the new contract.
3. The termination clause (Articles 8) provides that the County can terminate to "protect the public health or safety". The Town can terminate if the recycling contract with ReCommunity is not executed by January 1, 2013.

**Town Obligations**

4. Include the terms and conditions of the ILA in all recycling hauler agreements entered into by the Town.
5. Deliver all Program Recyclables to the designated facility.
6. Appoint a Town liaison for cooperative program development, outreach and promotional activities.
7. Conduct municipal-based outreach and promotion for cooperative recycling programs.
8. Ensure all trucks delivering to the designated recycling facility are properly identified.

The County has provided the attached summary (**Exhibit 2**) of the terms of the ILA.



Shown in Table 1 is the recycling tonnage delivered by Lauderdale-By-The-Sea in the last three years and the projected income to the Town under the proposed contract (using FY11 tonnage).

Table 1 – Revenue History and Projections

	FY09	FY10	FY11	FY11 Payment to Town (\$58.50 per ton)
Recycling (tons)	408.17	556.13	547.62	<b>\$32,035</b>
<b>New Contract Terms</b>				
	The Proposals were evaluated on a Base Monthly Value (BMV) of \$152.02 per ton			Potential Payment to Town @ FY11 tonnage
ReCommunity (first ranked proposer)	48.69% of BMV = \$74.02 per Ton (net \$66.62 to Town)			<b>\$36,440</b>
Waste Management (second proposer)	22.2% BMV = \$33.75 per Ton (net \$30.37 to Town)			\$16,615
Note: Contract requires a guarantee payment of \$25 per ton				

The Broward County RFP and the ReCommunity Proposal were previously distributed to the Commission and are on file in the Clerk’s Office.

**RECOMMENDATION:** We recommend the Town participation in the County recycling program and the Commission approves Resolution 2012-32, which authorizes the Mayor to execute the Broward County Interlocal Agreement.

- EXHIBITS:**
1. Resolution 2012-32 and ILA
  2. Broward County Summary of the Recycling Agreement with ReCommunity

**FISCAL IMPACT AND APPROPRIATION OF FUNDS:** We will realize a slight increase in recycling revenue if the markets for recycling continue to be strong.

Documents Reviewed by Town Attorney

Yes     No

Town Manager Initials   CA

**RESOLUTION 2012-32**

1       **A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF**  
2       **LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN**  
3       **INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR THE**  
4       **TOWN'S PARTICIPATION IN THE COUNTY'S RECYCLABLE**  
5       **MATERIALS RECOVERY PROGRAM FOR A TEN YEAR TERM,**  
6       **COMMENCING ON JULY 3, 2013; AUTHORIZING THE TOWN**  
7       **MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT WITH**  
8       **BROWARD COUNTY; PROVIDING FOR SEVERABILITY,**  
9       **CONFLICTS, AND AN EFFECTIVE DATE.**

10       **WHEREAS,** the Florida Solid Waste Management Act directs counties and  
11  
12       municipalities to reduce their solid waste stream and recycle designated materials; and

13       **WHEREAS,** the State of Florida has stipulated that counties reach a 75% recycling goal  
14       by 2020; and

15       **WHEREAS,** the Town of Lauderdale-By-The-Sea (the "Town") recognizes the  
16       beneficial economics of cooperative initiatives, such as the use of interlocal agreements with  
17       other local governments for the provision of certain services; and

18       **WHEREAS,** the Town and Broward County (the "County") agree that entering into an  
19       interlocal agreement and utilizing a privatized service agreement with a vendor affords the best  
20       opportunity to ensure a sound recycling market strategy; and

21       **WHEREAS,** Broward County advertised a Request for Proposals for a Recovered  
22       Material Processing Facility, RFP #R1006601P1 (the "RFP"), for processing and marketing  
23       recyclable materials for Broward County and those municipalities located in Broward  
24       County desiring to participate as provided in the RFP; and

25       **WHEREAS,** Broward County established and participated in an evaluation process  
26       and shall enter into a contract with terms and conditions substantially similar to the RFP with a  
27       vendor (the "Contractor"); and

28       **WHEREAS,** the proposal submitted by the first ranked Contractor included

**RESOLUTION 2012-32**

29 geographically dispersed reception sites, a central processing facility, and an average price  
30 share that exceeds net revenues currently returned to Prior Contract Communities, including  
31 the Town’s current recycling revenues; and

32 **WHEREAS**, under the Contractor’s proposal, participating communities should  
33 experience an increase in recycling revenues provided that the markets for recycling remain  
34 strong; and

35 **WHEREAS**, the proposed Interlocal Agreement between the Town and Broward  
36 County, attached as Exhibit “A”, (the “Recycling ILA”) requires the Town to deliver all  
37 Program Recyclables to the recyclable materials facility designated by the County for a ten  
38 year term, commencing on July 1, 2013 and ending on September 30, 2023; and

39 **WHEREAS**, under the terms of the Recycling ILA, the County pays the Town  
40 quarterly net revenues equal to 48.69% of sales generated from the recyclable materials  
41 delivered by the Town, less a 10% Recycling Support Fee that the County retains to cover  
42 its administrative costs.

43 **NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF**  
44 **THE TOWN OF LAUDERDALE BY THE SEA, FLORIDA, THAT:**

45 **Section 1. Recitals.** The foregoing Whereas clauses are hereby ratified and confirmed  
46 by the Town Commission, and incorporated herein.

47 **Section 2. Approval of Interlocal Agreement.** The Town Commission of the Town  
48 of Lauderdale-By-The-Sea, Florida, hereby approves the Recycling ILA with Broward County,  
49 attached as Exhibit “A”.

50 **Section 3. Authorization to Execute Agreement.** The Town Commission of the  
51 Town of Lauderdale-By-The Sea, Florida, hereby authorizes the Town Manager to execute the

**RESOLUTION 2012-32**

52 Recycling ILA with Broward County, attached as Exhibit "A", together with such non-  
53 substantial changes as are acceptable to the Town Manager and approved as to form and legal  
54 sufficiency by the Town Attorney.

55 **Section 4. Severability.** If any clause, section, or other part of this Resolution shall  
56 be held by any Court of competent jurisdiction to be unconstitutional or invalid, such  
57 unconstitutional or invalid part shall be considered as eliminated and in no way affecting the  
58 validity of the other provisions of this Resolution.

59 **Section 5. Conflict.** All Resolutions or parts of Resolutions in conflict herewith are  
60 hereby repealed to the extent of such conflict.

61 **Section 6. Effective Date.** This Resolution shall become effective immediately upon  
62 its passage and adoption.

63 **PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2012.

64  
65  
66 \_\_\_\_\_  
67 MAYOR ROSEANN MINNET

67 ATTEST  
68  
69 \_\_\_\_\_  
70 Town Clerk June White, CMC

71  
72 APPROVED AS TO FORM:  
73  
74  
75 \_\_\_\_\_  
76 Susan L. Trevarthen, Town Attorney

77

# Exhibit "A" to Resolution 2012-32

## INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF LAUDERDALE-BY-THE-SEA

for

RECYCLABLE MATERIALS RECOVERY

This is an Interlocal Agreement ("Agreement"), dated \_\_\_\_\_, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY";

and

TOWN OF LAUDERDALE-BY-THE-SEA, established under the laws of the State of Florida, hereinafter each referred to as "TOWN."

WHEREAS, the Florida Solid Waste Management Act directs counties and municipalities to reduce their solid waste stream and recycle designated materials; and

WHEREAS, the State of Florida has stipulated that counties reach a 75% recycling goal by 2020; and

WHEREAS, COUNTY and TOWN recognize the beneficial economics of cooperative initiatives; and

WHEREAS, COUNTY and TOWN agree that a privatized service agreement affords the best opportunity to ensure a sound recycling market strategy; and

WHEREAS, COUNTY advertised a Request for Proposals for a Recovered Material Processing Facility, RFP #R1006601P1 ("RFP"), for processing and marketing recyclable materials for the COUNTY and those municipalities located in Broward County desiring to participate as provided in the RFP; and

WHEREAS, COUNTY established and participated in an evaluation process and shall enter into contract with terms and conditions substantially similar to the RFP with a vendor ("CONTRACTOR"); and

# EXHIBIT "A" TO RESOLUTION 2012-32

WHEREAS, the proposal submitted by CONTRACTOR included geographically dispersed reception sites, a central processing facility, and an average price share that exceeds net revenues currently returned to Prior Contract Communities; and

WHEREAS, this Agreement is entered into pursuant to Section 163.01, Florida Statutes, as may be amended from time to time, and prior to its effectiveness shall be filed as provided by Section 163.01(11), Florida Statutes; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises and covenants hereinafter set forth, COUNTY and TOWN agree as follows:

## ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 Agreement – Means this document, Articles 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Board – The Broward County Board of County Commissioners.
- 1.3 TOWN Contract Administrator – The Lauderdale-By-The-Sea Town Manager. The primary responsibilities of the TOWN Contract Administrator are to coordinate and communicate with COUNTY and to manage and supervise execution and completion of the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the TOWN Contract Administrator.
- 1.4 County Contract Administrator - The Director of the Broward County Solid Waste and Recycling Services. The primary responsibilities of the County Contract Administrator are to coordinate and communicate with TOWN and to manage and supervise execution and completion of the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the County Contract Administrator.
- 1.5 County Administrator – The administrative head of County pursuant to Sections 3.02 and 3.03 of the Broward County Charter.

# EXHIBIT "A" TO RESOLUTION 2012-32

- 1.6 County Attorney – The chief legal counsel for Broward County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.7 Prior Contract Community – A municipal corporation existing under the laws of the State of Florida, located within Broward County, that entered into that certain agreement entitled "An Interlocal Agreement with Broward County for Solid Waste Disposal Services," dated for convenience November 25, 1986, as amended. The unincorporated area of Broward County shall be treated in all respects as a Prior Contract Community under the terms and conditions of this Agreement.
- 1.8 Program Materials - Includes newspapers and inserts; mixed paper (including, magazines, catalogs, office paper, shredded paper, envelopes, junk mail, chipboard, phonebooks and kraft bags); corrugated cardboard; glass food and beverage containers (clear, brown, green); aluminum cans; Steel and bimetal food and beverage containers; aerosol cans; plastics (including plastic bottles, containers and packages made from various resins including PETE, HDPE, PVC, LDPE, PP, PS and other plastics, codes #1 through #7); aseptic or polycoated food and beverage containers; and other recyclables which may be designated, if mutually agreed to by the COUNTY and CONTRACTOR for separation, collection and/or processing as part of the program if additional Recyclable Materials and viable markets are identified.
- 1.9 Program Recyclables – Means Program Materials which are generated from residential units and local governmental entities within Broward County which are collected by the COUNTY, haulers, or as a result of an agreement between the COUNTY and any other government entity located in the COUNTY, provided that the Program Materials are actually generated by the governmental entity.
- 1.10 Recovered Materials Processing Facility or "RMPF" – The facility or facilities designated for the processing of recovered materials in the RMPF Contract.
- 1.11 RMPF Contract – The agreement entered between COUNTY and CONTRACTOR as a result of the RFP, including any amendments.
- 1.12 RMPF - Request for Proposals – That certain Request for Proposals for a Recovered Material Processing Facility, RFP #R1006601P1.
- 1.13 Single-Stream Recycling – A recycling process in which all Program Materials are collected together with no sorting required by residents.
- 1.14 Unincorporated County – the geographical areas of Broward County that are not within the boundaries of any municipal corporation.

ARTICLE 2  
TERM AND TIME OF PERFORMANCE

- 2.1 The term of this Agreement shall begin on the date it is fully executed by both parties ("Effective Date") and shall end on September 30, 2023; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.
- 2.2 If TOWN is a Prior Contract Community, then the commencement date of responsibilities and obligations under this Agreement shall be on July 3, 2013. If TOWN is not a Prior Contract Community, then the commencement date of responsibilities and obligations under this Agreement shall be October 1, 2013.

ARTICLE 3  
COUNTY'S OBLIGATIONS

- 3.1 COUNTY shall proceed with finalization of an RMPF Contract the incorporating criteria for contractor capabilities and facility/reception location. Terms of the RMPF Contract shall be substantially similar to the RFP.
- 3.2 COUNTY shall administer the RMPF Contract.
- 3.3 COUNTY agrees to pay to TOWN on a quarterly basis, net revenues generated from the sale of Program Recyclables on the basis of actual tonnage and composition of materials delivered to the RMPF by the TOWN, except that COUNTY shall retain the Recycling Program Support Fee, as described in Paragraph 5 herein. Payments to TOWN shall occur no later than 60 days after the end of each quarter.
- 3.4 COUNTY shall provide regional advertising of the RMPF program.
- 3.5 COUNTY shall provide technical support to TOWN to promote recycling, including site-specific efforts at multifamily developments.
- 3.6 COUNTY shall provide quarterly reports to TOWN on program activities, participation, and associated costs.
- 3.7 COUNTY shall prepare and submit an annual State Report, as required under Section 62-716, Florida Administrative Code, on solid waste and recycling.

ARTICLE 4  
TOWN'S  
OBLIGATIONS

- 4.1 TOWN agrees to cause the terms and conditions of any agreement that it may have with a hauler of Program Recyclables to conform with the terms of this Agreement.
- 4.2 TOWN agrees to deliver or cause to be delivered all Program Recyclables from within the TOWN to the facility/facilities as designated in the RMPF Contract.
- 4. TOWN agrees to provide a TOWN liaison for cooperative program development, outreach and promotional activities.
- 4.4 TOWN agrees to conduct municipal-based outreach and promotion for cooperative recycling programs.
- 4.5 TOWN agrees to ensure all trucks delivering to RMPF from TOWN are properly identified.

ARTICLE 5  
RECYCLING PROGRAM SUPPORT FEE

- 5.1 COUNTY shall retain the Recycling Program Support Fee from net revenues, which shall be equal to ten percent (10%) of net revenues, but not to exceed \$150,000.00 quarterly in aggregate for all municipalities participating as provided in the RFP, beginning on October 1, 2013 for the remaining years of the RMPF Contract.
- 5.2 The Recycling Program Support Fee shall be used by COUNTY for the purposes of contract administration and the support of programs to enhance recycling, including the provision of technical support for TOWN recycling activities.

ARTICLE 6  
GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Both parties are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of its respective agents or employees to the extent permitted by law.

ARTICLE 7  
INSURANCE

Both parties are entities subject to Section 768.28, Florida Statutes, and both parties shall furnish the Contract Administrator of the other party with written verification of liability protection in accordance with state law prior to final execution of said Agreement.

ARTICLE 8  
TERMINATION

This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. TOWN may terminate this agreement if COUNTY has not executed an RMPF Contract, substantially similar to the RFP by January 1, 2013.

ARTICLE 9  
EEO COMPLIANCE

Both parties shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. Both parties shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the non-breaching party deems appropriate.

Both parties shall not unlawfully discriminate against any person in its respective operations and activities or in its use or expenditure of funds in fulfilling its respective obligations under this Agreement. Both parties shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of fulfilling its obligations under this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, both parties shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, both parties represent that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). Each party hereby materially relies on such representation by the other party in entering into this Agreement. An untrue representation of the foregoing shall entitle the other party to terminate this Agreement.

ARTICLE 10  
MISCELLANEOUS

10.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the party that created same and will be available to the other party for inspection or use at no cost; provided that nothing herein shall prevent or restrict the owner of the documents from lawfully destroying or lawfully disposing of any such documents.

10.2 AUDIT RIGHT AND RETENTION OF RECORDS

Each party shall have the right to audit the books, records, and accounts of the other party that are related to this Agreement. TOWN and COUNTY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. TOWN and COUNTY shall preserve and, upon request, make available, at reasonable times for examination and audit by the other party, 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, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the document or record came into existence. 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.

10.3 INDEPENDENT CONTRACTOR

TOWN and COUNTY are independent contractors under this Agreement. Services provided by each party pursuant to this Agreement shall be subject to the supervision of that party. In providing such Services, each party, its respective officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of the other party. No partnership, joint venture, or other joint relationship is created hereby. Neither party extends to the other party or its respective agents any authority of any kind to bind it in any respect whatsoever.

10.4 THIRD PARTY BENEFICIARIES

Neither TOWN nor COUNTY intends to directly or substantially benefit a third party by 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 right or claim against either of them based upon this Agreement.

10.5 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

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County Administrator  
Governmental Center, Suite 409  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

With a copy to:

Director, Waste and Recycling Services  
One North University Drive, Suite 400  
Plantation, Florida 33324

FOR TOWN:

Town Manager  
Town Hall  
4501 Ocean Drive  
Lauderdale-By-The-Sea, FL 33308

With copy to:

Town Attorney  
Town Hall  
4501 Ocean Drive  
Lauderdale-By-The-Sea, FL 33308

## 10.6 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of Contract Administrator of the other party.

## 10.7 CONFLICTS

Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with that party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

Neither party nor its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other party in any legal or administrative proceeding unless they are a party in such proceeding or compelled by court process. Further, the parties agree that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the other party in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude either party from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

## 10.8 MATERIALITY AND WAIVER OF BREACH

COUNTY and TOWN agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

Neither TOWN's nor COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

## 10.9 COMPLIANCE WITH LAWS

Both parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

## 10.10 SEVERANCE

In the event a portion of this Agreement is found by a court of competent

jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or TOWN elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

#### 10.11 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.

#### 10.12 PRIORITY OF PROVISIONS

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 Articles 1 through 10 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 shall prevail and be given effect.

#### 10.13 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, TOWN AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

#### 10.14 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and TOWN or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 10.15 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 10.16 PAYABLE INTEREST

10.16.1 Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, COUNTY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof SECOND PARTY waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

10.16.2 Rate of Interest. In any instance where the prohibition or limitations of Section 10.18.1 are determined to be invalid or unenforceable, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

#### 10.17 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties.

#### 10.18 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### 10.19 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.

IN WITNESS WHEREOF, the parties hereto have made and executed the Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor, authorized to execute same by BOARD action on the \_\_\_\_ day of \_\_ 20 \_\_, and each CITY signing by and through officers duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

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

By \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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

Insurance requirements  
approved by Broward County  
Risk Management Division

By \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
Purvi A. Bhogaita (Date)  
Assistant County Attorney

By \_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF LAUDERDALE-BY-THE-SEA FOR RECYCLABLE MATERIALS RECOVERY.

**TOWN**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_ TOWN Clerk  
Roseann Minnet, Mayor

Dated: \_\_\_\_\_ day of August, 2012

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_

, TOWN Attorney

Dated: \_\_\_\_\_

## Broward County and ReCommunity Draft MRF Agreement

### Summary Highlights

(Provided by Broward County)

- 1 **Term** – July 3, 2013 through September 30, 2023 with two 5-year extension options by mutual consent
- 2 **Effective Dates** – ReCommunity may terminate Agreement if less than 50% of County's overall population has executed the MRF ILA by September 11, 2012, and ReCommunity may restrict terms to only municipalities that execute the ILA before October 15, 2012.
- 3 **Termination** – for cause with a period to cure and for convenience with payout for non-depreciated assets and project development cost
- 4 **Program Recyclables** – current list of paper products and containers, as well as all plastic bottles, containers, and packaging (Plastics # 1- 7) from residential and governmental facilities
- 5 **ReCommunity Facilities** – MRF located at Sun 3 (3251 SW 26<sup>th</sup> Terrace, Dania Beach) plus Transfer Stations at Sun 2 (2281 NW 16<sup>th</sup> Street, Pompano Beach) and Sun Bergeron Transfer Station (19820 Sylvan Pass, Pembroke Pines).
- 6 **Net Revenues** – monthly payments based on 48.69% of established Market Indices and periodic composition reviews (based on last 10 quarters, an average \$63.27 per ton is estimated).
- 7 **Load Rejection** – establishes a 25% non-Program Materials threshold with Contract Hauler responsible for payment of handling and disposing contamination charges with deduction from Contract Community revenues, if not paid in sixty (60) days (similar to current processes).
- 8 **Administrative Fees** – stipulated payments by ReCommunity for late reports, non-acceptance of materials during operating hours, average turn-around times more than thirty (30) minutes, annual certification of scales, and unapproved disposal of Program Recyclables.
- 9 **Most Favored Terms** – ReCommunity required to extend any better Net Revenue payments offered any municipal or governmental entity in Broward County plus a 10% surcharge factor.