



# AGENDA ITEM REQUEST FORM

Item No. 2d

**Town Manager's Office**

**Connie Hoffmann & Bud Bentley**

Department Submitting Request

**REGULAR**  
**COMMISSION MTG**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

**ROUNDTABLE**  
**MEETING**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

- Nov 9, 2010
- Dec 7, 2010

- Oct 29 (5:00 pm)
- Nov 30 (5:00 pm)

- Nov 22, 2010
- Dec 14, 2010

- Nov 12 (5:00 pm)
- Dec 3 (5:00 pm)

**SUBJECT TITLE: Proposed Interlocal Agreement for Resource Recovery System in Broward County**

**EXPLANATION:** The Town is a party to the November 26, 1986 Interlocal Agreement (ILA) for solid waste disposal with the Broward Solid Waste Disposal District (**District**), twenty-three (23) Broward County municipalities (**Contract Communities**) and Broward County. There are current twenty-five (25) Contract Communities. The District is governed by the Resource Recovery Board, which in 2007 was changed to the following nine (9) members.

The County was involved in the creation of the Resource Recovery System as the unincorporated areas were a significant generator of waste at that time but more importantly, the County was the overall coordinator and planner for the system. The Broward County Solid Waste Disposal District was created as a dependent district of the County.

The ILA communities send waste to one of two Wheelabrator mass burn resource recovery facilities (the incinerators) in Broward County. Under the current and proposed ILA, participating cities are required to send 100% of their waste stream to the Wheelabrator facilities.

The current ILA does not expire until July 2013, but the service agreements with Wheelabrator expire in August 2011 (for the south plant) and March, 2012 (for the North plant). Broward County, the District, and Wheelabrator have been negotiating a replacement ILA and service agreement with Wheelabrator. The term of the new agreement is ten years beginning on August 4, 2011, with one ten year renewal option. Each contract community has the option not to renew.

- ✓ **Exhibit 1** - Summary of the proposed ILA
- ✓ **Exhibit 2** - Proposed ILA.
- ✓ **Exhibit 3** - Summary of the proposed service agreement, and
- ✓ **Exhibit 4** - Service agreement.

The summaries were prepared by the Town Attorney.

At its meeting of November 10, 2009, the Commission approved Resolution 2009-27, which approved a Memorandum of Understanding (**MOU**) that set forth the material terms agreed to among Broward County, the Broward Solid Waste Disposal District, and Wheelabrator (North and South). Resolution 2009-27 is only binding on the Town upon the passage of an additional resolution approving the new ILA (Exhibit 2).



### **Deadlines and Signing Bonus**

The District has requested all municipalities to decide if they are going to enter into the new ILA by December 31, 2010. To encourage an early decision, the ILA provides for a signing bonus of \$12 million prorated by the percentage of tonnage of each participating city, which is estimated to be \$72,858 for the Town (**Exhibit 1**, page 3). However, that figure is based on 2008 data and the actual amount will be determined based on the year's tonnage ending August 4, 2011. We know our tonnage already went down between 2008 and 2009.

### **Signing Requirements**

The Service Agreement with Wheelabrator (**Exhibit 4**) provides that Contract Communities representing (a) at least 51% of the population of the District and (b) at least 80% of the 2009 flow from the current ILA communities must enter into the new ILA prior to December 31, 2010. If enough communities sign on, the new ILA will become effective for a ten-year term on August 4, 2011. If not enough cities sign, then the ILA will not become effective, and the Town and the other ILA parties will have to find other arrangements for the disposal of their solid waste or negotiate a new service agreement and ILA.

If the ILA is signed by the County and Contract Communities representing 80% of the 2009 flow, the ILA will become effective, first as a two-year amendment into the Predecessor Agreement, and beginning July 13, 2013, as a separate agreement for a term of eight (8) years (ILA, Article 15, Paragraph 2).

As of November 17, 2010, 10 municipalities (**Exhibit 5**) have decided to enter into the new ILA, representing 46.5% of the District's population and 44.4% of the solid waste of the district.

### **Changes to the ILA**

Three changes from the current system sought by the municipalities have been incorporated into the proposed ILA:

1. Conversion of the District from a dependent to an independent district in order to reduce Broward County control;
2. Broader municipal representation on the Resource Recovery Board (the Board) which governs the District; and,
3. The right for municipalities to review the terms of the executed version of the Service Agreement between the District and Wheelabrator before being asked to sign the new ILA.

Right now, the Town does not have a representative on the Board. All parties, including the Town, will have a representative on the Board under the new ILA, which will meet twice a year. Only 33% of members attending will constitute a quorum. An eleven-member Executive Board (with a quorum set at 5 members) will be created to handle the general matters of the District.

Under the negotiated Service Agreement, the Service Fee, which is only part of the tipping fee, will be significantly lower than the current fee. The 2009 base Service Fee is \$47.75 per ton plus a projected \$12 per ton District fee to cover the District's administrative costs, for a total of \$59.75, plus Pass-Through expenses. When the Service Fee of \$47.75 is adjusted for 2010 and 2011 according the formulas in the Agreement, the total tipping fee is projected to be around \$66 (includes District Fee and a projected Pass-Through amount), which is a reduction of about one-third from the current \$99.20 fee. The reduction in tipping fees is possible because, in part, the debt incurred to build the plants have been retired.



The Service Fee will be increased annual by a COLA of between 1% and 5%, and any applicable Capital Cost Adjustment, Operating & Maintenance Adjustment or Revenue Adjustment, which are outlined in Section 5.02 of Exhibit 4. Pass-Through Expenses, which are outlined in Exhibit 4, Section 5.03, page 8, may increase and they appear to not be capped.

The Service Fee will not increase more than 10% in one year or more than 40% over the term of the new ILA due to changes in law, increased costs or decreased in revenues caused by the District.

### **Town of Lauderdale-by-the-Sea Considerations**

The District is offering a “signing bonus” to those communities that approve the ILA by December 31, 2010. Because our waste stream is so small, the signing bonus offered the Town is estimated to be \$72,000. (Some municipalities’ bonuses are in the millions and serve as a strong inducement to accept the terms being offered in the ILA.)

We expect the estimated saving to the Town to be around \$200,000 in the first year of the new ILA, based on the fact that we disposed of 5,700 tons of waste in 2009. When the Town’s recycling efforts accelerate, that savings will be reduced. It will also be reduced as tipping fees and service fees increase under the ILA.

A big concern is all of the unknown costs of the Pass-Throughs and adjustments that could substantially increase the service fee.

If the Town does not sign the ILA, our waste stream can to another destination or it can still go to the Wheelabrator plants, but we would forgo the signing bonus and the tipping fee our waste contractor will be charged is not known. The agreement between the County and the District with Wheelabrator, however, will dictate that Broward municipalities that are not parties to the new ILA will be charged the more than parties to the ILA.

We also have the option of contracting with another vendor to take our waste stream.

Other cities – Pompano Beach, Hallandale and Parkland for example - were never parties to the original ILA and some have advised us that they paid substantially less per ton over the years to dispose of their waste than those cities that were part of the ILA. Hallandale recently entered into a short term agreement to dispose of their waste at a Choice Environmental facility and will be seeking proposals in the future for a longer term arrangement. We are in the process of reviewing the consultant’s report that convinced Hallandale not to enter into the new ILA.

Parkland has an agreement with Waste Management for disposal of their waste. We will be contacting Pompano Beach to find out what their plans are and what analysis they’ve done.

Miramar will be presenting a consultant’s report evaluating the new ILA and the service agreement with Wheelabrator to their Commission on November 29<sup>th</sup>. We have asked to receive a copy of that report when it is publically available.



### Public Policy Considerations

The District is pitching the new ILA as a great deal because the combination of the tipping fees and the District's administrative fee is going down substantially. But they should as the debt acquired to build the facility has been retired and financial statements show that Wheelabrator is making a huge profit on the facilities. The District's current fee of \$30 seems excessive as they are able to reduce it to \$12 in the new agreement.

Several larger cities have evaluated the proposed ILA fee, disposal alternatives, and Wheelabrator's financial reports and asked the District to make changes in their approach. Among the issues raised in these analyses were:

1. This was not a competitive process. Despite requests and suggestions, the District refused to consider seeking proposals or bids from other firms for the disposal of the waste stream in Broward County.
2. Wheelabrator's 2008 financial statements reveal they made a 59% return on equity. The District is essentially creating the market for Wheelabrator by requiring that at least 80% of the Contract Communities participate in the new ILA. It is not unlike a franchise agreement. But the District, in agreeing to the service fees they have with Wheelabrator in the new ILA, has not used the negotiating power they have as the provider of the market to get the service fees down further.
3. The District has not included in the service agreement with Wheelabrator a mechanism for periodically reviewing the service fee taking profitability into account. The District has refused suggestions to do that.
4. The District has refused a suggestion from Oakland Park that the agreement allow for 20% of the waste stream of the waste stream to go to other vendors to keep the marketplace competitive.

When the original ILA was proposed there was a reason to capture most of the County's waste stream for the Wheelabrator facilities. Without a dedicated revenue stream, the financing to build the waste to energy incinerators would have been exceedingly costly. That reason no longer exists.

We are also troubled by the signing bonus concept. We have been advised that money is coming from Wheelabrator. What are the ethics of such a payment? (If Wheelabrator has generated such a surplus in profits from the current operation to be able to make almost \$12 millions of dollars in payments to the participating cities to sign up again, shouldn't those funds simply be returned to the participating cities?)



**RECOMMENDATION:** Staff should do additional research to document how the cities that do not participate in the current ILA dispose of their waste and how those that have chosen not to participate in the new ILA plan to dispose of their waste stream and the costs they project. We also have many unanswered questions regarding the proposed ILA that require further review and analysis.

We will bring this information back to the Commission in December with a recommendation on how to proceed.

- EXHIBITS:**
1. Summary of Proposed Interlocal Agreement
  2. Proposed Interlocal Agreement
  3. Summary of Proposed Service Agreement
  4. Solid Waste Disposal Service Agreement
  5. List of Contract Communities

**FISCAL IMPACT:** Not clear at the present time

Reviewed by Town Attorney

Yes  No

Town Manager Initials

*CA*

File: <https://e5qbyb.docs.live.net/65d14c39bc46d4a2/Agenda/1122 AC Resource Recovery District.docx>

AN  
INTERLOCAL AGREEMENT  
PROVIDING FOR  
THE RESOURCE RECOVERY SYSTEM WITHIN BROWARD COUNTY  
AND FOR THE BROWARD SOLID WASTE DISPOSAL DISTRICT

## INDEX

ARTICLE		PAGE NO.
1	BACKGROUND .....	3
2	DEFINITIONS .....	8
3	BROWARD SOLID WASTE DISPOSAL DISTRICT/ RESOURCE RECOVERY BOARD/EXECUTIVE BOARD.....	15
4	FACILITIES AND COMMITMENT OF WASTE STREAM.....	24
5	OBLIGATIONS RELATING TO OPERATIONS.....	29
6	ANNUAL AUDIT.....	31
7	ASSETS AND LIABILITIES OF THE DISTRICT .....	32
8	OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INDEBTEDNESS OF ANY CONTRACT COMMUNITY OR COUNTY .....	33
9	RELATIONSHIPS OF THE PARTIES .....	33
10	MISCELLANEOUS.....	34
11	INDEMNIFICATION.....	39
12	CONTRACTS WITH HAULERS. ....	39
13	CESSATION.....	39
14	DURATION .....	40
15	RATIFICATION OF INTERLOCAL AGREEMENT.....	41
EXHIBIT A	Names of Contract Communities.....	45
EXHIBIT B	Names to Whom Notices Are to be Directed.....	46
EXHIBIT C	Ordinance Establishing Solid Waste Flow Control.....	47
EXHIBIT D	Reporting Requirements.....	53

## AGREEMENT

This Agreement dated for convenience December 31, 2010, 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 “CONTRACT COMMUNITIES”:

## ARTICLE 1 BACKGROUND

### 1.1 General Statement

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 CONTRACT 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 Historical Background and Findings

During the 1980s, the State of Florida and the federal government began discouraging the use of landfills as the sole method of disposal for solid waste, and encouraged the development of alternative energy resources. In response, Broward County and 22 of its municipalities sought a joint solution through the execution of an Interlocal Agreement (ILA). On November 25, 1986, the COUNTY and participating municipalities executed an ILA for solid waste services, which created an integrated waste management system (Resource Recovery System) and a special district known as the Broward Solid Waste Disposal District. (This 1986 ILA will hereinafter be referred to as the Predecessor Agreement). In keeping with the legislation and environmental policies outlined below, the Predecessor Agreement focused on waste-to-energy as the major element of the original Resource Recovery System. Over time, three new cities were formed as a result of incorporation and they executed the Predecessor Agreement.

# Exhibit 2

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Since 1986, the Resource Recovery System has expanded to include a Materials Recovery Facility for processing of recyclables, a Household Hazardous Waste Program, an Electronics Recycling Program, and other elements in addition to the two waste-to-energy plants that were constructed following the execution of the Predecessor Agreement.

Each of the parties to this new Interlocal Agreement wishes to continue the existence of the integrated solid waste management system for Broward County, which is the Broward Resource Recovery System, and agrees to have the Broward Resource Recovery System maintained, funded and run by the Broward Solid Waste Disposal District in the form and manner provided for herein.

The findings made by the COUNTY and municipalities that signed the Predecessor Agreement are outlined below:

Because of Broward County's contour, elevation and high ground water, disposal of solid waste through landfills has been discouraged. The United States Congress and Legislature of the State of Florida (the "State") have discouraged the dumping or burying of solid waste matter and the use of sanitary landfills as the sole method of disposal of solid waste. The County and the Contract Communities, therefore, make the following findings:

- (a) Because of environmental concerns with utilization of landfilling as the sole method of disposal of solid waste generated by the residents and businesses of and visitors to Broward County, Florida, the Contract Communities have sought a joint solution to such concerns.
- (b) The Contract Communities and the County have found and determined that the policy of the United States Congress regarding the elimination of solid waste as provided in 42 U.S.C. Section 6901 is toward recovery of resources from such waste.
- (c) The United States Congress has found with respect to energy that:
  1. Waste represents a potential source of solid fuel, oil, or gas that can be converted into energy.
  2. The need exists to develop alternative energy sources for public and private consumption in order to reduce the nation's dependence on such sources as petroleum products, natural gas, nuclear and hydro-electric generation; and
  3. Technology exists to produce energy from solid waste.
- (d) Chapter 403, Part IV, Florida Statutes, sets forth the State of Florida Resource Recovery Management Act. The act's purpose is to require plans and regulations for the storage, collection, transportation, separation, processing, recycling, and disposal of solid waste to

protect the public's health, safety, and welfare. Likewise, such Act has deemed it a public purpose to establish and maintain a state program for the planning and technical assistance of resource recovery and management through, among other things, the promotion of recycling, reuse or treatment of solid waste, including recycling of solid waste to produce electric power.

- (e) Additionally, Section 403.713, Florida Statutes, provides that local governments undertaking resource recovery of solid waste pursuant to general law or special law may control the collection and disposal of solid waste for the purpose of insuring that resource recovery facilities receive an adequate quantity of waste from solid waste generated within the boundaries of the local governmental jurisdiction.
- (f) The State Comprehensive Plan (Chapter 187, F.S.) establishes a number of policies regarding energy production and the reduction of solid waste landfilling including:
  - 1. Energy Policy No. 5 - Reduce the need for new power plants by encouraging end-use efficiency, reducing peak demand and using cost-effective alternatives.
  - 2. Energy Policy No. 9 – Promote the use and development of renewable energy resources and low-carbon-emitting electrical power plants.
  - 3. Waste Policy No. 9 – Encourage the research, development and implementation of recycling, resource recovery, energy recovery, and other methods of using garbage, trash, sewage, slime, sludge, hazardous waste, and other waste.

1.3 Pursuant to F.S. 163.01 and F.S. 403.706(19), Broward County determines that it is in the best interest of the residents of Broward County to grant to the Broward Solid Waste Disposal District its power to manage solid waste, to the extent provided in this Interlocal Agreement.

1.4 It is recognized by Contract Communities and County that the Resource Recovery System will be operated, maintained and repaired by the DISTRICT or full service contractors retained by the DISTRICT in reliance upon the existence and delivery of the solid waste generated in the Contract Communities and unincorporated County, except solid waste which is transported outside the State of Florida, and the revenue generating capabilities of the special district provided for herein.

1.5 It is further recognized by CONTRACT COMMUNITIES and COUNTY that the 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.

#### 1.6 Interlocal Agreement

- (a) This Agreement is an interlocal agreement entered into pursuant to Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969, as amended.
- (b) 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.

#### 1.7 Construction of Interlocal Agreement

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 Inter Local Agreement (ILA) between the County and Contract 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 CONTRACT COMMUNITY. The term "CONTRACT COMMUNITY" OR "CONTRACT 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 Disposal Facility(ies). The term "Disposal facility(ies)" means that portion of the Resource Recovery System where solid waste will be disposed of pursuant to this Agreement within the Resource Recovery System.
- 2.7 Disposal Obligation. The term "disposal obligation" shall mean the obligation of the DISTRICT to provide for the disposal of all solid waste that is generated in each CONTRACT COMMUNITY and in the unincorporated County and delivered to a Resource Recovery System facility or transfer station designated pursuant to the Plan of Operations.
- 2.8 District. The term "District" shall mean the Broward Solid Waste Disposal District, an independent special district formed pursuant to this Interlocal Agreement, and state law. The geographic boundaries of the DISTRICT shall include and be coterminous with the geographic boundaries of the CONTRACT COMMUNITIES that have executed this agreement and unincorporated Broward County.
- 2.9 Facility Operator. The term "facility operator" shall mean full service contractors or other operators of a part of the Resource Recovery System, including the District or County.

# Exhibit 2

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- 2.10 Fiscal Year. The term “fiscal year” shall mean October 1 to September 30 of the following year.
- 2.11 Full Service Contractor(s). The term “full service” contractor(s) shall mean a person, firm or corporation that has entered into an agreement or agreements with the DISTRICT to design, construct , test, maintain, repair and operate Resource Recovery System facilities.
- 2.12 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 CONTRACT COMMUNITY(IES) or the unincorporated County, or provide for the transportation and delivery of such solid waste to facilities inside or outside the District.
- 2.13 Materials Recovery Facility. The term “Materials Recovery Facility” or “MRF” shall mean the facility or facilities constructed, operated, maintained and repaired or caused to be constructed, operated, maintained, and repaired by DISTRICT pursuant to this Agreement for the purposes of receiving, processing, transferring, and shipping materials that are intended for reuse or recycling. The Materials Recovery Facilities shall be deemed to be a part of the Resource Recovery System for the term of the Materials Recovery Facility Contract with the District.
- 2.14 Materials Recovery Facility Contract. The term “Materials Recovery Facility Contract” or MRF Contract shall mean the contract(s) entered into between COUNTY, DISTRICT and full service contractor(s), for the purpose of designing, constructing, testing, operating, maintaining, and repairing a Materials Recovery Facility as part of the Resource Recovery System.
- 2.15 North Facility. The term “North Facility” shall mean the waste to energy plant operated by Wheelabrator North Broward, Inc., located at 2600 NW 48th Street in Pompano Beach, Florida, which is part of the Resource Recovery System serving the CONTRACT COMMUNITIES and the unincorporated County located in the northern part of the COUNTY, as directed in the Plan of Operations.
- 2.16 Plan of Operations. The term “Plan of Operations” shall mean the plan for the operation of the Resource Recovery System that is adopted, amended or revised by the Resource Recovery Board in the manner set forth in Section 5.4 hereof.
- 2.17 Predecessor Agreement. The term “Predecessor Agreement” means the interlocal agreement which created the Resource Recovery System within Broward County and the Broward Solid Waste Disposal District, a dependent special district. The term of the Predecessor Agreement is from 1986 to 2013 (except as modified by this Agreement). As of January 1, 2010, the Predecessor Agreement was executed by the County and the following Contract Communities: Coconut Creek, Cooper City, Coral Springs, Davie, Deerfield Beach, Fort Lauderdale, Hillsboro Beach, Hollywood, Lauderdale Lakes, Lauderdale-by-the-Sea, Lauderhill, Lazy Lake, Lighthouse Point, Margate, Miramar, North Lauderdale, Oakland Park, Pembroke Park, Plantation, Sea Ranch Lakes, Sunrise, Southwest Ranches, Tamarac, West Park, Weston and Wilton Manors.

# Exhibit 2

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- 2.18 **Processable Waste.** The term “processable waste” shall mean that portion of the waste stream which is capable of being processed of the North Facility or the South Facility, including but not limited to, all forms of household and other garbage, trash, rubbish, and refuse, as well as combustible agricultural, commercial and light industrial waste, the combustible portion of construction and demolition debris, leaves and brush, paper and cardboard, plastics, wood and lumber, rags, carpeting, tires, wood furniture, mattresses, stumps, wood pallets, timber, tree limbs, ties, and logs. Processable Waste does not include any recyclable material that is source separated (i.e., removed from the waste stream at the point of generation) and recycled. However, Processable Waste includes the non-recyclable waste that remains after recyclable materials have been removed from the waste stream, regardless of whether the recyclable materials are source separated or removed from the waste stream at another location. Processable Waste does not include Unacceptable Waste, except to the extent consistent with the regulatory and permit requirements applicable of processing of waste by the North Facility and South Facility, and to the extent that minor amounts of Unacceptable Waste or Unprocessable Waste may be contained lawfully in Processable Waste.
- 2.19 **Recovered Materials.** The term “recovered materials” shall have the meaning provided in F.S. 403.703(24).
- 2.20 **Resource Recovery Board.** The term “Resource Recovery Board” or “RRB” shall mean the governing Board of the District, which shall be established by this Agreement and which shall perform the tasks set forth in this Agreement. The Resource Recovery Board shall be composed of both the full Resource Recovery Board as provided in Section 3.2 of this Agreement and its Executive Board as provided in Section 3.3 of this Agreement. Reference to “the Resource Recovery Board” or “governing body of the District” in this Agreement shall be a general reference to both the full Resource Recovery Board and the Executive Board, unless specified as a power, duty, or function of the “full Resource Recovery Board” or the “Executive Board of the Resource Recovery Board” or “Executive Board.”
- 2.21 **Resource Recovery System.** The term “Resource Recovery System” shall mean the facilities which are constructed, operated, maintained and repaired pursuant to this Agreement or within the regulatory jurisdiction of the District for the purpose of transfer, recycling, or disposal of solid waste, Recovered Materials, or other materials designated by the RRB, the CONTRACT COMMUNITIES and the unincorporated County, and the recovery and sale of materials and energy, therefrom, including all landfills, contingency landfills, transfer stations, treatment facilities and electrical generation facilities, attendant to the Resource Recovery System.
- 2.22 **Service Agreement (s).** The term “service agreement” shall mean the agreements entered into between the District and (a). Wheelabrator South Broward, Inc. and Wheelabrator North Broward, Inc., respectively, for the purpose of operating, maintaining and repairing the South waste to energy facility and North waste to energy facility, respectively, or (b). any other full

# Exhibit 2

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- service contractor for the purpose of operating, maintaining, and repairing a part of the Resource Recovery System.
- 2.23 Solid Waste. The term “solid waste” shall be as provided in F.S. 403.703.
- 2.24 South Facility. The term “South Facility” shall mean the waste to energy plant and the ash monofill that are operated by Wheelabrator South Broward, Inc., located at 4400 South State Road 7 in Fort Lauderdale, Florida and are part of the Resource Recovery System serving the CONTRACT COMMUNITIES and the portions of the unincorporated County located in the southern part of the COUNTY, as directed in the Plan of Operations.
- 2.25 Tipping Fee. The term “tipping fee” shall mean the fees imposed on haulers pursuant to this Agreement for the delivery of solid waste to the Resource Recovery System.
- 2.26 Ton. The term “ton” is used to express a unit of weight equal to two thousand (2,000) pounds or .907 metric tons.
- 2.27 Transfer Stations. The term “transfer stations” means the sites and receiving facilities constructed, operated, maintained and repaired by the DISTRICT or a full service contractor or a facility operator retained by the DISTRICT for the acceptance of solid waste for transfer to Resource Recovery System disposal facilities.
- 2.28 Unacceptable Waste. The term “unacceptable waste” shall mean motor vehicles, trailers, comparable bulky items of machinery or equipment, highly flammable substances, hazardous waste, sludges, pathological and biomedical waste, biological wastes, liquid wastes, sewage, manure, explosives and ordinance materials, radioactive materials, and any material that cannot lawfully be accepted for disposal in the North Facility or the South Facility
- 2.29 Unincorporated County. The term “unincorporated County” shall mean the geographical areas of the 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 CONTRACT COMMUNITY.
- 2.30 Unprocessable Waste. The term “unprocessable waste” shall mean that portion of the District’s waste stream that is predominantly noncombustible and therefore should not be processed in the North Facility or the South facility. Unprocessable Waste shall include, but not be limited to, metal furniture and appliances, concrete rubble, mixed roofing materials, noncombustible building debris, rock, gravel and other earthen materials, equipment, wire and cable, and any other item exceeding six feet in any one of its dimensions or being in whole or in part of a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion, and Processable Waste (to the extent that it is contained in the normal Unprocessable Waste stream). Unprocessable Waste includes the noncombustible portion of construction and demolition debris, as defined in Section 403.706(6), Florida Statutes (2009). Unprocessable Waste also includes all other items of

Solid Waste, the acceptance and disposal of which, in the judgment of the North Facility or South Facility, reasonable exercised, would be likely to (a) pose an unacceptable risk to health or safety, (b) cause damage to the Facility, or (c) be in violation of an applicable judicial decision, permit, authorization, license, approval, law or regulation. Unprocessable Waste does not include Unacceptable Waste, which the District shall not knowingly deliver to the North and South Facility, and each of the Facilities shall not knowingly accept and shall have the right to exclude.

ARTICLE 3  
BROWARD SOLID WASTE DISPOSAL DISTRICT/  
RESOURCE RECOVERY BOARD/EXECUTIVE BOARD

3.1 The CONTRACT COMMUNITIES and COUNTY agree that there shall be created an independent special district to be known as the "Broward Solid Waste Disposal District" pursuant to and consistent with Sections 163.01, 189.4041, 403.706(12)(15), and (19)and 403.713 of the Florida Statutes, and this Agreement. The District shall have the authority and duty to establish, operate and maintain the Resource Recovery System as described in this agreement.

(a). The Powers of District

The governing body of the District shall have the following general powers. Such general powers shall be exercised by the Executive Board of the Resource Recovery Board unless they are specifically provided to be exercised by the full Resource Recovery Board in Section 3.2.

(1). Adopt, alter, rescind, modify, or amend rules, guidelines, and orders necessary for the operation of the Broward Solid Waste Disposal District and the Resource Recovery System within the District in accordance with Chapter 403, Florida Statutes and all other applicable law.

(2). Adopt and implement a resource recovery and waste management program for the District that shall provide for the transportation, storage, separation, processing, recovery, recycling, or disposal of solid waste and recovered materials generated or existing within the District and modify and update such program or plan as may be required or allowed by law. Specifically, the District shall have the authority to provide solid waste reduction, education and public information programs, e-waste recycling, regional yard waste processing, household hazardous waste drop-off facilities, recycled material processing programs, research and development activities and emergency debris processing and disposal.

(3). Acquire, at its discretion, personal or real property or any interest therein by gifts, lease, eminent domain, or purchase.

# Exhibit 2

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(4). Appoint a District Counsel who shall act as the general counsel and advisor to the Resource Recovery Board, the Executive Board, and the District. The District Counsel shall have such duties as prescribed by the governing body of the District and serve at the pleasure of same.

(5). Appoint an executive director to be responsible for the operation of the DISTRICT in accordance with the policies and decisions of the governing body of the District and who shall serve at the pleasure of the governing body of the District.

(6). Authorize the operation and management of the District in the manner it deems appropriate, including but not limited to, the employment of personnel and/or the contracting for services. Personnel shall be appointed or removed by the executive director. Employees shall report to and serve at the direction of the executive director.

(7). Require surety bonds for any of the District's officers and employees in such amounts as the governing body deems necessary. The premiums for the bonds shall be paid by the District in the same manner as any other operating expense.

(8). Sue and be sued, implead and be impleaded, and complain and defend in all courts.

(9). Adopt, use, and alter a corporate seal.

(10). Acquire, construct, reconstruct, improve, maintain, equip, furnish, and operate at its discretion such resource recovery and waste management facilities as are required to carry out the purposes and intent of this Agreement and to meet the requirements of Chapter 403, Florida Statutes, and other applicable law.

(11). Conduct studies, develop programs, provide continuing management and monitoring of waste and recovered materials projects, programs, and facilities directly or indirectly affecting the Resource Recovery System or the District and contract with governmental agencies, individuals, public or private corporations, municipalities, districts or any other person to achieve the purposes of this Agreement and the requirements of Chapter 403, Florida Statutes, and other applicable law.

(12). Establish such reasonable rates, fees and other charges and revenue sources allowed by law to sufficiently fund the Resource Recovery System and the maintenance of the District, including but not limited to its administration, management, operation, enforcement, debt service, reserve accounts or any other obligations or services necessary or convenient for the operation of the Resource Recovery System in compliance with this Interlocal Agreement and applicable law.

(13). Develop, approve and manage an annual revenue and expense budget sufficient for the operation of the District.

(14). Issue any bonds or other instruments related to short or long term borrowing, and letters of credit or debt that relate to the Resource Recovery System, which it deems necessary or convenient for the operation of the District.

(15). Enforce waste flow control ordinances and flow control provisions of hauler contracts as the agent for Contract Communities and the County.

(b). The Duties of District.

The governing body of the District shall have the following duties which shall at a minimum be performed. Such duties shall be exercised by the Executive Board of the Resource Recovery Board unless they are specifically provided to be exercised by the full Resource Recovery Board in Section 3.2.

(1). Adopt a Plan of Operations for the District;

(2). Establish tipping fees, rates, and other charges and revenue sources to sufficiently fund the Resource Recovery System and the maintenance of the District. All fees, rates and other charges shall be approved by resolution of the Resource Recovery Board. Tipping fees for processable waste shall be calculated and established by the Resource Recovery Board at least 120 days preceding the beginning of each fiscal year and shall be effective for the next ensuing fiscal year, unless amended in compliance within the provisions in this Agreement;

(3). Develop, approve and manage an annual revenue and expense budget;

(4). Enforce the solid waste flow control ordinances and the flow control provisions of hauler contracts, as the agent for the Contract Communities and the County, if and to the extent such action is necessary to comply with the District's obligations under this Agreement and the service agreements.

3.2 Composition, Powers and Meetings of the Full Resource Recovery Board.

(a). The full Resource Recovery Board shall be comprised of one County Commissioner appointed by the Broward County Commission and one member of the governing body of each Contract Community appointed by the governing body of that Contract Community. The full Resource Recovery Board shall have the following duties and responsibilities:

(1). Selection of the Executive Board, as provided in Section 3.3.

(2). Selection of a Chair of the full Resource Recovery Board, who shall serve also as the Chair of the Executive Board.

# Exhibit 2

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- (3). Selection of a Vice Chair of the full Resource Recovery Board, who shall serve as the Chair of the full Resource Recovery Board and Executive Board when the Chair is not physically present at a meeting of either body.
- (4). Approval of the annual budget of the District.
- (5). Approval of the annual tipping fee charged to Contract Communities.
- (6). Adoption annually of the Plan of Operations.
- (7). Approval of any new service agreements with Wheelabrator North and South, or any amendments to same.
- (8). Approval of the engagement of the Executive Director of the District.
- (9). Approval of the engagement of the District Counsel.
- (10). Approval of any bonds as defined in F.S. 166.101(1).
- (11). Approval of any agreement for contractual services to the District for \$100,00.00 or more, or where contractual services shall be supplied to the District in excess of 12 months .
- (12.) Approval of such rules as are necessary and convenient for the conduct of its meetings.

A quorum at any meeting of the full Resource Recovery Board shall be those members physically present equal to one-third (1/3) of all Resource Recovery Board members appointed pursuant to 3.2(a).

(b). The full Resource Recovery Board shall meet twice yearly: at 2:00 p.m. on the third Thursday of September and at 2:00 p.m. on the third Thursday of March, of each year. However, the full Resource Recovery Board may meet more often than twice annually when the Executive Board or the Executive Director has requested a meeting of the full Resource Recovery Board.

(c). No action of the full Resource Recovery Board shall be determined to be approved unless:

- (1). The action is approved by a majority of the members physically present at a full Resource Recovery Board meeting; and
- (2). The action is approved by the full Resource Recovery Board members representing CONTRACT COMMUNITIES and County evidencing a majority of the average tonnage remitted to the North Facility and South Facility among the members physically present, at a full Resource Recovery Board meeting.

Board Calculations utilized shall be for the last full fiscal year prior to the action of the Resource Recovery Board voted on.

### 3.3 Composition, Powers and Meetings of the Executive Board.

(a). There is hereby created an Executive Board of the Resource Recovery Board. The Executive Board shall be chosen as follows:

The Executive Board shall be comprised of 11 members.

(1). One (1) member shall be appointed by the County Commission.

(2). At the first full Resource Recovery Board meeting subsequent to August 4, 2011, and every two years thereafter, 10 members of the Executive Board shall be appointed as follows:

Based upon population figures contained in the latest estimate of population published by the University of Florida Bureau of Economics and Business, Contract Communities shall be separated in 3 parts of equal member Communities based upon population. These shall be: 1/3 of the Communities with the largest populations; 1/3 of the Communities with the next largest populations; 1/3 of the Communities with the smallest populations. (Where the number of Contract Communities is not evenly divisible by 3, the extra Community(ies) shall be deemed a part of the largest 1/3 of Communities.

i). Five members shall be selected by the full Resource Recovery Board from among members from the 1/3 of the Contract Communities with the largest populations.

ii). Three members shall be selected by the full Resource Recovery Board from among members from the 1/3 of the Contract Communities with the next largest populations.

iii). Two members shall be selected by the full Resource Recovery Board from among members from the 1/3 of the Contract Communities with the smallest populations.

(b). The Executive Board shall meet at least quarterly. The Executive Board shall have all powers and responsibilities provided in Section 3.1 of this agreement except for those specifically reserved for the full Resource Recovery Board as provided in Section 3.2 of this agreement. The Executive Board shall have the power to amend the annually approved Plan of Operations, which shall be operative until further action of the full Resource Recovery Board.

A quorum of the Resource Recovery Board shall be five (5) members. Actions of the Executive Board shall be determined to be approved by a majority vote of the members physically

present. The Executive Board shall approve such rules as are necessary and convenient for the conduct of its meetings.

(c). Each member of both the full Resource Recovery Board and the Executive Board shall serve a term of two years. All members appointed by the Contract Communities or the County, shall be elected officials of their respective Contract Communities or County Commission, as the case may be. Should a member cease to be a duly qualified elected official, the appointing authority which appointed such individual to the Resource Recovery Board shall select a successor to serve for the remaining term of the original appointment.

3.4 Technical Advisory Committee. There is hereby created a Technical Advisory Committee composed of representatives of each CONTRACT COMMUNITY and unincorporated County as follows:

- (a) The chief administrative officer of each CONTRACT COMMUNITY and COUNTY shall appoint a representative who shall serve until replaced from the public works, utilities or such other department which performs similar functions for the CONTRACT COMMUNITY and unincorporated County. In addition to the regular TAC representative, the chief administrative officer may also designate an alternate representative, who performs similar functions for the CONTRACT COMMUNITY, who shall also serve until replaced. Alternate representatives may attend and participate in the TAC meetings or TAC subcommittee meetings, but may only be counted toward a quorum and vote in the absence of the appointed representative. The Resource Recovery Board shall appoint for two (2) year terms up to five (5) additional members representing waste generators, recycling or environmental interests and private waste collection companies.
- (b) Each member of the Technical Advisory Committee shall be appointed on the basis of his or her technical or professional background or knowledge of the solid waste industry or a related profession, which may include engineering, solid waste management or other related activities.
- (c) Regular meetings of the Technical Advisory Committee shall be held in accordance with a schedule approved by the committee but not less than at least once per quarter and not less than a total of four (4) times per year.
- (d) Any member of the TAC having four (4) or more unexcused absences from the TAC meetings within a fiscal year will be reported to the CONTRACT COMMUNITY by the TAC chair.
- (e) At the first meeting of the new calendar year, the TAC members will elect a chair or vice chair to serve for one (1) year in that capacity or until their successors are elected. The Chair shall appoint standing or special subcommittees as the Chair deems necessary. The role of the TAC and TAC Subcommittees will be to provide technical advice,

guidance and counsel to the Resource Recovery Board on any matter relevant to the Resource Recovery System.

- (f) The Technical Advisory Committee shall serve in an advisory capacity to the Resource Recovery Board in technical matters of integrated solid waste planning, including environmental concerns and educational programs, as well as providing a forum for the exchange of ideas among municipal representatives and the private sector.

## ARTICLE 4

### FACILITIES AND COMMITMENT OF WASTE STREAM

- 4.1 The DISTRICT shall cause to be constructed, operated, maintained and repaired a Resource Recovery System located within the County for the disposal of all solid waste that is collected in each CONTRACT COMMUNITY and unincorporated County and delivered to the Resource Recovery System.
- 4.2 During the duration of this Agreement as defined in Article 14 hereof, the CONTRACT COMMUNITIES and the COUNTY for the unincorporated area shall cause all of the solid waste generated within each of their respective boundaries to be collected, transported, delivered and deposited at the designated receiving facilities of the DISTRICT's Resource Recovery System pursuant to the Plan of Operations for system facilities as approved by the Resource Recovery Board except for solid waste which is transported outside the State of Florida.
- 4.3 (a) Each CONTRACT COMMUNITY and COUNTY for the unincorporated area agrees to enact prior to August 4, 2011 and thereafter maintain in effect a solid waste flow control ordinance pursuant to Section 403.713, Florida Statutes, directing that all solid waste generated within their respective geographic boundaries be delivered to the Resource Recovery System transfer or disposal facility or facilities designated in the Plan of Operations, except for solid waste which is to be transported outside the State of Florida. The solid waste flow control ordinance shall be substantially in the form of Exhibit C attached hereto and made a part hereof. Each party agrees to include in any contracts or contract amendments with haulers executed after December 31, 2010, a provision that all solid waste shall be delivered to the Resource Recovery System transfer or disposal facility or facilities designated in the Plan of Operations and to enforce such provision, with an exception for any waste generated in the DISTRICT which is shown to be destined for recycling or disposal outside the State of Florida. In each such contract and contract amendments, the District shall be (a) expressly identified as a third party beneficiary of such provision; and (b) given the right to enforce such provision, if enforcement is necessary to ensure the delivery of solid waste to the Resource Recovery System transfer or disposal facility or facilities.

## Exhibit 2

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(b) Each Contract Community and County for the unincorporated area agrees to enact prior to August 4, 2011, and thereafter maintain in effect, a solid waste reporting ordinance pursuant to Section 403.713 Florida Statutes, directing that each hauler shall report the following information to each Contract Community and County for the unincorporated areas on a monthly basis:

- 1). The amount of processable solid waste collected in the Contract Community and unincorporated County in cubic yards and tons.
- 2). Where the processable solid waste collected by the hauler within each Contract Community and unincorporated County has been transported. Identification shall be by the name of the facility and address of same.
- 3). The quantity (either by volume, weight, or number and size of all trucks or containers) of unprocessable solid waste which has been collected by the hauler within the Contract Community and unincorporated County and which is to be transported outside the State of Florida.
- 4). Where the unprocessable solid waste generated within each Contract Community and unincorporated County has been transported outside of the State of Florida. Identification shall be by the name of the facility and address of same.

The preceding described ordinance shall be substantially in the form of Exhibit D, which is attached hereto and made a part hereof.

Each Contract Community and the County for the unincorporated areas agrees that the reports required pursuant to this subsection shall be sent to the Executive Director, Resource Recovery Board, c/o Waste and Recycling Services, 1 University Drive, Plantation, Florida 33324, or to any other address as determined by the Executive Director upon reasonable notice.

(c). Each Contract Community and the County for the unincorporated area agrees to include the requirements of the solid waste flow control ordinance and the solid waste reporting ordinance required by subsections 4(a) and (b), respectively, in agreements, licenses, permits, franchises or other arrangements with Haulers entered into on or after December 31, 2010. Each CONTRACT COMMUNITY and the COUNTY for the unincorporated area hereby appoints the DISTRICT as its agent for the enforcement of obligations in any agreement, license, permit, franchise or other arrangement found in the solid waste flow control ordinance and/or the solid waste reporting ordinance. Each CONTRACT COMMUNITY and the COUNTY for the unincorporated area further agrees to include a requirement that Haulers consent to inspection of loads by the District in any

# Exhibit 2

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agreements, licenses, permits, franchises or other arrangements with Haulers entered into on or after December 31, 2010. The District may enforce such obligations through civil action, including the right to pursue any and all legal and equitable remedies, in the appropriate forum.

(d). Each Contract Community and the County for the unincorporated area hereby agrees to have the ordinances each has enacted pursuant to this section enforced pursuant to an ordinance enacted by the County in conformity with Chapter 162 of the Florida Statutes or any other system of Code Enforcement authorized to the County or District by either special act or the general laws of the State of Florida. Said system shall specifically include, but not be limited to the appointment of Code Enforcement officers who shall have jurisdiction to issue citations within the Contract Community and the unincorporated areas, a magistrate or magistrates authorized to determine fines and liens and foreclosure of properties as provided in 162 of the Florida Statutes, or such other similar quasi-judicial proceedings for code enforcement as authorized pursuant to general or special law. By approving this Interlocal Agreement, each Contract Community and County hereby appoints and authorizes such agents designated by either the County or the District or both, as Code Enforcement Officers for the purpose of enforcing the ordinances adopted by said municipality or County pursuant to this Agreement. The County agrees to enact and maintain such an ordinance providing for the institution of a code enforcement system as described in this paragraph.

(e). Each Contract Community, and the County for the unincorporated area, appoints the District as its agent and authorizes the District to enforce any and all provisions of any franchises and other agreements the Contract Community and County may have with haulers concerning the delivery of processable waste to the Resource Recovery System. The District shall exercise this authority whenever and to the extent the District deems necessary to ensure that the District complies with its obligations under this Agreement and the service agreements to deliver processable waste to the Resource Recovery System.

(f). All costs and expenses of the code enforcement system above described shall be borne by the District. All costs and fines derived from said enforcement system shall be the property of the DISTRICT.

A Memorandum of Understanding or other agreement shall be approved by both the Resource Recovery Board and the County providing for the implementation of this subsection.

- 4.4 A Resource Recovery System disposal facility may burn processable waste to produce electrical energy to be sold to purchasers of electrical energy. Such facility may also provide for the

separation and sale of ferrous and nonferrous metals and other materials which may be separated either prior to or subsequent to the burning of processable waste necessary to produce electrical energy. Upon delivery to the Resource Recovery System, neither the unincorporated County nor any CONTRACT COMMUNITIES, shall have any interest in ferrous and nonferrous metals and other materials contained in the solid waste delivered.

- 4.5 The DISTRICT hereby assumes responsibility for the disposal of all solid waste delivered to the Resource Recovery System by each or on behalf of each CONTRACT COMMUNITY and unincorporated County during the duration of this Agreement consistent with its rights and obligations under the service agreements.
- 4.6 Transfer stations and contingency landfills may be required in the event that one or more of the resource recovery facilities are not operational. Consequently, the costs of construction, operation, maintenance and repair of the transfer stations and contingency landfills shall be part of the overall cost of the Resource Recovery System.

## ARTICLE 5 OBLIGATIONS RELATING TO OPERATIONS

- 5.1 Delivery and Acceptance of Waste. Each CONTRACT COMMUNITY and COUNTY for the unincorporated area agrees that all of the solid waste collected within its respective territorial boundaries shall be delivered to a Resource Recovery System facility designated pursuant to the Plan of Operations. It is the understanding of each of the parties to this Agreement that the transportation of solid waste should be minimized to the greatest extent possible consistent with the obligations of the DISTRICT to make deliveries under the service agreement. In determining the Resource Recovery System facility to which solid waste shall be delivered, the Resource Recovery Board shall make every reasonable effort consistent with the DISTRICT rights and obligations under the service agreements to minimize the cost of transportation for CONTRACT COMMUNITIES and unincorporated County or their haulers. The provisions in this paragraph do not apply to solid waste which is to be transported outside the State of Florida.
- 5.2 The DISTRICT shall provide for the construction, operation, maintenance and repair of transfer stations, contingency landfills or other facilities utilized for the purpose of receiving solid waste that are a part of the Resource Recovery System.
- 5.3 In order to provide for the testing and startup of any new facility of the Resource Recovery System upon not less than thirty (30) days notice by the DISTRICT, each of the CONTRACT COMMUNITIES and unincorporated County shall deliver or cause to be delivered processable waste to such facility in amounts and at the times and in the manner designated in said notice. The notice from the DISTRICT shall also state the estimated amount of processable waste to be delivered by each CONTRACT COMMUNITY and unincorporated County and the estimated

## Exhibit 2

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length of time for which such deliveries are required. In order to facilitate CONTRACT COMMUNITY planning, the DISTRICT will share information with the CONTRACT COMMUNITIES and County as to the progress of construction of all Resource Recovery System facilities.

- 5.4 **Plan of Operations.** The DISTRICT, COUNTY and the CONTRACT COMMUNITIES agree there presently is in place a Plan of Operations for the Resource Recovery System, developed to meet the DISTRICT's obligations under this Agreement. The Plan of Operations will be maintained and amended by the Resource Recovery Board, consistent with this Agreement and all contracts for District facilities. The Plan of Operations shall delineate matters relating to the operation, management and administration of the Resource Recovery System including but not limited to: hours of operations; schedule and routing of deliveries; regulation of delivery vehicles; measurements of quantity, quality and other waste characteristics; billing; rules and regulations relating to the use of the Resource Recovery System; inspection of Resource Recovery System facilities; and such other items as may be deemed appropriate by the Resource Recovery Board.
- 5.5 **Title To and Interest in Products.** The CONTRACT COMMUNITIES and unincorporated County shall relinquish any and all title and interest in the solid waste collected within their respective boundaries upon delivery of the solid waste to the Resource Recovery System.
- 5.6 **Manner of Delivery.** Each CONTRACT COMMUNITY and unincorporated County shall provide the DISTRICT with the following information about each hauler delivering solid waste on its behalf to the Resource Recovery System: hauler name and address; make, body type and motor vehicle registration number of each vehicle used; area of collection; and status as municipal vehicle operator or contract hauler.
- 5.7 **Solid Waste Segregation Programs.** The CONTRACT COMMUNITIES, unincorporated County and DISTRICT agree that no provisions of this Agreement shall be read or construed to discourage or prohibit either voluntary or locally ordained programs for segregating new or used materials at the point of generation for reuse or recycling.
- 5.8 **Other Contracts for Waste Delivery.** The DISTRICT agrees, to the extent consistent with the service agreements, that neither the District nor any operator of Resource Recovery System facilities may enter into any agreement for the disposition of solid waste with other persons, firms or corporations that materially impairs the ability of the DISTRICT to perform its obligations to the CONTRACT COMMUNITIES and unincorporated County under this Agreement.
- 5.9 **It is recognized by the Contract Communities and County that Processable Waste will be delivered to the North Facility and South Facility as defined in this agreement. Processable Waste delivered to the North and South Facilities shall be processed pursuant to a Solid Waste Disposal Service Agreement between the District and Wheelabrator South Broward, Inc. and Wheelabrator North Broward, Inc. A copy of the aforesaid agreement is attached hereto and made a part of this Interlocal Agreement.**

## ARTICLE 6 ANNUAL AUDIT

The DISTRICT shall secure an annual external audit, consistent with the terms of the service agreements, of the solid waste disposal and Resource Recovery System by a qualified certified public accountant. Copies of the audit reports are to be made available to all CONTRACT COMMUNITIES, County, and the Resource Recovery Board and, if requested, to private entities utilizing the system. The DISTRICT shall maintain separate accounts and records for each of the facilities in the Resource Recovery System.

## ARTICLE 7 ASSETS AND LIABILITIES OF THE DISTRICT

- 7.1 All assets, properties, liabilities, agreements and responsibilities of the District and the Broward Resource Recovery Board existing on the date of termination of the Predecessor Agreement as provided in Article 15, shall continue to be held in the name of the Broward Solid Waste Disposal District.
- 7.2 All assets, properties, liabilities, and responsibilities of the Resource Recovery System held in the name of the County, as determined by the Resource Recovery Board, shall be transferred to the District and held in the name of the District. All agreements regarding the Resource Recovery System, shall be transferred into the name of the District upon assent of all parties to said agreement.

Excepted from the preceding shall be the real property and all improvements at the Broward County Interim Contingency Landfill located at US 27 and Sheridan Street which asset shall remain the property of Broward County; provided further, that the County and District agree that the County shall make available to the Resource Recovery System its landfill capacity and landfill facilities as may be reasonably required by the Resource Recovery System.

Further excepted from the preceding transfer of assets and properties, shall be the property on which the South Facility is situated, which shall also remain the property of Broward County. However, all rental income received from the Second Amended and Restated Facility Site Lease Agreement dated December 31, 2010, between Broward County and Wheelabrator South Broward Inc., by Broward County during the term of this Interlocal Agreement, shall be the property of the District.

## ARTICLE 8

## OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INDEBTEDNESS OF ANY CONTRACT COMMUNITY OR COUNTY

The respective obligations of each CONTRACT COMMUNITY and County under this Agreement shall not be an indebtedness of such CONTRACT COMMUNITY or County within the meaning of any constitutional, statutory, charter or ordinance provision or limitation of such CONTRACT COMMUNITY or County. Neither is obligated to pay or cause to be paid any amounts due under this Agreement except in the manner provided herein, and the faith and credit of such CONTRACT COMMUNITY and COUNTY are not pledged to the payment of any amounts due under this Agreement.

## ARTICLE 9 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 CONTRACT COMMUNITIES and COUNTY.

## ARTICLE 10 MISCELLANEOUS

- 10.1 To the extent set forth in this Agreement, COUNTY does hereby grant its power to manage solid waste to the Broward Solid Waste Disposal District pursuant to F.S. 163.01 and F.S. 403.706(19).
- 10.2 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. The parties agree, however, that the DISTRICT may assign rights and obligations under this Agreement as is necessary by the DISTRICT for the provision of solid waste services under this Agreement.
- 10.3 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.
- 10.4 The DISTRICT agrees to maintain and cause its full service contractors to maintain complete and accurate accounting records for solid waste transfer or disposal services provided to the

## Exhibit 2

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CONTRACT COMMUNITIES and unincorporated County. The DISTRICT agrees to maintain, or cause to be maintained information in sufficient detail to permit each CONTRACT COMMUNITY and County to ascertain the cost of solid waste services provided pursuant to this Agreement, separate and apart from the cost of other services of the DISTRICT. Upon reasonable notice given by any CONTRACT COMMUNITY or County, the DISTRICT shall make available or have made available to such CONTRACT COMMUNITY or County all books, records, computer programs, printouts, memoranda of any kind whatsoever regarding all of the operations of the Resource Recovery System. Such materials may be inspected and copied at the expense of the party seeking such information.

- 10.5 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 CONTRACT 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.
- 10.6 Grant Information. The CONTRACT COMMUNITIES and County agree to provide the Resource Recovery Board with all relevant information that (a). any federal, state or local agencies may require for any application for financial assistance in the acquisition or construction of the Resource Recovery System and (b). the Resource Recovery Board reasonably needs for the provision of solid waste disposal services to them. The parties agree to adopt such regulations, execute such agreements and do such work as may be required by federal, state, or local agencies as part of any such application for financial assistance.
- 10.7 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 (a). majority of the governing bodies of the CONTRACT COMMUNITIES and County and (b). those CONTRACT COMMUNITIES and County containing at least 51 percent of the population of all CONTRACT COMMUNITIES and the unincorporated County; however, County must consent to same. No modification or alteration shall be adopted with respect to any of the rights and obligations of the parties as to Section 4.3 of this Agreement, unless said alteration is adopted by the CONTRACT COMMUNITIES containing at least 51 percent of the population, the District and the

# Exhibit 2

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- County. No modification or alteration shall be adopted which reduces the term of this Agreement.
- 10.8 Additional CONTRACT COMMUNITIES. After December 31, 2010 and 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 CONTRACT COMMUNITY may become a CONTRACT COMMUNITY by agreeing to all of the terms and conditions established by resolution of the Resource Recovery Board at the time the community requests entry.
- 10.9 Confidentiality. Each CONTRACT COMMUNITY and County acknowledges that information DISTRICT obtains from a full service contractor may be subject to confidentiality restrictions under the construction contracts and service agreements to the extent consistent with applicable law.
- 10.10 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.
- 10.11 Representations and Warranties: Legal Opinions. Each of the CONTRACT COMMUNITIES and County hereby represents and warrant as to itself as follows, and each CONTRACT COMMUNITY and County hereby agrees to provide to the DISTRICT counsel a favorable opinion of its Counsel dated as of such date as the DISTRICT may request and on which the DISTRICT may rely, to the following effect:
- (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);
  - (c) Neither the execution nor delivery of this Agreement, nor the performance of its obligations hereunder nor the fulfillment of the terms herein: (i) conflicts with, violates or results in a breach of the Constitution, any law or government regulation of the State of Florida, or any other local law or ordinance; or (ii) conflicts with, violates or results in any breach of any term or condition of any judgment or decree,

or any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound, or constitutes a default thereunder;

- (d) Except for the procedures provided under Chapter 163 and Chapter 75 of the Florida Statutes, and such action as has already been taken, no approval authorization, or order of, or any consent or declaration, registration of filing with, any governmental authority of the State of Florida or any referendum or other action of voters by election, action by town or city council or otherwise) is required for the valid execution, delivery and performance of this Agreement by it;
- (e) Except as disclosed in writing to the other parties prior to its execution and delivery of this Agreement, to its best knowledge, there is no action, suit or proceeding, at law or in equity, or any official investigation before any court or governmental authority nor any referendum or other voters' initiative pending or, to its best knowledge, threatened against it which might materially adversely affect the taking or exercise by the District or the Resource Recovery Board of the actions to be taken by either of them or the Agreement, or the performance by either of them or it of challenges, or if adversely determined might materially adversely affect, the validity, legality or enforceability of this Agreement.

10.12 The applicable financial disclosure, noticing and reporting requirements of the District shall be those provided by general law.

10.13 The creation of the District is consistent with the Broward County Comprehensive Plan.

## ARTICLE 11 INDEMNIFICATION

To the maximum extent permitted by law, the DISTRICT, County and each CONTRACT 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 of damages whatsoever, including the intentional or negligent acts of each arising out of the performance of the obligations under this Agreement of the District, County, and each Contract Community, except the same shall not include punitive damages or prejudgment interest.

## ARTICLE 12 CONTRACTS WITH HAULERS

# Exhibit 2

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Each party to this Agreement agrees to cause the terms and conditions of any agreement that it may have with a hauler of solid waste to conform with the terms and conditions of this Agreement by August 4, 2011.

## ARTICLE 13 CESSATION

- 13.1 If any CONTRACT COMMUNITY, County or DISTRICT shall fail to perform or observe any of the material terms and conditions of this Agreement for a period of sixty (60) days after receipt of notice of such default from another party or Resource Recovery Board, the party giving the notice of default may be entitled, but not required, to seek specific performance of this Agreement. The parties acknowledge that money damages may be an inadequate remedy for the failure to perform and that the party giving notice is entitled to obtain an order requiring specific performance by the other party. Failure of any party to exercise its rights in the event of any breach by another party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by another party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the terms specifically contained therein. This paragraph shall be without prejudice to the right of any party to seek such just legal remedy for any breach of the other as may be available to it.
- 13.2 (a) On or before the date of termination of the Predecessor Agreement, as provided in Article 15 of this Agreement, the Resource Recovery Board shall provide for the equitable distribution of the District's assets to the COUNTY AND municipalities which were CONTRACT COMMUNITIES pursuant to the Predecessor Agreement prior to January 1, 2010, and after all outstanding liabilities of the predecessor agreement have been provided for, and which the Resource Recovery Board determines are not necessary for the maintenance and continuation of the District and the maintenance of the Resource Recovery System pursuant to this Agreement.
- (b) At the end of this Agreement, or at the end of all renewal terms (if any), whichever occurs later, the Resource Recovery Board shall provide for the equitable distribution of the District's assets and liabilities to the CONTRACT COMMUNITIES, unincorporated County and COUNTY. The Resource Recovery Board shall consider any perpetual maintenance responsibilities of the COUNTY in making such distributions.

## ARTICLE 14 DURATION

This Agreement shall be effective for each CONTRACT COMMUNITY and County on August 4, 2011 and for a period of ten (10) years from said date. This Agreement may be renewed up to one additional ten (10) year period; however, the County, and any Contract Community which is a party to this Agreement shall have the option at the end of the initial ten (10) year period not to renew this Agreement.

## ARTICLE 15 RATIFICATION OF INTERLOCAL AGREEMENT

This Interlocal Agreement shall have the following effect upon the County and each Contract Community that executes this Agreement by December 31, 2010:

- 1). Should County and all Contract Communities to the Predecessor Agreement execute this Agreement, this Agreement shall be in full force and effect on August 4, 2011.
- 2). Should less than all Contract Communities to the Predecessor Agreement and County execute this Agreement, but should County and Contract Communities representing 80 percent of the processable waste delivered to the North and South facilities during the 2009 calendar year, execute this Agreement:
  - a) Notwithstanding anything to the contrary in Article 14, this Agreement shall be deemed the Eleventh Amendment to the Predecessor Agreement, and this Agreement shall govern Predecessor Agreement from August 4, 2011 to July 13, 2013, for Contract Communities of the Predecessor Agreement, and County, and additional Contract Communities which have executed this Agreement; and
  - b) Notwithstanding anything to the contrary in Article 14, the initial term of this Agreement shall be eight years beginning July 13, 2013 for all Contract Communities and County, which have executed this Agreement.
- 3). Should the Contract Communities to the Predecessor Agreement representing less than 51 percent of the population of all Contract Communities of the Predecessor Agreement, execute this Agreement, or should County not execute this Agreement, this Agreement shall be of no force and effect.

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 Chairman, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and each CONTRACT COMMUNITY, signing by and through officers duly authorized to execute same.

# Exhibit 2

## COUNTY

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and Ex-  
Officio Clerk of the Board of  
County Commissioners of  
Broward County, Florida

By \_\_\_\_\_  
Chair  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Approved as to form and legality by  
the Office of County Attorney for  
Broward County, Florida

\_\_\_\_\_

County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: \_\_\_\_\_

\_\_\_\_\_

Assistant County Attorney

## CONTRACT COMMUNITY

# Exhibit 2

---

WITNESS:

\_\_\_\_\_  
Name of Contract Community

\_\_\_\_\_

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

ATTEST:

By \_\_\_\_\_  
City Manager

\_\_\_\_\_

City Clerk

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

(CORPORATE SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

EXHIBIT A  
NAMES OF CONTRACT COMMUNITIES

EXHIBIT B

## NAMES TO WHOM NOTICES ARE TO BE DIRECTED

EXHIBIT C  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ESTABLISHING SOLID WASTE FLOW CONTROL PURSUANT TO SECTION 403.713, FLORIDA STATUTES AND SECTION 4.3 OF THE INTERLOCAL AGREEMENT DATED DECEMBER 31, 2010 BY AND BETWEEN THE CONTRACT COMMUNITIES AND BROWARD COUNTY, FLORIDA, PROVIDING FOR THE BROWARD SOLID WASTE DISPOSAL DISTRICT; DIRECTING THE DELIVERY OF ALL SOLID WASTE GENERATED WITHIN \_\_\_\_\_ TO THE RESOURCE RECOVERY SYSTEM DESCRIBED HEREIN; RELINQUISHING TITLE TO SOLID WASTE COLLECTED OR GENERATED WITHIN \_\_\_\_\_ UPON DELIVERY OF SUCH SOLID WASTE TO SAID RESOURCE RECOVERY SYSTEM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, because of the low elevation and high ground water level of Broward County, Florida (the "County"), disposal of solid waste through means other than landfills has been encouraged; and

WHEREAS, the Legislature of the State of Florida has discouraged the dumping or burying of solid waste matter and the use of sanitary landfills as the sole method of disposal of solid waste; and

WHEREAS, because of environmental concerns with utilizing landfilling as the sole method of disposal of solid waste generated by the residents and visitors of the County, certain municipalities within the county and the COUNTY have sought a joint solution to such concerns; and

WHEREAS, Section 403.713, Florida Statutes, provides that (a.) "any local government that undertakes resource recovery from solid waste pursuant to general law or special act may control the collection and disposal of solid waste, as defined by general law or such special act, which is generated within the territorial boundaries of such local government and other local governments which enter into interlocal agreements for the disposal of solid waste with the local government sponsoring the resource recovery" ...facilities, (b) "any local government which undertakes resource recovery of solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction," and (c) "such solid waste will not include recovered materials, whether separated at the point of generation or after collection, that are intended to be held for purposes of recycling... however,

the handling of such materials shall be subject to applicable state and local public health and safety laws;" and

WHEREAS, consistent with Chapter 403, Part IV, Florida Statutes, and in furtherance of addressing the problems created by the disposal of solid waste, certain municipalities within the County (the "Contract Communities") have entered into an Interlocal Agreement (the "Interlocal Agreement"), which provides for, among other things, the disposal of solid waste generated within the CONTRACT COMMUNITIES and the unincorporated area of the County; and

WHEREAS, Section 4.3(a) of the Interlocal Agreement provides that each Contract Community and the County shall enact a waste flow control ordinance pursuant to Section 403.713 of the Florida Statutes directing that solid waste generated within each Contract Community and the unincorporated area of the County be delivered to the designated Resource Recovery System transfer or disposal facility or facilities except for solid waste which is to be transported outside the State of Florida; and

WHEREAS, each Contract Community and the County further agreed in the Interlocal Agreement to include in any contract arrangements with haulers including any agreements, licenses, permits or franchises a provision that all solid waste shall be delivered to the Resource Recovery System facilities designated in the Plan of Operations developed pursuant to the Interlocal Agreement;

NOW, THEREFORE, be it ordained by the (governing body of Contract Community or Board of Commissioners of Broward County), Florida, that:

Section 1. Findings.

The findings set forth in the foregoing preamble to this Ordinance are hereby approved and confirmed.

Section 2. Definitions.

For the purpose of this Ordinance, the definitions contained in the Interlocal Agreement dated December 31, 2010 shall apply unless otherwise specifically stated in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

- (a) Contract Communities. The term "Contract Communities" shall refer to the municipal corporation or corporations existing under the laws of the State of Florida located within the county that from time to time enter into the Interlocal Agreement.
- (b) 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.

- (c) District. The term "District" shall mean the Broward Solid Waste Disposal District formed pursuant to the Interlocal Agreement and state law. The geographic boundaries of the DISTRICT shall be coterminous with the geographic boundaries of the CONTRACT COMMUNITIES that have executed this Agreement and unincorporated Broward County.
- (d) Haulers. The term "haulers" shall mean those persons, firms or corporations or governmental agencies which collect solid waste (either under oral or written contract, license, permit or otherwise) within the geographic boundaries of the CONTRACT COMMUNITY(IES) or the unincorporated County, or provide for the transportation or delivery of such solid waste to facilities inside or outside the District.
- (e) Interlocal Agreement. The term "Interlocal Agreement" shall refer to that certain Interlocal Agreement dated December 31, 2010, by and among the County and the Contract Communities, providing for the Broward Solid Waste Disposal District, as amended or supplemented from time to time pursuant to the provisions of the Interlocal Agreement.
- (f) Resource Recovery System. The term "resource recovery system" shall refer to the resource recovery facilities which are constructed, operated, and maintained pursuant to the Interlocal Agreement.
- (g) Solid Waste. The term "solid waste" shall have the meaning set forth in Chapter 403, Part IV, Florida Statutes.

### Section 3. Waste Flow Control.

- (a) It is the purpose of this Ordinance to require all inhabitants and persons within the ( \_\_\_\_\_ of \_\_\_\_\_ or unincorporated area of the County), Florida, to use exclusively the Resource Recovery System identified in the Interlocal Agreement for the disposal of all solid waste generated within the ( \_\_\_\_\_ of \_\_\_\_\_ or the unincorporated area of the County. This ordinance is intended to ensure that the Resource Recovery System receives an adequate quantity of solid waste from the solid waste generated within the boundaries of \_\_\_\_\_.
- (b) The ( \_\_\_\_\_ of \_\_\_\_\_ , or the County on behalf of the unincorporated area of Broward County) hereby directs that all solid waste generated within (its geographic boundaries or the unincorporated area of the County) be delivered to the Resource Recovery System facilities designated in the Plan of Operations under the Interlocal Agreement. Further, the \_\_\_\_\_ of \_\_\_\_\_ hereby relinquishes any and all title and interest in such solid waste upon delivery of such solid waste to the Resource Recovery System facilities designated in said Plan of Operations.
- (c) Waste generated in the \_\_\_\_\_ is not subject to the requirements in paragraph (b) if it is shown to be destined for disposal or recycling

# Exhibit 2

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at any facility located outside the State of Florida. To make such a showing, a hauler shall execute a form approved by the Broward Resource Recovery Board and the form shall be delivered to the Broward Solid Waste Disposal District. In the form, the hauler shall recite facts which demonstrate the solid waste shall be transported and disposed outside the State of Florida.

(d) The ( \_\_\_\_\_ of \_\_\_\_\_, or the Board of Commissioners of Broward County, Florida) shall conform the terms and conditions of any agreement that it may have with a hauler of solid waste to the terms and conditions of the Interlocal Agreement.

(e) Nothing herein shall be read or construed to discourage or prohibit either voluntary or locally ordained programs segregating new or used materials at the point of generation for reuse or recycling.

Section 4. Effective Date. This Ordinance shall become effective immediately upon compliance with any statutory requirements relating to notice and publication hereof.

DONE AND ADOPTED in regular session this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(GOVERNING BODY)

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

Title:

## EXHIBIT D REPORTING REQUIREMENTS

AN ORDINANCE ESTABLISHING SOLID WASTE FLOW CONTROL REPORTING REQUIREMENTS PURSUANT TO SECTION 403.713, FLORIDA STATUTES AND SECTION 4.3 OF THE INTERLOCAL AGREEMENT DATED DECEMBER 31, 2010 BY AND BETWEEN THE CONTRACT COMMUNITIES AND BROWARD COUNTY, FLORIDA, PROVIDING FOR THE BROWARD SOLID WASTE DISPOSAL DISTRICT; REQUIRING THE REPORTING OF ALL SOLID WASTE COLLECTED WITHIN THE BOUNDARIES OF \_\_\_\_\_ PROVIDING FOR REMITTANCE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, because of the elevation and high ground water level of Broward County, Florida, (the "County"), disposal of solid waste through means other than landfills has been encouraged; and

WHEREAS, the Legislature of the State of Florida has discouraged the dumping or burying of solid waste matter and the use of sanitary landfills as the sole method of disposal of solid waste; and

WHEREAS, because of environmental concerns with utilizing landfilling as the sole method of disposal of solid waste generated by the residents and visitors of the County, certain municipalities within the County and the County have sought a joint solution to such concerns; and

WHEREAS, Section 403.713, Florida Statutes, provides that (a) "any local government that undertakes resource recovery from solid waste pursuant to general law or special act may control the collection and disposal of solid waste, as defined by general law or such special act, which is generated within the territorial boundaries of such local government and other local governments which enter into interlocal agreements for the disposal of solid waste with local government sponsoring the resource recovery" facilities (b) "any local government which undertakes resource recovery of solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction"; and (c) "such solid waste will not include recovered materials, whether separated at the point of generation or after collection, that are intended to be held for

# Exhibit 2

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purposes of recycling ...”; however, the handling of such materials shall be subject to applicable state and local public health and safety laws; and

WHEREAS, consistent with Chapter 403, Part IV, Florida Statutes and in furtherance of addressing the problems created by the disposal of solid waste, certain municipalities within the County (the “Contract Communities”) have entered into an Interlocal Agreement (the “Interlocal Agreement”) which provides for, among other things, the disposal of solid waste generated within the Contract Communities and the unincorporated area of the County; and

WHEREAS, Section 4.3(a) of the Interlocal Agreement provides that each Contract Community and the County shall enact waste flow control ordinances pursuant to Section 403.713 of the Florida Statutes, directing that solid waste generated within each Contract Community and the unincorporated area of the County be delivered to the designated Resource Recovery System facilities, except for solid waste which is to be transported outside the State of Florida; and

WHEREAS, each Contract Community and the County agreed in the Interlocal Agreement to enact an ordinance in furtherance of flow control, as authorized by F.S. 403.713, and agreed to require reporting by all haulers collecting solid waste generated within the boundaries of the communities;

NOW, THEREFORE, be it ordained by the (governing body of Contract Community or Board of Commissioners of Broward County), Florida, that:

Section 1. Findings. The findings set forth in the foregoing preamble to this Ordinance are hereby approved and confirmed.

Section 2. Definitions. For the purpose of this Ordinance, the definitions contained in the Interlocal Agreement dated December 31, 2010 shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word “shall” is always mandatory and not merely directory.

(a) Contract Communities. The term “Contract Communities” shall refer to the municipal corporation or corporations existing under the laws of the State of Florida

# Exhibit 2

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located within the County that from time to time enter into the Interlocal Agreement.

- (b) 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.
- (c) District. The term "District" shall mean the Broward Solid Waste Disposal District formed pursuant to the Interlocal Agreement and state law. The geographic boundaries of the DISTRICT shall be coterminous with the geographic boundaries of the CONTRACT COMMUNITIES which have executed this agreement and unincorporated Broward County.
- (d) Haulers. The term "haulers" shall mean those persons, firms or corporations or governmental agencies which collect solid waste (either under oral or written contract, license, permit or otherwise) within the geographic boundaries of the CONTRACT COMMUNITY(IES) or the unincorporated County, or provide for the transportation or delivery of such solid waste to facilities inside or outside the District.
- (e) Interlocal Agreement. The term "Interlocal Agreement" shall refer to that certain Interlocal Agreement, dated December 31, 2010, by and among the County and the Contract Communities, providing for the Broward Solid Waste Disposal District, as amended or supplemented from time to time pursuant to the provisions of the Interlocal Agreement.
- (f) Resource Recovery System. The term "resource recovery system" shall refer to the resource recovery facilities which are constructed, operated and maintained pursuant to the Interlocal Agreement.
- (g) Solid Waste. The term "solid waste" shall have the meaning set forth in Chapter 403, Part IV, Florida Statutes.
- (h) Processable Waste. The term "processable waste" shall mean that portion of the solid waste stream which is capable of being processed in the mass burn resource recovery facilities used by the District, including, but not limited to, all forms of household and other garbage, trash, rubbish, refuse, combustible agricultural,

commercial and light industrial waste, commercial waste, leaves and brush, paper and cardboard, plastics, wood and lumber, rags, carpeting, occasional tires, wood furniture, mattresses, stumps, wood pallets, timber, tree limbs, ties, and logs, not separated and recycled at the source of generation. Processable waste does not include unacceptable waste and unprocessable waste, except, to the extent consistent with the regulatory and permit requirements applicable to the processing of waste by the District's mass burn resource recovery facilities and to the extent that minor amounts of unacceptable waste may be contained lawfully in the processable waste.

- (i) Unacceptable Waste. The term "unacceptable waste" shall mean motor vehicles, trailers, comparable bulky items of machinery of equipment, highly flammable substances, hazardous waste, sludges, pathological and untreated biological wastes, liquid wastes, sewage, manure, explosives and ordinance materials, and radioactive materials. Unacceptable waste shall also include any other material not permitted by law or regulation to be disposed of at a Class 1 landfill. None of such material shall constitute either processable waste or unprocessable waste. Haulers shall not knowingly deliver such unacceptable waste to and the DISTRICT and full service contractors shall have the right to exclude such unacceptable waste from the Resource Recovery System.
- (j) Unprocessable Waste. The term "unprocessable waste" shall mean that portion of the solid waste stream that is predominately noncombustible and therefore, should not be processed in the mass burn facilities used by the Resource Recovery System. Unprocessable waste shall include, but not be limited to, metal furniture and appliances, concrete rubble, mixed roofing materials, noncombustible building debris, rock, gravel and other earthen materials, equipment, wire and cable, and any item of solid waste exceeding six feet in any one of its dimensions or being in whole or in part of a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion, and processable waste (to the extent that it is contained in the normal unprocessable waste stream). Unprocessable waste includes construction and demolition debris as defined in F.S. 403.703(6).

Section 3. Reports. Each hauler that collects processable solid waste generated within the boundaries of \_\_\_\_\_ shall file monthly reports on forms approved by the Broward Resource Recovery Board. Said reports shall provide the following information about the hauler's activities during the prior month:

- (1) The amount/quantity (in tons or cubic yards) of processable solid waste collected by the hauler that has been generated within \_\_\_\_\_, with regard to each facility identified in (2).
- (2) The name, address and contact person of each facility where the processable solid waste has been transported/delivered by the hauler.
- (3) A summary table of delivery tickets information from each facility must be attached to the monthly report.

The above described reports shall be remitted to the Executive Director of the Broward Resource Recovery Board no later than the fifteenth (15<sup>th</sup>) day of each succeeding month.

Section 4. Reports. Each hauler that collects unprocessable solid waste generated within the boundaries of \_\_\_\_\_ where said solid waste is to be transported outside the State of Florida, shall file monthly reports on forms approved by the Broward Resource Recovery Board. Said reports shall require the following information:

- (1) The quantity (either by volume, weight, or number and size of all trucks or containers) of unprocessable solid waste which has been collected by the hauler within the Contract Communities and unincorporated County which is to be transported outside the State of Florida.
- (2) The name, address and contact person of each facility where the unprocessable waste has been transported/delivered.
- (3) A summary table of delivery tickets information from each facility must be attached to the monthly report.

The above described reports shall be remitted to the Executive Director of the Broward Resource Recovery Board no later than the fifteenth (15<sup>th</sup>) day of each succeeding month.

# Exhibit 2

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Section 5. Effective Date. This Ordinance shall become effective immediately upon compliance with any statutory requirements relating to notice and publication hereof.

DONE AND ADOPTED in regular session this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

(GOVERNING BODY)

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

Titles:

# Exhibit 3

## SUMMARY OF THE SERVICE AGREEMENT

---

- 1) The Service Agreement is a contract between the Broward Solid Waste Disposal District (the "District"), Wheelabrator North Broward, Inc., and Wheelabrator South Broward, Inc. (collectively, the "Companies") for processing the District's solid waste at the Companies' Waste-to-Energy Plants (the "Facilities").
- 2) The Service Agreement will have a term of 10 years, beginning August 4, 2011. The Service Agreement may be extended for an additional 10 years with the mutual written consent of the District and the Companies.
- 3) The Service Agreement will not take effect unless the Interlocal Agreement is executed and delivered on or before December 31, 2010 by the Contract Communities representing at least 80% of the District's Solid Waste deliveries to the Facilities in 2009.
- 4) If the Service Agreement takes effect, the Companies will pay a bonus of \$12,000,000 (minus any amounts already paid to the Contract Communities), which will be divided between the existing Contract Communities as indicated by the attached Chart below.
- 5) The District must deliver all of its processable waste to the Facilities. However, this requirement does not apply to source-separated recyclable materials or solid waste that is destined for disposal at a location outside of Florida. There is no put or pay requirement or minimum guarantee.
- 6) The District will pay a Service Fee of \$47.75 (2009 rate) for each ton of solid waste the District delivers to the Facilities. The Service Fee will be adjusted on August 4, 2011 to reflect the inflation from October 2009.
- 7) The Service Fee will be adjusted each year, beginning on October 1, 2012, based on the Adjustment Factor. The adjustments shall not be less than 1% or more than 5% per annum.
- 8) The District will pay a lower Service Fee than any non-ILA municipality in Broward County that uses the Facilities.
- 9) The Service Fee will be adjusted if a Change in Law or the District's willful misconduct, negligence, or unexcused failure causes the Companies to incur new capital costs, or increased costs for operating and maintaining the Facilities, or a loss of revenue. However, the District is not obligated to pay an increase in the Service Fee of more than 10% in any one year or more than 40% over the term of the Service Agreement.

# Exhibit 3

## SUMMARY OF THE SERVICE AGREEMENT

---

- 10) The District shall use its best efforts to enforce the Flow Control and Enforcement Ordinances mandated under the Interlocal Agreement.
- 11) The District will pay certain costs incurred by the Companies, including costs associated with constructing, operating and closing the County's ash monofill at the South Broward Facility, and various taxes associated with the Facilities. Each of these items will be paid on a lump-sum basis after the Companies incur the costs.
- 12) The Companies will permit the District, its authorized employees, agents, and representatives to inspect the Company records necessary to document and demonstrate compliance with the Service Agreement.
- 13) If the Company's willful misconduct, negligence, or unexcused failure increases the costs or expenses of the District or the Contract Communities in delivering or disposing its solid waste, the Service Fee will be adjusted to reflect such cost impact.
- 14) The District will share in the revenues received by the Companies from the sale of electricity and ferrous metals if the prices received by the Companies for electricity and ferrous metal exceed specified levels.
- 15) Within 120 days after the end of each Contract Year, each of the Companies will deliver an annual statement to the District documenting all of the Service Fees incurred and paid to each Company. If the District has overpaid a Company, the Company will refund the overpayment to the District with interest at delivery of the annual statement.
- 16) Waste Management, Inc. shall guarantee the operations and performance of the Companies under the Service Agreement. Waste Management, Inc. will execute and deliver this guarantee to the District by July 25, 2010.

As of June 21, 2010

**SOLID WASTE DISPOSAL SERVICE AGREEMENT**

**by and between**

**Wheelabrator South Broward Inc.,**

**Wheelabrator North Broward Inc.**

**and**

**Broward Solid Waste Disposal District**

**Dated as of December 31, 2010**

## TABLE OF CONTENTS

Article I.	CERTAIN DEFINITIONS.....	1
Article II.	TERM; CONDITIONS PRECEDENT.....	10
Article III.	COMMITMENT TO DELIVER AND ACCEPT, OPERATION OF FACILITIES.....	12
	Section 3.01 Commitment to Deliver and Accept District Waste.....	12
	Section 3.02 Operation of the Facilities.....	13
	Section 3.03 Manner of Delivery.....	14
	Section 3.04 Weighing Records.....	15
	Section 3.05 Scale Accuracies.....	16
	Section 3.06 Queuing Times.....	16
	Section 3.07 Residue.....	17
	Section 3.08 Access and Security.....	17
	Section 3.09 Permits and Licenses.....	18
	Section 3.10 Books, Records and Accounts.....	18
	Section 3.11 Rules and Regulations.....	18
	Section 3.12 Disposal of Processable Waste for Others.....	19
	Section 3.13 Reimbursement of Pass-Through Costs.....	19
	Section 3.14 Equal Employment Opportunity.....	19
Article IV.	REFUSAL OR INABILITY TO ACCEPT OR DELIVER WASTE.....	20
	Section 4.01 General.....	20
	Section 4.02 Inability or Refusal to Accept Delivery.....	20
	Section 4.03 Inability or Refusal to Deliver.....	22
	Section 4.04 Waste Other than Solid Waste.....	22
Article V.	SERVICE FEE.....	23
	Section 5.01 In General.....	23
	Section 5.02 Adjustments to Tipping Fee.....	24
	Section 5.03 Monthly Pass-Throughs.....	28
	Section 5.04 Annual Estimation Process.....	29
	Section 5.05 Monthly Statement.....	30
	Section 5.06 Annual Settlement.....	31
	Section 5.07 Corrections and Survival.....	33
	Section 5.08 Special Payments.....	34
	Section 5.09 Companies' Obligation to Justify Payment.....	35
Article VI.	FORCE MAJEURE.....	35
	Section 6.01 Inability to Perform or Delay in Performance.....	35
	Section 6.02 Effects of Compensable Event; Company Fault.....	35
	Section 6.03 Notice.....	36
	Section 6.04 Uncontrollable Circumstance of District.....	36
	Section 6.05 Termination Due to Increases in the Service Fee.....	36
Article VII.	INSURANCE AND INDEMNIFICATION.....	37
	Section 7.01 Indemnity.....	37
	Section 7.02 Insurance.....	38
Article VIII.	TERMINATION; BREACH; DISPUTE RESOLUTION.....	38
	Section 8.01 Termination for Breach or Event of Default.....	38
	Section 8.02 Independent Engineer.....	40
Article IX.	CONFIDENTIALITY.....	41
Article X.	REPRESENTATION, WARRANTIES AND OPINIONS.....	43
	Section 10.01 Representations and Warranties; Legal Opinions.....	43
Article XI.	GENERAL PROVISIONS.....	45
	Section 11.01 Further Assurances.....	45

Section 11.02	Notices .....	45
Section 11.03	Limitation of Liability.....	46
Section 11.04	Assignment; Successors and Assigns.....	46
Section 11.05	Sale of Facilities.....	46
Section 11.06	Alternate Performance Security.....	47
Section 11.07	Governing Law, Jurisdiction, Venue and Attorneys Fees.....	47
Section 11.08	Waiver of Jury Trial.....	47
Section 11.09	Reference and Headings; Schedules and Exhibits.....	47
Section 11.10	Counterparts.....	48
Section 11.11	Severability.....	48
Section 11.12	Construction.....	48
Exhibit A: Adjustment Factor.....		50
Exhibit B: Flow Control and Enforcement Ordinance.....		
Exhibit C: Interlocal Agreement.....		
Exhibit D: Parent Guarantee.....		
Exhibit E: South Facility Site Lease Amendment.....		
Schedule 1: Waste Delivery Schedule.....		

**SOLID WASTE DISPOSAL SERVICE AGREEMENT**

THIS SOLID WASTE DISPOSAL SERVICE AGREEMENT, dated as of December 31, 2010, is made by and between Wheelabrator North Broward Inc., a Delaware corporation (“WNB”), Wheelabrator South Broward Inc., a Delaware corporation (“WSB”, and together with WNB, each a “Company” and collectively the “Companies”), and the Broward Solid Waste Disposal District (the “District”). Capitalized terms not otherwise defined herein shall have the respective meanings assigned thereto in Article I hereof.

**WITNESSETH:**

WHEREAS, WNB is the owner of mass burn resource recovery facility located at 2600 Wiles Road, Pompano Beach, Florida (the “North Plant”), and WSB is the owner of a mass burn resource recovery facility located at 4400 South State Road 7, Ft. Lauderdale, Florida (the “South Plant”, and together with the North Plant, each a “Facility” and collectively the “Facilities”), each of which was constructed for the purposes of receiving and disposing of Processable Waste by the process of combustion, generating energy in the form of steam or electricity, and recovering certain by-products therefrom; and

WHEREAS, Broward County, Florida, a political subdivision and body politic of the State of Florida (the “County”) and the Contract Communities have entered into the Interlocal Agreements pursuant to which the District is responsible for the disposal of all Solid Waste delivered by or on behalf of the Contract Communities; and

WHEREAS, the District desires to secure a long-term disposal option for all of the Processable Waste generated within the Contract Communities; and

WHEREAS, each of the District and the Companies desire, for mutual consideration, to enter into a long-term contractual relationship pursuant to which the District will deliver or cause to be delivered to the Facilities, and the Companies will accept at the Facilities and take ownership of and responsibility for, all Processable Waste generated within the Contract Communities;

NOW THEREFORE, in consideration of the foregoing premises, and the mutual conditions, covenants and promises contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

**Article I. CERTAIN DEFINITIONS**

Section 1.01 Definitions. As used herein, the following terms shall have the meanings set forth below:

“Adjustment Factor” shall be determined in accordance with Exhibit A hereto.

“Affiliate” means, with respect to any Person, any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person.

“Agreed-Upon BLS Series” shall have the meaning set forth on Exhibit A hereto.

“Agreement” means this Solid Waste Disposal Service Agreement, together with all Schedules and Exhibits attached hereto, as amended from time to time in accordance with the terms hereof.

“Annual Settlement Statement” has the meaning given in Section 5.06 hereof.

“Applicable Rate” means the rate equal to two percentage points over the then current bank prime loan rate established by the Federal Reserve, but in no event shall such rate exceed that which is allowable under applicable law.

“Base Tipping Fee” shall mean Forty Seven Dollars and Seventy Five Cents (\$47.75).

“Change in Law” means, after the Contract Date (a) the adoption, promulgation, issuance, modification or change in interpretation of any federal, state or local law, regulation, rule, requirement, ruling or ordinance of the United States or any state or territory thereof, unless such law, regulation, rule, requirement, ruling or ordinance was on or prior to the Contract Date fully adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental entity or official having jurisdiction (provided, that it shall not constitute a Change in Law if an administrative regulation which existed on the Contract Date in temporary or proposed form and was treated as generally applicable to transactions of the type contemplated hereby and thereafter becomes final in identical form); (b) the issuance of an order and/or judgment of any governmental entity or official having jurisdiction, to the extent such order and/or judgment constitutes a reversal of a prior applicable order and/or judgment, or an overturning of prior administrative policy or judicial precedent; or (c) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the operation, ownership or possession of a Facility or a Facility Site, to the extent such suspension, termination, interruption or failure of renewal is not caused by any action or inaction of a Company or any of its Affiliates (provided that for the purposes of determining whether a suspension, termination, interruption or failure of renewal was so caused, any reason or finding set forth in writing by the agency responsible for issuance of such permit, license, consent, authorization or approval shall be accorded the rebuttal presumption of accuracy), provided that no Change in Tax Law, change in foreign law, or change in law which adversely affects a Company's legal rights as a licensee, grantee, owner or user of any patent, intellectual property, or other “know-how” in respect of proprietary technology intended to be utilized by it in performing its

obligations under this Agreement, shall constitute a Change in Law for any purposes of this Agreement.

“Change in Tax Law” means, after the Contract Date, any event of the kind referred to in clause (a) or (b) of the definition of “Change in Law” in respect of federal, state or local tax law pertaining to a Company’s income taxes or other taxes applicable to a broad range of business or industrial facilities in the United States; provided, however, that in no event shall a “Change in Tax Law” include a discriminatory sales tax or tax law having application to a Company as the owner or operator or both of a Facility.

“Class I Waste” shall have the meaning set forth in Section 62-701.200(13), Florida Administrative Code. Class I Waste includes garbage and other non-hazardous waste that may lawfully be placed in a “Class I landfill,” as described in Section 62-701.340(2)(a), F.A.C.

“Commencement Date” has the meaning given in Section 2.01.

“Company Event of Default” has the meaning given in Section 8.01(b).

“Company Fault” means the willful misconduct or negligence of a Company, or any of its agents, subcontractors or employees, or the unexcused failure of a Company or its agents, subcontractors or employees to perform its obligations hereunder.

“Compensable Event” means a Change in Law or the occurrence of District Fault.

“Confidential Information” has the meaning given in Article IX.

“Consulting Engineer” means a nationally recognized independent engineering firm with experience with mass-burn resource recovery facilities, which has been or is to be selected by the District to act as a representative of the District during the term of this Agreement.

“Contingency Landfill” means the Broward County Interim Contingency Landfill or any other landfill made available by the County for the disposal of certain limited amounts of Solid Waste pursuant to Section 4.02(d) of this Agreement.

“Contract Communities” means those municipal and other political subdivisions of the State of Florida located in the County which are parties to the Interlocal Agreement, and shall include the County in its capacity as a party to the Interlocal Agreement and as an unincorporated waste generation area with Solid Waste requiring Disposal.

“Contract Date” means the date this Agreement is executed by the District, which shall occur after the date this Agreement is executed by the Companies.

“Contract Year” means any full Fiscal Year occurring between August 4, 2011 and the date on

which this Agreement expires or is terminated, and any portion of a Fiscal Year occurring between August 4, 2011 and the following September 30 of the Fiscal Year in which that expiration or termination occurs.

“Deemed Deliveries” with respect to a Facility shall mean an amount of Tons equal to the sum of (a) the Processable Waste actually delivered by, for or on behalf of the District, (b) the Excused Diverted Waste arising as a result of District Fault and (c) the Unexcused Diverted Waste.

“Deliver”, “Delivered” or “Delivery” means the delivery of Processable Waste to the Facilities.

“Dispose” or “Disposal” means the Processing or Landfilling of Solid Waste.

“District Fault” means the willful misconduct or negligence of the District or any of its agents, subcontractors or employees, or the unexcused failure of District or its agents, subcontractors or employees, to perform its obligations hereunder.

“District Waste” shall mean all Processable Waste generated within the District, but excluding any Processable Waste that is transported to a disposal facility located outside the State of Florida in a manner allowed under the Flow Control and Enforcement Ordinances.

“Excused Diverted Waste” has the meaning given in Section 4.02(b).

“Excused Shutdown” has the meaning given in Section 4.02(b).

“Facility Capacity” means Eight Hundred Thousand (800,000) Tons of Processable Waste per Contract Year with respect to the South Plant and Eight Hundred Thousand (800,000) Tons of Processable Waste per Contract Year with respect to the North Plant, in each case subject to variation for planned maintenance and the heating value of the Processable Waste, prorated for any Contract Year of fewer than 12 months, as such number may be adjusted in accordance with the terms of this Agreement in connection with an event of Force Majeure or as a result of District Fault with respect to the Facility.

“Facility Site” means either the North Facility Site or the South Facility Site.

“Fiscal Year” means the fiscal year of the District, which currently commences on October 1 and ends on September 30.

“Flow Control and Enforcement Ordinances” means the ordinances adopted by the County and the Contract Communities setting forth the requirements for the disposal of District Waste, and the enforcement thereof, all in substantially the form attached hereto as Exhibit B.

“Force Majeure” means any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder or on a Facility, a Facility Site (including the South Facility Landfill) or the Contingency Landfill, or on the operation, ownership or possession of any or all of them,

if such event or condition 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 (the "Non-Performing Party") any obligation or complying with any condition required of such party under this Agreement; provided that the contesting in good faith of any event or condition constituting a Change in Law shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of such Non-Performing Party. The foregoing provisions shall not be construed to require that the Non-Performing Party observe a higher standard of conduct than that required by the usual and customary standards of the industry in question, as a condition to claiming the existence of an event of Force Majeure. Such events or conditions may include, but shall not be limited to, circumstances of the following kind:

(a) 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, civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a Facility unless knowingly accepted by a Company;

(b) Non-Company Strike;

(c) a Change in Law, or

(d) the determination by any federal, state or local governmental body, agency or authority, or any court of competent jurisdiction, that the removal, transport and disposal of the Residue requires handling or treatment that is more expensive than was required by applicable laws in effect on the Contract Date.

In any event, Force Majeure shall not include the following:

(aa) a strike, lockout, work stoppage or similar industrial or labor action other than those constituting Non-Company Strikes;

(bb) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure at a Facility Site;

(cc) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a Facility which is the result of any action or inaction or failure of compliance by a Company (provided that for the purposes of determining whether a suspension, termination, interruption or failure of renewal was the result of any such action or inaction or failure of compliance, any reason or finding set forth in writing by the agency responsible for issuance of such permit, license, consent, authorization or approval shall be accorded the

rebuttable presumption of accuracy);

(dd) any Change in Tax Law or other change in law expressly excluded from "Change in Law", as defined herein;

(ee) loss or unavailability of personnel desired by a Company to operate or maintain a Facility;

(ff) wear and tear or obsolescence of any parts or equipment utilized in or at a Facility;

(gg) any subsurface or surface condition at the South Facility Site, which was (i) ascertainable through visual inspection of the surface of the South Facility Site, (ii) known to the Company prior to the Contract Date, or (iii) reasonably foreseeable on the basis of generally acceptable knowledge of geologic conditions existing in southern Florida; or

(hh) 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 Facilities.

"Hazardous Waste" means (a) waste of a character and in sufficient quantity to be defined as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under applicable federal, state and local laws, as may be amended from time to time, including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281, (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766, and (3) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage, or disposal of toxic substances, or hazardous wastes, or (b) radioactive materials, which are source, special nuclear, or by-product materials, as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40, or (c) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a) or Section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11002(a), 110239(c) (Supp. 1993), in each case as the same may be amended, replaced, or superseded, or (d) a material or substance that is treated as a hazardous waste, substance, or material by any applicable federal, state, or local law, regulation or ordinance, or is otherwise prohibited by applicable permits or laws from being deposited in the North Plant or the South Plant. With regard to any materials or substances which are not Hazardous Waste as of the Contract Date, if any applicable law is subsequently declared or amended, or any governmental body having appropriate jurisdiction thereafter determines, that such material or substance is within the definition of Hazardous Waste, then such materials or

substances shall be considered Hazardous Waste for the purposes of this Agreement from and after the effective date of such declaration or amendment of law or governmental determination.

“Independent Engineer” means a nationally recognized independent engineering firm that has experience with mass-burn resource recovery facilities and is jointly selected by the District and the Companies in accordance with Section 8.02(a) hereof.

“Interlocal Agreement” means the agreement by and among the District and the Contract Communities, substantially in the form attached hereto as Exhibit C.

“Landfill” or “Landfilling” means the disposition of Residue, Unprocessable Waste, and mixed loads of Processable Waste and Unprocessable Waste in accordance with the terms and conditions of this Agreement, including the performance specifications hereof, all applicable federal, state and local laws, regulations and ordinances, and all applicable permits and licenses.

“Monthly Pass-Through” has the meaning specified in Section 5.03.

“Net Tipping Fee” means the then current Base Tipping Fee, plus or minus any adjustments required under Section 5.02 or Article VI of the Agreement.

“Non-Company Strike” means a strike, lockout, work stoppage, or similar industrial or labor action which involves labor relations of a Company on or about a Facility Site, but does not arise solely out of the direct relationship of a Company with its employees.

“North Facility Site” means the land upon which the North Plant is located.

“North Facility SWDA” means that certain Amended and Restated Solid Waste Disposal Service Agreement between the County and WNB, dated March 1, 1989, together with all amendments thereto, including the First Amendment to Amended and Restated Solid Waste Disposal Service Agreement, dated February 1, 2001.

“Operating Hours” means the dates and times during which a Facility is open for the Delivery of Solid Waste.

“Parent Guarantee” means the guarantee of Waste Management Inc. in substantially the form attached hereto as Exhibit D.

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

“Pit” means the refuse storage pit, located inside a Facility, where Processable Waste is deposited pursuant to this Agreement.

“Plan of Operations” means the Broward Solid Waste Disposal District Plan of Operations adopted pursuant to Section 5.4 of the Interlocal Agreement.

“Prior ILA” means that certain Interlocal Agreement, dated November 25, 1986 between the County and the twenty-six (26) signatory municipalities located within the County.

“Prior ILA Communities” means the County and the twenty-six (26) municipalities that executed the Prior ILA.

“Process” or “Processing” means the mass burning of Processable Waste by a Facility in accordance with the provisions hereof.

“Processable Waste” means that portion of the waste stream which is capable of being processed in the North Plant or the South Plant, including but not limited to, all forms of household and other garbage, trash, rubbish, and refuse, as well as combustible agricultural, commercial and light industrial waste, the combustible portion of construction and demolition debris, leaves and brush, paper and cardboard, plastics, wood and lumber, rags, carpeting, tires, wood furniture, mattresses, stumps, wood pallets, timber, tree limbs, ties, and logs. Processable Waste does not include any recyclable material that is source separated (i.e., removed from the waste stream at the point of generation) and recycled. However, Processable Waste includes the non-recyclable waste that remains after recyclable materials have been removed from the waste stream, regardless of whether the recyclable materials are source separated or removed from the waste stream at another location. Processable Waste does not include Unacceptable Waste and Unprocessable Waste, except to the extent consistent with the regulatory and permit requirements applicable to processing of waste by the North Plant and South Plant, and to the extent that minor amounts of Unacceptable Waste or Unprocessable Waste may be contained lawfully in Processable Waste.

“RRB” means the Resource Recovery Board formed pursuant to the Interlocal Agreement.

“Residue” means all bottom ash, fly ash, siftings and other material resulting from the Processing of Processable Waste at a Facility, but excluding ferrous metals and other materials (if any) which are removed from the Solid Waste stream (before or after burning) and sold or reused.

“Service Fee” has the meaning specified in Section 5.01.

“Solid Waste” means Processable Waste and Unprocessable Waste, but excludes Unacceptable Waste.

“South Facility Landfill” means the final disposal site for the Residue produced by the South Plant, Unprocessable Waste delivered to the South Facility Site by or on behalf of the District, and mixed

loads of Processable and Unprocessable Waste delivered to the South Facility Site by or on behalf of the District.

“South Facilities” means the South Plant and the South Facility Landfill.

“South Facility Site” means the land upon which the South Facilities are located, as described more specifically in the Amended and Restated Facility Site Lease Agreement (dated February 1, 2001) between the County and WSB.

“South Facility SWDA” means that certain Amended and Restated Solid Waste Disposal Service Agreement between the County and WSB (dated March 1, 1989), together with all amendments thereto, including the First Amendment to Amended and Restated Solid Waste Disposal Service Agreement (dated February 1, 2001).

“South Facility Site Lease” means that certain Second Amended and Restated Facility Site Lease Agreement between the County, as lessor, and WSB, as lessee, in substantially the form attached hereto as Exhibit E.

“Termination Date” shall have the meaning set forth in Section 2.01.

“Ton” or “ton” means 2,000 pounds, or .907 metric tons, also known as a “short ton.”

“Unacceptable Waste” means motor vehicles, trailers, comparable bulky items of machinery or equipment, highly flammable substances, Hazardous Waste, sludges, pathological and biomedical waste, biological wastes, liquid wastes, sewage, manure, explosives and ordinance materials, radioactive materials, and any material that cannot lawfully be accepted for disposal in the North Plant or the South Plant.

“Unexcused Diverted Waste” has the meaning given in Section 4.02(c).

“Unexcused Shutdown” has the meaning given in Section 4.02(c).

“Unprocessable Waste” means that portion of District's waste stream that is predominantly noncombustible and therefore should not be Processed in the North Plant or the South Plant. Unprocessable Waste shall include, but not be limited to, metal furniture and appliances, concrete rubble, mixed roofing materials, noncombustible building debris, rock, gravel and other earthen materials, equipment, wire and cable, and any other item exceeding six feet in one of its dimension or being in whole or in part of a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion, and Processable Waste (to the extent that it is contained in the normal Unprocessable Waste stream). Unprocessable Waste includes the noncombustible portion of construction and demolition debris, as defined in Section 403.703(6), Florida

Statutes (2009). Unprocessable Waste also includes all other items of Solid Waste, the acceptance and disposal of which, in the judgment of the Company, reasonably exercised, would be likely to (a) pose an unacceptable risk to health or safety, (b) cause damage to the Facility, or (c) be in violation of an applicable judicial decision, permit, authorization, license, approval, law or regulation. Unprocessable Waste does not include Unacceptable Waste, which the District shall not knowingly deliver to, and each of the Companies shall not knowingly accept at, the Facilities, and each of the Companies shall have the right to exclude from the Facilities.

“WM Landfill” means the Central Disposal Sanitary Landfill located at 2700 Wiles Rd, Pompano Beach, Florida, or any other landfill owned and operated by an Affiliate and designated by a Company which is used as the final disposal site for the Residue produced at the North Plant, Unprocessable Waste delivered to the North Plant, mixed loads of Processable and Uprocessable Waste delivered to the North Plant, or Processable Waste which either the North Plant or South Plant is unable to Process.

“Wheelabrator” means Wheelabrator Technologies Inc., a Delaware corporation.

Section 1.02 Definitions Adopted by Reference. Whenever a definition in this Agreement adopts by reference the definition contained in a statute or rule, the definition in this Agreement shall be based on the rule or statute as it exists on the Contract Date, unless otherwise provided herein.

## **Article II. TERM; CONDITIONS PRECEDENT**

Section 2.01 Initial Term. This Agreement shall become effective on the Contract Date and shall continue in full force and effect until August 3, 2021 (the “Termination Date”), unless sooner terminated as provided for herein; provided that, except as provided in this Article II, performance by the parties under this Agreement shall not commence until August 4, 2011 (the “Commencement Date”).

Section 2.02 Extension of Initial Term. Upon mutual written consent, the parties may elect to extend the term of this Agreement beyond the Termination Date for a period of ten (10) years. All terms and conditions then in effect, including the Service Fee (and any escalation thereof), shall remain in full force and effect during such extended term.

Section 2.03 Conditions Precedent to Company Obligations. The obligations of the Companies to perform their respective obligations hereunder on and after the Commencement Date pursuant to the provisions of this Agreement are subject to the satisfaction of the following conditions:

(a) On or prior to December 31, 2010, the Interlocal Agreement shall have been executed and delivered by Contract Communities whose deliveries to the Facilities represented at least eighty (80%)

percent of the deliveries to the Facilities made by or on behalf of all Prior ILA Communities in the 2009 calendar year.

(b) The following shall have occurred at least ten (10) days prior to the Commencement Date:

(i) WSB and the County shall have executed and delivered the South Facility Site Lease Amendment.

(ii) The District shall have delivered to the Companies evidence reasonably satisfactory to the Companies that the District has the authority and means to perform its obligations under this Agreement, which evidence shall include (1) a plan for the prompt adoption and implementation by the County and the District of an effective system for enforcing the rules and regulations of the District, including without limitation, the Flow Control and Enforcement Ordinances and (2) the District having, or the County making available to the District, the assets and personnel necessary to perform its obligations under this Agreement and the Interlocal Agreement.

(iii) The District shall have delivered to the Companies the legal opinion described in Section 10.01(a) hereof.

(iv) The County and the District shall have executed and delivered a letter agreement in a form reasonably acceptable to the Companies, pursuant to which the County or the District (as successor to the County) shall have waived any rights it may have under Section 2.2 of the North Facility SWDA and Section 2.2 of the South Facility SWDA to disposal rights at the Facilities at a discount to the disposal prices offered to third parties at the Facilities.

(v) WNB and the County shall have executed and delivered a letter agreement in a form reasonably acceptable to the parties, pursuant to which the parties shall agree to terminate the North Facility SWDA effective as of the Commencement Date of this Agreement.

(vi) Waste Management Inc. shall have executed and delivered the Parent Guarantee to the District.

Section 2.04 Effect of Failure to Satisfy Conditions Precedent. Each party shall make a good faith effort to satisfy the conditions precedent in Section 2.03 in compliance with the deadlines specified therein. In the event that the conditions precedent specified in Section 2.03(a) and Section 2.03(b)(i) through (v), other than the Companies' obligations set forth in Section 2.03(b)(iv) and (v), are not satisfied by the dates required therein, this Agreement may be terminated by the Companies on not less than five (5) days prior written notice to the District. The Companies' right to terminate this Agreement

pursuant to this Section 2.04 shall expire on the Commencement Date.

**Article III. COMMITMENT TO DELIVER AND ACCEPT, OPERATION OF FACILITIES.**

**Section 3.01 Commitment to Deliver and Accept District Waste.**

(a) Subject to the terms and provisions of this Agreement, throughout the Term of this Agreement the District shall Deliver or cause to be Delivered to the Facilities or elsewhere as provided herein, all District Waste without cost to the Companies (except as otherwise provided herein), and each Facility shall accept from the District for Processing or otherwise be responsible for the timely Disposal of all of the District Waste Delivered by or on behalf of the District, up to the Facility Capacity.

(b) Within thirty (30) days of the Contract Date, the Companies and the District shall mutually agree on a procedure for determining how the total amount of District Waste is to be delivered to each Facility, which procedure shall be specified in the Plan of Operations. The District Waste shall be delivered by the District in a manner which does not violate the maximum tonnage permitted in accordance with Schedule 1, the Processable Waste Delivery Schedule.

(c) The District shall use its best efforts to enforce the provisions of the Flow Control and Enforcement Ordinances that require all District Waste to be delivered to the Facilities. The District's efforts shall include, but not be limited to (i) appointing, employing, training and deploying, or contracting for, Code Enforcement Officers having the authority to issue citations within the District; (ii) funding the costs required to support the enforcement of the Flow Control and Enforcement Ordinances by establishing, pursuant to Section 3.1(11) of the Interlocal Agreement, tipping fees sufficient to fulfill the District's obligations under the Interlocal Agreement and this Agreement; (iii) requiring each of the Contract Communities to adopt and keep in effect a Flow Control and Enforcement Ordinance, in compliance with Section 4.3(a) of the Interlocal Agreement, throughout the term of this Agreement; (iv) exercising any rights the District has, pursuant to Section 4.3(a) of the Interlocal Agreement, as a third party beneficiary of the solid waste franchise agreements or other contractual arrangements between the Contract Communities and any Person that collects District Waste for the Contract Communities, if such action by the District is necessary to ensure that all District Waste is Delivered to the Facilities. The District shall require that the Code Enforcement Officer(s) appointed or contracted for by the RRB use reasonable efforts to investigate any alleged violations of the applicable flow control ordinances that are reported by either Company and to initiate such investigations within five (5) business days after receiving written notification thereof. During the Term of this Agreement, the District shall not consent to any amendment of the Interlocal Agreement that would preclude the District from complying with its obligations under this Section 3.01(c), unless the Companies provide their prior written consent, which

shall not be unreasonably withheld or delayed.

(d) The District shall have no obligation to deliver and the Facilities shall have no obligation to accept Unprocessable Waste; provided, however, that in the event of an emergency situation which, in the reasonable judgment of the District, and with the consent of WSB, such consent not to be unreasonably withheld, requires the Landfilling of Unprocessable Waste or mixed loads of Processable Waste and Unprocessable Waste at the South Facility Landfill, WSB shall use all reasonable efforts to accommodate the District's request to dispose of such waste materials in the South Facility Landfill. In such case, the District shall not be responsible for any tipping fees with respect to the disposal of Unprocessable Waste or mixed loads of Processable Waste and Unprocessable Waste at the South Facility Landfill, but shall reimburse WSB for any additional expenses reasonably incurred by WSB in connection with the disposal of such Solid Waste at the South Facility Landfill pursuant to this Section 3.01(d).

(e) The District has no obligation to Deliver Processable Waste of any specific heat content, composition, or quality to the North Plant or the South Plant. The Companies acknowledge and agree that the District makes no representations and provides no guarantees concerning the heat content, composition, or quality of the Processable Waste that the District will deliver or cause to be delivered to the Facilities.

#### Section 3.02 Operation of the Facilities.

(a) Each Company shall (i) operate, maintain and repair its Facility in accordance with good operating practices, and shall keep its Facility in good operating condition by timely making all necessary repairs and replacements, consistent with the prevailing standards in the waste-to-energy industry for Processable Waste handling, and consistent with good steam and electrical generating plant practices; and (ii) maintain the safety of its Facility at a level consistent with applicable law and good boiler and electrical generating plant practices; and (iii) maintain the general appearance and aesthetic quality of its Facility Site in a neat and orderly condition, while minimizing the presence of odors, vectors, birds, and litter.

(b) WSB shall operate and maintain the South Facility Landfill in good condition consistent with good Solid Waste handling practices, in a safe and orderly manner, consistent with applicable law, and in a responsible and orderly condition (given the nature of landfill operations and maintenance).

(c) Each Company shall provide, at its sole cost and expense, any and all necessary labor, materials, and equipment for the reasonable operation, maintenance and repair of its Facility, and will repair or replace, at its sole cost and expense, portions of its Facility which become worn out, lost, stolen, obsolete, destroyed, damaged or rendered unfit for use. To the extent that such cost or expense is

occasioned by a Compensable Event, the provisions of Section 6.02 hereof shall apply.

(d) The Companies shall operate the Facilities in compliance in all material respects with all applicable federal, state and local laws and regulation. The Companies shall not be deemed to have breached the obligations under the preceding sentence in respect of any period during which a Company may in good faith be contesting the validity or application of any such law or regulation.

(e) Under normal operating circumstances, the Companies shall keep the Facilities open for the receiving of Processable Waste from the District 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, every day of the year, excluding Christmas and Sundays. To the extent permitted by law and to the extent that capacity is available, the Companies shall use all reasonable efforts to keep the Facilities open for additional hours to accept Processable Waste and, in accordance with Section 3.01(d), Unprocessable Waste from or on behalf of the District in the event of emergency conditions and special collections, upon reasonable notice by the District of its intent to make such deliveries. Except as provided below, the District will pay to a Company charges for out-of-hours deliveries, which will be equal to the actual additional costs of the Company in accepting deliveries outside of its normal receiving hours, including direct additional overhead, plus a profit of 10%. However, the District shall not pay any charges for out-of-hours deliveries if the District's Solid Waste is delivered to the Facilities before 6 p.m. on any day of the year or if it is delivered during a declared emergency, as determined by the County.

### Section 3.03 Manner of Delivery

(a) All vehicles Delivering Solid Waste will be weighed at a Facility's scales upon entering and exiting a Facility Site. Each vehicle must be capable of self-powered mechanical unloading directly into the Pit. Each vehicle Delivering Solid Waste to a Facility for or on behalf of the District will be identified in a manner mutually satisfactory to the District and the Companies, provided that the Companies shall not require that the District provide more than the following information regarding each vehicle of haulers delivering Solid Waste to the Facilities for or on behalf of the District: (i) name of Contract Community or Communities whose Solid Waste is being Delivered, to the extent the origin of such Solid Waste is possible to ascertain; (ii) make, body type and motor vehicle registration number of each vehicle used; and (iii) status as municipal operator or contract hauler. Each Company will control all traffic flow into and out of its Facility Site and Pit. The Companies shall assist the District in preventing Processable Waste delivered by or on behalf of the District from being misidentified as Unprocessable Waste, but shall not have any liability or obligation resulting from such misidentification. The Companies may inspect any vehicle which they reasonably believe to be delivering Unacceptable Waste (or Unprocessable Waste or mixed loads of Processable Waste and Unprocessable Waste during periods when

Section 3.01(d) does not apply) to the Facilities for or on behalf of the District and may deny admission to a Facility Site to any vehicle carrying such waste, or any vehicle which appears likely to leak, spill or allow waste to be blown or scattered, or any vehicle which is not in a safe, clean and repaired condition.

(b) The District shall comply, and shall cause its agents and contractors to comply, with any and all reasonable safety and administrative rules imposed by the Companies, after consultation with the District, relative to entering upon and using a Facility Site and a Pit.

Section 3.04 Weighing Records.

(a) Each Company shall utilize and maintain motor truck scales calibrated to at least the accuracy required by Florida law to weigh all vehicles Delivering Solid Waste to a Facility. Each vehicle Delivering Solid Waste to the Facilities shall be weighed entering and exiting a Facility Site, with the weight difference resulting in the Tons of Processable Waste actually delivered. The Companies shall require that each vehicle delivering Solid Waste to the Facilities identify the hauler and, if possible, the name of the Contract Community or Communities whose waste is being delivered in such vehicle and the Companies shall make a record thereof. The Companies shall maintain such weight records (as well as weight records of deliveries other than on behalf of the District) for each Contract Year for a period of two (2) years thereafter (including for a two (2) year period following any termination or expiration of this Agreement with respect to the final Contract Year or portion thereof) and the District may inspect the weight records at the Facilities during normal business hours so long as the District does not interfere with the orderly operation of the Facilities. The Companies shall provide notice to the District prior to the destruction of any weight records and afford the District an opportunity to take the records or make copies thereof.

(b) Each Company will maintain daily records of total tonnages of (i) Solid Waste delivered to the Facility, (ii) Processable Waste accepted by the Facility, (iii) Excused Diverted Waste and Unexcused Diverted Waste which crossed the motor truck scales of the Facility prior to being diverted, and, with respect to WSB, (iv) if deliveries are made pursuant to Section 3.01(d), Unprocessable Waste accepted for Landfilling. The Company's daily records shall identify the origin of all such tonnages (as reported by the vehicle operators, if such vehicle is shown on the records of the Companies maintained pursuant to Section 3.04(a) as used for the delivery of waste for more than one Contract Community). The data referred to in the two preceding sentences are herein called collectively the "Tonnage Data". Every other Wednesday, the Companies shall electronically deliver to the District the Tonnage Data and the scale system ticket transfer data for the prior two (2) weeks, a weekly totals report, and such other information as is normally maintained by the Companies or required to be maintained by the Companies under this Agreement which may be reasonably requested by the District to administer the Interlocal

Agreement. The Tonnage Data shall identify the allocation of waste for each category listed in clauses 3.04(b)(i) through (iv), above, for each of the Contract Communities.

(c) All such information shall be provided to the District in a form reasonably acceptable to the District. The Companies shall utilize data gathering and compilation equipment which is compatible with the data processing equipment of the District. If the District after the Contract Date changes its data processing equipment, the Companies shall take, at the District's cost and expense, such steps as the District may reasonably request to transform the output of the Companies' data processing equipment into a form compatible with the District's data processing equipment. The District shall be responsible only for the incremental costs and expenses that are incurred at the District's request and are beyond those that would have been incurred by the Companies in installing, maintaining, and operating its own equipment.

Section 3.05 Scale Accuracies. Each Company shall have a qualified, independent, third party calibrate the scales at each Facility at least once each calendar quarter during each Contract Year. The results of each calibration test shall be reported in writing to the District within 14 days after the test is completed. The District or its authorized representative shall also have the right, at the District's sole expense, to test the accuracy of the truck scales at either of the Facilities provided that such tests are made at reasonable times and upon twenty-four (24) hours prior written notice, and do not interfere unreasonably with the orderly operation of the Facilities. A Company shall adjust the accuracy of the truck scales at its sole expense within ten (10) days of the date upon which such truck scales are determined to be inaccurate, as determined pursuant to Rule 5F-5.001, Florida Administrative Code (adopting by reference the specifications, tolerances, and other technical requirements for commercial weighing device adopted by the National Conference on Weights and Measures and contained in the National Institute of Standards and Technology (NIST) Handbook 44, 2007 Edition). Prior weight records and billings shall be adjusted to reflect inaccurate weight records upon the assumption that the scales became inaccurate at the mid-point between the previous scale adjustment and the date of such determination of inaccuracy. If the weighing facilities are incapacitated, the affected Company will repair such weighing facilities promptly. While such facilities are incapacitated, the Company will notify the District and, after consultation with the District on procedures to be utilized, will estimate the quantity of Solid Waste delivered based on container volumes and estimated data obtained from historical information and will keep records of such estimates. Such estimates will take the place of actual weight records for all deliveries made to a Facility during any scale outage.

Section 3.06 Queuing Times. The Companies shall operate the Facilities in such a manner as to reasonably ensure that vehicle queuing times shall be kept to a minimum. It is the Companies' intention that queuing times shall be less than ten (10) minutes at the Facilities. However, the District recognizes,

understands and agrees that queuing times are directly dependent upon a number of circumstances and events beyond the control of the Companies, including, without limitation, the District's delivery schedules, delivery vehicle conditions, vehicle driver experience and cooperation, and the like. Accordingly, the Companies shall be responsible for the reduction of queuing times in excess of the anticipated queuing times only to the extent such excess queuing times are within a Company's control. The Companies agree to cooperate with the District by implementing reasonable suggestions for the reduction of queuing times caused by circumstances outside of a Company's control. In no event shall the Companies provide any non-District delivery vehicle with preferential delivery rights over any District delivery vehicles.

Section 3.07 Residue.

(a) The Companies will be solely responsible for the Landfilling or other disposition of all Residue. Notwithstanding the preceding sentence, should any federal, state or local governmental body, agency or authority or any court of competent jurisdiction determine (i) that Residue from the South Plant must be disposed of other than at the South Facility Landfill, or (ii) that the removal, transport and Landfilling of Residue at the South Facility Landfill or WM Landfill requires special handling or other procedures more costly than those required for the Landfilling of Class I Waste, or (iii) that the physical characteristics or the operation of the South Facilities must be modified from those required on the Contract Date because of the composition or other characteristics of the Residue, or (iv) that Residue cannot be used as a part of the "initial cover" (as defined in Section 62-701.200(53) of the Florida Administrative Code) required for landfill cells, then such event or condition shall be deemed to constitute a Change in Law for which the affected Company shall be compensated in the manner provided in Articles V and VI. The Companies shall use all reasonable efforts in cooperation with the District to reduce or minimize such increased costs of disposal of Residue. The Companies shall use reasonable efforts, taking into account the overall economics of the Facilities, to find beneficial uses of the Residue, including the sale thereof.

(b) The Companies shall not use the South Facility Landfill for the Disposal of any Solid Waste received, or Residue generated, at the North Plant without the prior consent of the District.

Section 3.08 Access and Security.

(a) The Companies shall use all reasonable efforts to maintain and keep the Facilities reasonably safe and secure from intrusion by any unauthorized person at all times. The foregoing shall not restrict the right of a Company to permit any person to enter a Facility Site as the Company may deem appropriate.

(b) Authorized representatives of the District, the Contract Communities, the Consulting Engineer, and the Independent Engineer shall have access to each Facility during normal business hours, after giving reasonable advance notice to the Company, provided that each representative shall comply with all reasonable safety rules and regulations adopted by the Company and shall not interfere with the Company's operations.

Section 3.09 Permits and Licenses. The Companies shall be responsible for the maintenance of all permits and licenses associated with the operation of the Facilities. Each Company shall at its sole cost and expense conduct such tests of a Facility from time to time as shall be required by such permits and licenses, and shall send copies of the test results to the District when the test results are submitted to the state or federal regulatory agencies. Each Company also shall make such test results available for review and copying by the District during normal business hours. A Company 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 the Company shall not otherwise be relieved from performing its obligations under this Agreement unless such performance is relieved as a result of an event of Force Majeure or District Fault. The District shall provide all reasonable cooperation requested by the Companies in connection with such permits and licenses.

Section 3.10 Books, Records and Accounts. Each Company will maintain such books and records as may be reasonably necessary or appropriate in the performance of its obligation under this Agreement. All such books and records will be maintained in accordance with generally accepted accounting principles, will fairly and in reasonable detail reflect the dealings and transactions relating to the Company's activities under this Agreement, and will be sufficient to enable such dealings and transactions to be audited in accordance with generally accepted auditing standards. Each Company will permit the District, its authorized employees, agents and, representatives (which may include representatives of the Contract Communities), to inspect those portions of such Company's records necessary to document and demonstrate compliance with this Agreement and the costs incurred by a Company in connection with (a) adjustments (other than the annual adjustment pursuant to Section 5.02(a)) to the Service Fee payable by the District; or (b) costs for which such Company seeks reimbursement by the District pursuant to the terms of this Agreement.

Section 3.11 Rules and Regulations. Each Company, after consultation with the District, will establish general rules and regulations for a Facility, dissemination of information about the Facility and access of visitors to the Facility. All such rules and regulations will give due consideration to the

legitimate interests of the District in providing access to a Facility for guests of the District and, subject to the provisions of Section 3.08, and in providing information about the Facility and its operation to federal, state and municipal government officials having jurisdiction over such Facility.

Section 3.12 Disposal of Processable Waste for Others. The District recognizes, understands and agrees that the yearly disposal capacity of the Facilities may exceed the Tons of Processable Waste Delivered by the District. Accordingly, subject to the provisions of this Section 3.12, each Company shall have the right to accept Processable Waste from any third party at its Facility; provided that (i) no District Waste will be diverted from a Facility to allow for the delivery of such third party tonnage; and (ii) a Company shall not charge any municipal subdivisions of the State of Florida located within the County a tipping fee or service fee for the disposal of Processable Waste that is equal to or less than the then applicable Service Fee.

Section 3.13 Reimbursement of Pass-Through Costs. In the event that Processable Waste generated within any municipal subdivision of the State of Florida located within the County (other than any Contract Community) is accepted for disposal at the South Facility, the District shall be entitled to receive the credit specified in Section 5.06(d) below.

Section 3.14 Equal Employment Opportunity. The Companies will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or sexual orientation. The Companies will take affirmative action to ensure that applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, sexual orientation, ancestry, marital status or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Companies agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Each of the Companies will, in all solicitations or advertisements for employees placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, sexual orientation, ancestry, marital status or sex. Each Company will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Company's commitments in this regard and shall post copies of the notice in conspicuous places available to employees and applicants for employment. In addition to the above, each Company will use all reasonable efforts to ensure that minority business enterprises shall have the maximum practicable

opportunity to compete for subcontract work under this program. Each Company will cause all subcontractors to agree to observe the foregoing requirements.

#### **Article IV. REFUSAL OR INABILITY TO ACCEPT OR DELIVER WASTE**

Section 4.01 General. This Article IV sets forth provisions relating to the inability or refusal of the Companies to accept waste and the inability or refusal of the District to deliver waste, as well as the procedures for seeking to prevent the delivery of Unacceptable Waste to the Facilities, and for dealing with such Unacceptable Waste should any be delivered. Except as expressly stated herein, the Facilities shall be provided, operated, and maintained at the sole expense of the Companies.

#### Section 4.02 Inability or Refusal to Accept Delivery

(a) Each Company shall have the right, without liability to the District, to refuse delivery of the following types or categories of waste. In the event such types of waste are delivered to a Facility by or on behalf of the District and rejected by a Company, the Company shall cause, and the District shall pay for, the removal and disposal of such waste at an appropriate recycling or disposal facility:

- (i) Unacceptable Waste.
- (ii) Deliveries of Processable Waste not otherwise permitted pursuant to Schedule 1 – Waste Delivery Schedule;
- (iii) Subject to the provisions of Sections 3.01(d), any Solid Waste delivered at other than the Operating Hours.
- (iv) Any Solid Waste otherwise delivered by the District in a manner or by means not in conformity with the requirements of this Agreement.
- (v) Subject to the provisions of Sections 3.01(d), Unprocessable Waste or mixed loads of Processable Waste and Unprocessable Waste.

(b) Each Company shall use good faith and all reasonable efforts to Process the Processable Waste that such Company is required to Process under this Agreement. A Company shall not refrain from Processing Processable Waste it is capable of Processing (subject to Section 4.02(a)), because a less costly Disposal alternative is available to it or otherwise. A Company shall have the right, without liability to the District, to refuse Delivery of Processable Waste by the District to a Facility during periods in which events of Force Majeure or District Fault prevent such Company from accepting such Processable Waste for Disposal. During such events, an “Excused Shutdown” shall be deemed to exist, and the District shall, at no cost to the affected Company, cause any Processable Waste which cannot be accepted at the Facility that a Company would otherwise have been required to accept from the District, to be delivered

to either the Contingency Landfill, with respect to Processable Waste that WSB is unable to accept, or to the Central Disposal Sanitary Landfill, or if the Central Disposal Sanitary Landfill is incapable of receiving Solid Waste, such other WM Landfill as may be agreed upon by the parties, each acting reasonably, with respect to Processable Waste that WNB is unable to accept. Such diverted Processable Waste is referred to herein as "Excused Diverted Waste". Each Company shall promptly notify the District of the existence of an Excused Shutdown and, after receipt of such notice, the District may direct Excused Diverted Waste in accordance with the terms hereof, without causing such waste to pass the motor truck scales of the affected Facility. All such Excused Diverted Waste shall be weighed at the Contingency Landfill or the Central Disposal Sanitary Landfill (or other WM Landfill), as the case may be. The District shall notify the affected Company of the location or locations to which Excused Diverted Waste is being delivered, and the affected Company shall have the right to have a representative present at each such location to verify the weighing of such waste. The District shall provide compilations of such weight records to the affected Company on substantially the same schedule as the Companies are obligated to provide the District data regarding the delivery of Processable Waste to the Facilities pursuant to Section 3.04. The District shall not pay the Service Fee to the affected Company for any such Excused Diverted Waste, except that the District shall pay the Net Tipping Fee for all Excused Diverted Waste arising as a result of District Fault.

(c) If a Company is unable or unwilling to accept Processable Waste for Processing that the Company is required to accept from the District from time to time under this Agreement, under circumstances in which Sections 4.02(a) and (b) are not applicable, and such refusal or inability to accept such Processable Waste is not the result of District Fault or an event of Force Majeure, an "Unexcused Shutdown" shall be deemed to exist. During the period of any Unexcused Shutdown, the District shall cause Processable Waste that is not disposed of at the Facilities ("Unexcused Diverted Waste"), that a Company would otherwise have been required to accept from the District, to either be delivered to the Contingency Landfill, with respect to Processable Waste that WSB is unable to accept, or to the WM Landfill, with respect to Processable Waste that WNB is unable to accept, and the affected Company shall bear the actual costs of disposal of such Unexcused Diverted Waste, including, without limitation, the tipping fee cost at the Contingency Landfill (provided that such tipping fee cost shall not exceed the price charged for disposal of Class I waste or Processable Waste at the Contingency Landfill to unrelated third parties or, if such disposal is not provided to unrelated third parties, an amount sufficient to recover all of the costs incurred by the District in disposing of Unexcused Diverted Waste at the Contingency Landfill, plus a profit of 10%), incremental haul costs and all other costs actually incurred by the District or the Contract Communities in disposing of such Unexcused Diverted Waste. Each Company shall promptly notify the District of the existence of any Unexcused Shutdown and, after receipt of such notice the

District may direct Unexcused Diverted Waste in accordance with the terms hereof, without causing such waste to pass the motor truck scales of the affected Facility. The District shall take all reasonable steps to minimize costs to be borne by a Company pursuant to this Section 4.02(c), and shall notify the affected Company of the District's intent to incur costs of an extraordinary nature. All Unexcused Diverted Waste shall be weighed at the Contingency Landfill, the WM Landfill, or other disposal site. The District shall notify the affected Company of the location or locations to which Unexcused Diverted Waste is being delivered, and the affected Company shall have the right to have a representative present at each such location to verify the weighing of such waste. The District shall provide compilations of such weight records to the affected Company on substantially the same schedule as the Companies are obligated to provide the District data regarding the delivery of Processable Waste the South Facilities pursuant to Section 3.04. As provided in Article V, the District shall pay to the affected Company the Net Tipping Fee for all such Unexcused Diverted Waste.

(d) Contingency Landfill. At its sole cost and expense, the District will secure sufficient disposal capacity at the Contingency Landfill for all waste permitted to be disposed of at the Contingency Landfill pursuant to this Article IV. In no event shall more than 70,000 tons of Processable Waste constituting Unexcused Diverted Waste be disposed of at the Contingency Landfill in any Contract Year (subject to proportionate reductions for Contract Years containing fewer than 12 months) without the consent of the District.

Section 4.03 Inability or Refusal to Deliver.

(a) The District shall Deliver or cause the Delivery of all District Waste subject to the Interlocal Agreement and otherwise under its lawful control to the Facilities. During the Term of this Agreement, the District will not intentionally institute or administer a delivery program which would unreasonably discriminate in the delivery of Solid Waste among the facilities comprising the system administered by the District pursuant to the Interlocal Agreement.

(b) If, during any Contract Year, the Flow Control and Enforcement Ordinances are no longer in effect or not enforceable in one or more of the Contract Communities, the District shall Deliver to the Facilities all District Waste that is within the lawful control of the District, and use its best efforts to identify, implement, and enforce all of the measures that are legally available to the District for controlling the collection and Delivery of District Waste. Under such circumstances, the District also shall request the Contract Communities to enforce any solid waste franchise agreements that require the Delivery of District Waste to the Facilities.

Section 4.04 Waste Other than Solid Waste.

(a) The District shall institute all reasonable procedures to prevent the delivery to the Facilities of Unacceptable Waste by the District, the Contract Communities or its or their agents or contractors. To the extent such procedures would affect the operation of the Facilities, such procedures shall be reasonably acceptable to the Companies.

(b) The Companies shall cooperate with the District in connection with all matters regarding Unacceptable Waste under this Agreement. The Companies shall use all reasonable efforts to identify the source of any Unacceptable Waste delivered to the Facilities.

(c) Should any Unacceptable Waste be delivered to a Facility, such Unacceptable Waste shall be removed, transported and disposed of by the Company in accordance with all federal and state laws, rules and regulations governing such wastes, and the affected Company shall clean up the 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 Facility by or on behalf of the District or any Contract Community, the costs associated with such removal, transport, disposal and Facility clean-up shall be borne by the District.

(ii) Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Facilities other than by or on behalf of the District or any Contract Community, the costs associated with such removal, transport, disposal and Facility clean-up shall, as between the District and the affected Company, be borne by such Company.

(iii) Should the Person delivering such Unacceptable Waste be unknown or unidentifiable, the costs associated with such removal, transport, disposal and Facility clean-up shall be borne by the Company.

#### **Article V. SERVICE FEE**

Section 5.01 In General. In consideration for each Company's services and expenditures hereunder, and in addition to any other payments to be made to a Company hereunder (but without duplication), the District shall pay to each Company with respect to Solid Waste received by such Company a monthly service fee (the "Service Fee"). Subject to the other provisions contained herein, the Service Fee will be equal to the sum of: (i) the then current Net Tipping Fee multiplied by the Deemed Deliveries for such month; plus (ii) any Monthly Pass-Throughs; plus (iii) any other costs that are payable by the District pursuant to this Agreement, including, without limitation, any interest charges due for late payment; minus (iv) any credits, reimbursements, or payments that are due to the District pursuant to this

Agreement. The District shall budget the anticipated costs of the total annual Service Fee, plus a reasonable estimated contingency for additional costs, and shall include such amounts in the rates, fees and charges established each year by the RRB pursuant to Section 3.1(11) of the Interlocal Agreement.

Section 5.02 Adjustments to Tipping Fee.

(a) Adjustments for Inflation. The Base Tipping Fee shall be adjusted for inflation over the term of this Agreement, which adjustments shall never be less than one (1%) percent or greater than five (5%) percent per annum, and shall be calculated as follows:

(i) One Time Adjustment. The Base Tipping Fee shall be increased on August 4, 2011 by (1) 100% of the Adjustment Factor from October 2009 through April 2011 plus (2) 33.3% of the Adjustment Factor from April 2010 through April 2011. The Base Tipping Fee, as adjusted pursuant to this Section 5.02(a)(i), shall remain in effect through September 30, 2012.

(ii) Annual Adjustment. Commencing October 1, 2012 and on each October 1<sup>st</sup> thereafter, the then current Base Tipping Fee shall be increased by the Adjustment Factor for the prior April-to-April period. As an example, on October 1, 2012, the then current Base Tipping Fee shall be increased by the Adjustment Factor from April 2011 to April 2012.

(iii) Changes to Agreed-Upon BLS Series. In the event that the Bureau of Labor Statistics revises the standard reference base period, or if a change occurs in the structure of the Agreed-Upon BLS Series, the parties agree to use the applicable conversion factors supplied by the Bureau of Labor Statistics to convert the changed Agreed-Upon BLS Series to reflect the standard reference base period and structure of the Agreed-Upon BLS Series in effect as of the Contract Date.

(b) Capital Cost Adjustment. If as a result of a Compensable Event, a Company is required to make an additional capital investment to its Facility, (or, in the case of WSB, an additional capital investment to the South Facility Landfill) (in each case, a "Capital Cost Adjustment"), then a Capital Cost Adjustment shall be added to the then current Net Tipping Fee payable to such Company. A Capital Cost Adjustment for any Contract Year shall be determined by multiplying (A) an amount equal to the additional debt issued or equity contributed by the Company (including a reasonable return on such equity, but not to exceed 10%) to finance the cost of such capital investment, amortized over the lesser of the life of the capital improvement or the remaining life of the Facility, by (B) (i) if in connection with a Change in Law, a fraction, the numerator of which is the Deemed Deliveries by the District to the affected Facility during the twelve (12) months prior to the date that the Compensable Event occurred and the denominator of which is the total amount of Solid Waste delivered to such Facility by all Persons during such period, plus the total amount of Excused Diverted Waste and Unexcused Diverted Waste

during such period, or (ii) if as result of District Fault, by one (1). In the event that the Capital Cost Adjustment occurs within the first Contract Year, deliveries made during the twelve (12) months prior to the date of the Compensable Event by any of the Prior ILA Communities which are also Contract Communities under this Agreement will be included in the Deemed Deliveries made by the District for the purposes of determining the fraction in (B)(i) above, and the total amount of "Excused Diverted Waste" and "Unexcused Diverted Waste", as determined by the Prior ILA, during such period shall be included in the denominator. As an alternative to paying the Capital Cost Adjustment through an increase to the Net Tipping Fee, the entire amount may be paid on a lump sum basis. Regardless of when the Compensable Event occurs, a Company shall not be entitled to a Capital Cost Adjustment until such Company actually incurs capital expenses.

The value of the Capital Cost Adjustment to be used in the determination of the Net Tipping Fee payable to a Company during any Contract Year shall be the sum of each individual Capital Cost Adjustment then in effect with respect to the Service Fee, provided that all such adjustments shall be reduced to take into account all offsetting economic effects of the event triggering such adjustment, and of the adjustment itself, such as increases or decreases in revenue, increases or decreases in cost, or associated tax benefits or cost.

After the occurrence of a Compensable Event for which a Company seeks a Capital Cost Adjustment to the then current Net Tipping Fee, the affected Company shall submit to the District, with a copy to the Consulting Engineer, a notice describing such event, the cause(s) thereof (to the extent known to the Company), the Company's estimate of the Capital Cost Adjustment required as a result thereof, and the basis for the computation thereof. If a Compensable Event occurs, the then current Net Tipping Fee shall be adjusted in accordance with the undisputed portion of such estimate (as such estimate may have been modified by the course of discussions with the District and the Consulting Engineer). If the District and the affected Company cannot agree on the scope of the capital project or the amount of the Capital Cost Adjustment within thirty (30) days, the disputed matters shall be referred to the Independent Engineer for resolution as provided in Section 8.02 hereof. If any dispute regarding the scope of the capital project or the amount of a proposed Capital Cost Adjustment is referred to the Independent Engineer, the undisputed portions of such Capital Cost Adjustment shall be given effect, as estimated, during the pendency of such dispute before the Independent Engineer. If the Independent Engineer determines that such adjustment was excessive, the affected Company shall promptly reimburse the District the aggregate amount of any overpayment with interest at the Applicable Rate from the date of the overpayment until the date of such reimbursement. If the Independent Engineer determines that the disputed portions of the Capital Cost Adjustment should be paid by the District, the Net Tipping Fee shall

be promptly adjusted and the District shall promptly pay any overdue amounts, plus interest at the Applicable Rate from the date when such amounts were originally due and payable until the date of the District's payment.

(c) Operating and Maintenance Adjustment. If as a result of a Compensable Event, the actual costs of a Company for operating or maintaining a Facility, or in the case of WSB, for operating or maintaining the Landfill, increase, then an adjustment (the "Operating and Maintenance Adjustment") shall be added to the then current Net Tipping Fee payable to such Company, but the adjustment shall be paid only if and for so long as the Company incurs such increased costs. The amount of the Operating and Maintenance Adjustment for any Contract Year shall be determined at the time such costs first take effect and, thereafter, to the extent that the adjustment is attributable to an expenditure which may reasonably be expected to fluctuate in conformity with the Agreed-Upon BLS Series, the amount of the adjustment shall be calculated in accordance with fluctuations in the Agreed-Upon BLS Series, and to the extent that the adjustment is not so attributable, the amount of the adjustment shall be determined annually, based on the actual increase or decrease to operating and maintenance costs in any Contract Year attributable to such Compensable Event, provided that all such adjustments shall be reduced to take into account all offsetting economic effects of the event triggering such adjustment, and of the adjustment itself, such as increases or decreases in revenue, increases or decreases in cost, or associated tax benefits or cost. To determine the Operating and Maintenance Adjustment for any Contract Year, such increase or decrease shall be multiplied by (A) if in connection with a Change in Law, a fraction, the numerator of which is the average number of Deemed Deliveries by the District to the affected Facility during the twelve (12) months prior to the date that the Compensable Event occurred and the denominator of which is the total amount of Solid Waste delivered to such Facility by all Persons during such period, plus the total amount of Excused Diverted Waste and Unexcused Diverted Waste during such period, or (B) if as result of District Fault, by one (1). In the event that the Operating and Maintenance Adjustment occurs within the first Contract Year, deliveries made during the twelve (12) months prior to the date that of the Compensable Event by any of the Prior ILA Communities which are also Contract Communities under this Agreement will be included in the Deemed Deliveries made by the District for the purposes of determining the fraction in (A) above, and the total amount of "Excused Diverted Waste" and "Unexcused Diverted Waste", as determined by the Prior ILA, during such period shall be included in the denominator.

After the occurrence of a Compensable Event for which the affected Company seeks an Operating and Maintenance Adjustment to the then current Net Tipping Fee, the affected Company shall submit to the District, with a copy to the Consulting Engineer, a notice describing such event, the cause(s) thereof (to the extent known to the Company), the Company's estimate of the Operating and Maintenance

Adjustment required as a result thereof and the basis of computation thereof. The affected Company shall also specify whether it believes the adjustment to be of the sort that fluctuates with the Agreed-Upon BLS Series. If the District reasonably concurs with the amount and nature of such estimate, the then current Net Tipping Fee shall be adjusted in accordance with such estimate (as such estimate may have been modified by the Company in the course of discussions with the District and the Consulting Engineer). If the District and the Company cannot agree on the amount or nature of such Operating and Maintenance Adjustment within thirty (30) days, the disputed matters shall be referred to the Independent Engineer for resolution as provided in Section 8.02 hereof. If any dispute regarding the amount or nature of a proposed Operating and Maintenance Adjustment is referred to the Independent Engineer, the undisputed portions of such Operating and Maintenance Adjustment shall be given effect, as estimated, during the pendency of such dispute before the Independent Engineer. If the Independent Engineer determines that such adjustment was excessive, the Company shall promptly reimburse the District the aggregate amount of any overpayment with interest at the Applicable Rate from the date of such overpayment to the date of such reimbursement. If the Independent Engineer determines that the disputed portions of the Operating and Maintenance Adjustment should be paid by the District, the Net Tipping Fee shall be promptly adjusted and the District shall promptly pay any overdue amounts, plus interest at the Applicable Rate from the date when such amounts were originally due and payable until the date of the District's payment.

(d) Revenue Adjustment. If as a result of a Compensable Event, a Company suffers a documented loss of revenue, then an adjustment (a "Revenue Adjustment") shall be added to the then current Net Tipping Fee payable to such Company, but the adjustment shall be paid only if and for so long as the Company experiences the loss of revenue. The Revenue Adjustment for any Contract Year shall be equal to the reduction in revenues attributable to such Compensable Event during such Contract Year multiplied by (A) if in connection with a Change in Law, a fraction, the numerator of which is the average number of Deemed Deliveries by the District to the affected Facility during the twelve (12) months prior to the date that the Compensable Event occurred and the denominator of which is the total amount of Solid Waste delivered to such Facility by all Persons during such period, plus the total amount of Excused Diverted Waste and Unexcused Diverted Waste during such period, or (B) if as result of District Fault, by one (1). In the event that the Revenue Adjustment occurs within the first Contract Year, deliveries made during the twelve (12) months prior to the date that the Compensable Event by any of the Prior ILA Communities which are also Contracting Communities under this Agreement will be included in the Deemed Deliveries made by the District for the purposes of determining the fraction in (A) above, and the total amount of "Excused Diverted Waste" and "Unexcused Diverted Waste", as determined by Prior ILA, during such period shall be included in the denominator.

After the occurrence of a Compensable Event for which a Company seeks a Revenue Adjustment to the then current Net Tipping Fee, the affected Company shall submit to the District, with a copy to the Consulting Engineer, a notice describing such event, the cause(s) thereof (to the extent known to the Company), the Company's estimate of the Revenue Adjustment required as a result thereof and the basis of computation thereof. If the District concurs with part or all of such estimate, the Net Tipping Fee shall be adjusted in accordance with the undisputed portions of such estimate (as such estimate may have been modified by the Company in the course of discussions with the District and the Consulting Engineer). If the District and the affected Company cannot agree on the amount of such Revenue Adjustment within 30 days, the disputed matters shall be referred to the Independent Engineer for resolution as provided in Section 8.02 hereof. If any dispute regarding the amount of a proposed Revenue Adjustment is referred to the Independent Engineer, the undisputed portions of such Revenue Adjustment shall be given effect, as estimated, during the pendency of such dispute before the Independent Engineer. If the Independent Engineer determines that such adjustment was excessive, the Company shall promptly reimburse the District for the aggregate amount of any overpayment with interest at a rate equal to the Applicable Rate from the date of such overpayment to the date of such reimbursement. If the Independent Engineer determines that disputed portions of the Revenue Adjustment should be paid by the District, the Net Tipping Fee shall be promptly adjusted and the District shall promptly pay any overdue amounts, plus interest at the Applicable Rate from the date when such amounts were originally due and payable until the date of the District's payment.

(e) If a Company requests an adjustment pursuant to Sections 5.02(b), (c), or (d), the Company shall provide all of the information reasonably necessary for the District to evaluate the merits of the Company's request, and the District shall promptly review such information to ensure that the District's approval is not delayed or withheld unreasonably. The Company shall grant additional time for the District's review process, before referring the matter to the Independent Engineer, if additional time is reasonably needed to complete the review process.

Section 5.03 Monthly Pass-Throughs. The following costs and payments shall constitute Monthly Pass-Throughs and shall be included in the Service Fees payable hereunder:

- (a) charges for out-of-hours deliveries of Solid Waste to the South Facility by or on behalf of the District and the Contract Communities pursuant to Section 3.02(e);
- (b) the costs of removal and disposal of Unacceptable Waste delivered to the Facilities by or on behalf of the District pursuant to Section 4.02(a);
- (c) the costs of removal, transport, disposal and Facilities clean-up associated with

Unacceptable Waste, which are to be paid by the District pursuant to Section 4.04(c)(i);

- (d) the costs of planning, constructing and equipping new cells at the South Facility Landfill;
- (e) the costs of off-site disposal and treatment of leachate discharged from the South Facility Landfill;
- (f) the costs of capping and closing the South Facility Landfill in accordance with applicable laws; and
- (g) all real or personal property taxes, sales taxes, or similar fees or assessments (including non-ad valorem special assessments) incurred by a Company and related to the Company's ownership or operation of a Facility or a Facility Site, other than any taxes based on a Company's income; provided however that if the District is prohibited from paying such amounts or is otherwise unable to treat such expenses as Monthly Pass-Throughs, the Service Fee shall be adjusted or the District shall otherwise pay the affected Company in a manner reasonably acceptable to the affected Company to compensate the affected Company for such taxes and assessments. The District shall have no liability for the payment of taxes incurred by a Company for a business, operation, or activity that is not directly related to the disposal of the District's Processable Waste in the manner described herein.

Each of the foregoing items shall be paid by the District on a lump-sum basis after a Company incurs costs which constitute Monthly Pass-Throughs. Together with the estimates referred to in Section 5.04, on or before June 1st of each Contract Year, each Company shall deliver to the District an estimate of the amount of Monthly Pass-Throughs applicable to each month of the following Contract Year, but the District will pay the actual amount of Monthly Pass-Throughs incurred during such Contract Year notwithstanding any deviation from such estimate.

Section 5.04 Annual Estimation Process.

(a) Annually, prior to June 1st of each Contract Year, representatives of the Companies and the District shall meet and use their reasonable commercial efforts to agree to a distribution of the District Waste between the North Plant and South Plant for the following Contract Year based on the following criteria:

- (i) The then current Plan of Operations, including, without limitation, the designated disposal site within the Plan of Operations for each Contract Community;
- (ii) Past performance and projections for the following Contract Year of the throughput, availability, environmental compliance, maintenance requirements and electricity production of the North Plant and the South Plant;

- (iii) Historical data and projections related to Deliveries to the North Plant and the South Plant;
- (iv) Generation and delivery of Processable Waste within the Contract Communities during the prior Contract Year;
- (v) Optimizing transportation for the Contract Communities, and,
- (vi) Marketing plans of each Company related to the acceptance of Processable Waste from third parties in accordance with the terms of this Agreement.

If, on June 30 of any Contract Year, the Companies and the District have not reached mutual agreement on the distribution for the following Contract Year, the District Waste shall be divided equally between the Facilities.

(b) On each August 1 during the term of this Agreement, the Companies shall deliver to the District a good faith estimate of (i) the Service Fee for the following Contract Year, and (ii) each of the adjustments to the Net Tipping Fee to be made pursuant hereto during the following Contract Year, together with such information as shall reasonably support such estimates. The Monthly Service Fee for such Contract Year shall be determined in accordance with the terms of this Agreement and such estimates, as such estimates may have been modified by the Companies in the course of discussions with the District. Any differences between the estimates used to calculate the Service Fee during a particular Contract Year and actual amounts for such Contract Year shall be accounted for at the end of such year in connection with the Annual Settlement Statement provided for in Section 5.06.

Section 5.05 Monthly Statement. No earlier than ten days following the end of each calendar month during the term of this Agreement, each of the Companies shall render to the District a statement of the Service Fee (including Monthly Pass-Throughs) payable for such month. Such monthly statement shall set forth such information as shall reasonably support the determination by each Company in good faith of the amount of such Monthly Service Fee (subject to year-end adjustment).

Within fifteen (15) days after receipt of each such monthly statement, the District shall pay to each of the Companies all amounts that are due, as shown on such statement, and not subject to a good faith dispute. If such amount shall not be paid within such 15-day period, the District shall pay interest on such amount at the Applicable Rate from the end of such 15-day period until the date such amount is paid in full. All monthly payments shall be interim payments pending final settlement under Section 5.06. Subject to the provisions of Section 5.07 and Section 8.02 hereof, the District shall have the right to submit disputes regarding the amount of the Service Fee to the Independent Engineer for resolution as provided in Section 8.02 hereof, provided that the pendency of such dispute shall not relieve the District

of the obligation to pay undisputed amounts pursuant to the first sentence of this paragraph. If the Independent Engineer determines that the Service Fee was excessive, a Company shall promptly reimburse the District the amount of such excess with interest at the Applicable Rate from the date of payment by the District to such Company to the date of such reimbursement. If the Independent Engineer determines that the District should pay the disputed portion of the Service Fee, the District shall promptly pay such amount with interest at the Applicable Rate from the date when such payment was originally due.

Section 5.06 Annual Settlement.

(a) The Service Fees payable by the District to each Company for any Contract Year shall equal:

(i) the aggregate amount of all Monthly Pass-Throughs incurred by the Company pursuant to Section 5.03 hereof for such year; plus

(ii) the product of (A) the Net Tipping Fee in effect during such Contract Year and (B) the Deemed Deliveries to the Facility during such Contract Year; plus

(iii) any other costs or reimbursements payable to the Companies pursuant to this Agreement; minus

(iv) any credits, costs, or reimbursements payable to the District pursuant to this Agreement.

(b) In the event that a Compensable Event results in a savings in capital, operation, or maintenance costs, or an increase in revenue for a Company, such Company shall issue a credit to the District in the Annual Settlement Statement in an amount equal to the total of such savings multiplied by a fraction, the numerator of which is the total number of Tons of Deemed Deliveries to the Company's Facility during the twelve (12) months prior to the date that the Compensable Event occurred, and the denominator of which is (i) the total amount of Solid Waste delivered to such Facility by all Persons during such period, plus the total amount of Excused Diverted Waste and Unexcused Diverted Waste during such period, with respect to a Change in Law, and (ii) one (1), with respect to District Fault.

(c) Energy and Ferrous Metals Revenue Credit.

(i) In the event that the actual annual average electricity and capacity revenue dollar per megawatt hour sold during a Contract Year for the combined Companies exceeds \$88.00/MWH (to be adjusted consistent with Section 5.02 (a)), then, in such Contract Year, the Companies will give a credit to the District equivalent to (1) 25% multiplied by (2) a fraction, the numerator of which is the number of

Deemed Deliveries by the District and the denominator of which is the total amount of Solid Waste delivered to the Facilities by all Persons during such period multiplied by (3) the total megawatt hours sold by the Companies during such period multiplied by (4) the difference between the actual annual average revenue dollar per megawatt hour sold during such Contract Year for the Companies and \$88.00/MWH (to be adjusted consistent with Section 5.02 (a)). The revenue dollars above will be calculated net of fees related to power sales (i.e., transmission, distribution, and third party marketing fees, etc.). This calculation will be completed annually as a part of the Annual Settlement Statement calculations and any credit due to the District shall be paid at the same time as any other amounts are due to the District pursuant to Section 5.06(a). The credit due to the District, if any, shall be excluded from the calculation of interest for District overpayments or District underpayments as provided for in the second paragraph of Section 5.07.

(ii) In the event that the actual annual average revenue dollar per net ferrous metal ton recovered from the ash stream for the Companies exceeds \$50.00/ton (to be adjusted consistent with Section 5.02 (a)) during a Contract Year, then the Companies will give a credit to the District in such Contract Year equivalent to (1) 25% multiplied by (2) a fraction, the numerator of which is the number of Deemed Deliveries by the District and the denominator of which is the total amount of Solid Waste delivered to the Facilities by all Persons during such period multiplied by (3) the total net ferrous metal tons recovered from the ash stream that are sold by the Companies during such period multiplied by (4) the difference between the actual annual average revenue dollar per net ferrous metal ton for the combined Companies and \$50.00/ton (to be adjusted consistent with Section 5.02 (a)). The revenue dollars above will be calculated net of fees related to metals sales (i.e., transportation and third party marketing fees, etc.). The "net" ferrous metal ton refers to the intended exclusion of the ash entrained in the outbound metals which does not yield revenue. This calculation will be completed annually as a part of the Annual Settlement Statement calculations and any credit due to the District shall be paid at the same time as any other amounts are due to the District pursuant to Section 5.06(a). The credit due to the District, if any, shall be excluded from the calculation of interest for District overpayments or District underpayments as provided for in the second paragraph of Section 5.07.

(d) If, during any Contract Year, Processable Waste generated within any municipal subdivision of the State of Florida located within the County (other than any Contract Community) is accepted for disposal at the South Facility, the District shall be entitled to receive a credit equal to (1) the aggregate amount of the Monthly Pass-Through costs set forth in Sections 5.03 (d) – (g) incurred by WSB and passed through to the District pursuant to Section 5.03 hereof for such Contract Year, multiplied by (2) a fraction, the numerator of which is the number of Tons of Solid Waste delivered to the South Facility

by all municipal subdivisions of the State of Florida located within the County other than the Contract Communities and the denominator of which is the total amount of Solid Waste delivered to the South Facility by all municipal subdivisions of the State of Florida located within the County, including the Contract Communities, during such period. This calculation will be completed annually as a part of the Annual Settlement Statement calculations and any credit due to the District shall be paid at the same time as any other amounts are due to the District pursuant to Section 5.06(a). The credit due to the District, if any, shall be excluded from the calculation of interest for District overpayments or District underpayments as provided for in the second paragraph of Section 5.07.

Section 5.07 Corrections and Survival. Within 120 days after the end of each Contract Year, each of the Companies shall deliver to the District an annual settlement statement (the "Annual Settlement Statement"). The Annual Settlement Statement shall show the computation of the Service Fees for such Company for such year determined as set forth in the preceding paragraphs and a reconciliation of such amount with the Service Fees charged by such Company monthly during such Contract Year, including all adjustments required to reflect any discrepancies between (a) any estimated amounts used in the computation of the Service Fees as shown in such monthly statements and the actual amounts as determined at year end and (b) the tonnage amounts used to calculate the Net Tipping Fee adjustments, as per Ton figures during such year and the actual number of Tons for which the District is obligated to pay the Net Tipping Fee with respect to such year.

If the District has overpaid a Company, then such Company shall, at the time of its delivery of its Annual Settlement Statement, refund the overpayment to the District with interest as provided below. If the District has underpaid a Company, then the District within 30 days of receipt of the Annual Settlement Statement shall pay to such Company the additional amount due, with interest as provided below. Any amount due from a Company or the District under this paragraph shall bear interest at the Applicable Rate computed from the end of the Contract Year to which such Annual Settlement Statement relates to the date of payment in full of such amount.

If, after the delivery of the Annual Settlement Statement for any Contract Year, a Company or the District becomes aware that the Service Fee payable to such Company for such Contract Year should be or should have been increased or decreased (whether as a result of an error or as a result of the making of a payment or incurrence of a cost after the delivery of such Annual Settlement Statement that would properly be attributed to such Contract Year), (i) the District will pay to the affected Company an amount equal to the amount by which the Service Fee for such Contract Year should be or has been increased, or (ii) the affected Company will pay to the District an amount equal to the amount by which the Service Fee for such Contract Year should be or has been decreased. The party becoming aware that the annual

Service Fee should be adjusted shall render to the other party a statement setting forth the amount payable and information which reasonably supports the determination of such amount. Payments by the party receiving such statement shall be made within 20 days after receipt of such statement. Payments by the party delivering such statement shall accompany such statement.

Subject to Section 8.02 hereof, any dispute between a Company and the District with respect to the amount of adjustments to the Service Fee as shown on such Annual Settlement Statement or with regard to a subsequent adjustment as herein contemplated shall be referred within thirty (30) days after delivery of such Annual Settlement Statement to the Independent Engineer for resolution within thirty (30) days after such referral in accordance with Section 8.02 hereof.

All payment obligations of the District or a Company under this Agreement incurred or accrued prior to the expiration or termination of the Agreement pursuant to Section 8.01 or otherwise shall survive any such expiration or termination.

#### Section 5.08 Special Payments

(a) Wheelabrator Payment. On August 4, 2011, Wheelabrator shall pay to each Contract Community that (i) approved, by resolutions dated on or before January 1, 2010, that certain Memorandum of Understanding, dated September 1, 2009 by and between the Companies, the District, and the County (the "MOU"); and (ii) together with the District, signed the Interlocal Agreement on or before December 31, 2010, an amount equal to Twelve Million Dollars (\$12,000,000) times a fraction, the numerator of which is the Tons of Processable Waste delivered by or on behalf of such Contract Community to the Facilities in the twelve (12) months prior to July 2011, and the denominator of which is total Tonnage of Processable Waste delivered to the Facilities by or on behalf of all of the Prior ILA Communities for the same period. Wheelabrator shall also pay the District on August 4, 2011 an amount equal to (a) Twelve Million Dollars (\$12,000,000) less (b) any amounts paid or payable to the Contract Communities pursuant to the preceding sentence.

(b) District Payment. Not later than (60) days from April 1, 2012, the District shall pay to Wheelabrator an amount equal to (a) the difference between the "Service Fee", as such term is defined in North Facility SWDA and the Service Fee under this Agreement, each determined as of March 22, 2012 (and assuming in the case of the "Net Tipping Fee" under the North Facility SWDA, that the North Facility SWDA remained in full force and effect through March 22, 2012), multiplied by (b) the Tons of Processable Waste actually delivered by or on behalf of the District to the North Facility during the period commencing on August 4, 2011 through March 22, 2012. Notwithstanding anything to the contrary contained herein, the District shall continue to make deliveries of Processable Waste to the North Facility

consistent with the County's historical practices through March 22, 2012.

Section 5.09 Companies' Obligation to Justify Payment. In all cases where this Agreement requires the District to pay or reimburse the Companies for their costs, the District's obligation to pay is limited to the Companies' actual, reasonable, and documented costs, unless this Agreement explicitly provides otherwise. The District's obligation to reimburse the Companies for their costs is contingent upon the Companies providing the District with reasonable back-up documentation.

#### **Article VI. FORCE MAJEURE**

Section 6.01 Inability to Perform or Delay in Performance. If a Company is unable to perform, or is delayed in its performance of, any of its obligations under this Agreement by reason of any event of Force Majeure or event arising out of District Fault, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the Company to correct the adverse effect of such event of Force Majeure or District Fault. The Companies shall bear all costs or revenue impacts of an event of Force Majeure or Company Fault, but shall be entitled to an adjustment of the Service Fee as provided in Section 6.02 for a Compensable Event. A Company shall attempt to remedy with all reasonable dispatch the cause or causes of an event of Force Majeure or Company Fault, and the District shall cooperate with such efforts; provided, however, the settlement of strikes, lockouts, work slowdowns, and other similar industrial or labor action or of any legal actions or administrative proceedings shall be entirely in the discretion of the Companies. Each Company commits to use all reasonable efforts to reconstruct all or part of a Facility which may be physically damaged by an event of Force Majeure, Company Fault or District Fault should such reconstruction be practicable, commercially and otherwise, at such time. If a Company believes that an event qualifies as Compensable Event, the Company shall seek the District's acknowledgment to that effect or other resolution of the question prior to commencing reconstruction, but the Company may proceed with reconstruction at any time at its own risk.

Section 6.02 Effects of Compensable Events; Company Fault. Subject in all respects to Section 5.02:

(a) If a Compensable Event causes an increase in a Company's capital costs, or the costs of operating or maintaining a Facility, or the cost of operating or maintaining the South Facility Landfill, or decreases the revenue generated by the operation of a Facility, the Net Tipping Fee payable to such Company shall be adjusted in accordance with Section 5.02 to reflect such cost or revenue impact.

(b) If an event arising out of Company Fault increases the costs or expenses of the District or the Contract Communities in delivering or disposing of Solid Waste or otherwise, the Net Tipping Fee

shall be adjusted to reflect such cost impact. If the affected Company and the District agree upon the amount of part or all of the adjustment, the undisputed amount of the adjustment shall be adopted promptly. If the affected Company and the District are unable to agree about part or all of the adjustment, the disputed portions of the adjustment to the Net Tipping Fee shall not take effect unless there is a subsequent determination of the parties or adjudication that a Company is obligated to compensate the District for the disputed amounts. Upon such determination or adjudication, the District shall be compensated by the Company in a lump sum payment, together with interest at the Applicable Rate from the date that such cost increase was first sustained.

Section 6.03 Notice. If a Company claims excuse from performance hereunder on account of an event of Force Majeure or District Fault, it shall give written notice thereof to the District within thirty (30) days after obtaining knowledge thereof.

Section 6.04 Uncontrollable Circumstance of District. If the District is unable to perform, or is delayed in its performance of, any of its obligations hereunder by reason of any event or condition which has a material and adverse effect on the rights, duties and obligations of the District hereunder or on the District or the Contract Communities, and such event or condition is beyond its or their reasonable control and not the result of its or their willful or negligent action or omission or a lack of reasonable diligence on its or their part, then the Companies shall use good faith and all reasonable efforts, after consultation with the District, to minimize the adverse effects of such non-performance or delay. Without limiting the generality of the foregoing, in such event, the Companies shall cooperate in adjusting the hours, adjusting staffing at the Facilities, providing technical assistance, and taking such other appropriate action as may be necessary to accommodate the District's circumstance.

Section 6.05 Termination Due to Increases in the Service Fee. If in any Contract Year, a Change in Law occurs which results in an adjustment (which shall not include any Monthly Pass-Through paid by the District pursuant to Section 5.03 hereof) to the Service Fee for a Facility which (i) exceeds ten percent (10%) of the Service Fee in effect for the prior Contract Year, or (ii), when combined with all prior increases in the Service Fee due to Change in Law (excluding any Monthly Pass Through paid pursuant to Section 5.03 hereof), results in an adjusted Service Fee that is greater than one hundred forty percent (140%) of the Service Fee on the Contract Date as adjusted for inflation pursuant to Section 5.02(a), then the District and the affected Company shall have the respective rights and obligation set forth below:

(a) The District may give the affected Company written notice within thirty (30) days after receiving notice of any such Service Fee adjustment under Section 5.02 that the District is unwilling to pay such adjusted Service Fee.

(b) If the District delivers the notice referred to above, then, within sixty (60) days after the date on which the affected Company receives such notice, the affected Company may elect by notice to the District to adjust the Service Fee to an amount that shall not exceed one hundred ten percent (110%) of the Service Fee in effect immediately prior to the effective date of the Change in Law or one hundred forty percent (140%) of the Service Fee on the Contract Date, as adjusted for inflation pursuant to Section 5.02(a), and waive the right to receive that portion of the Service Fee to which it would otherwise be entitled to under Section 5.02 and Section 6.02, and in such case, this Agreement shall remain in effect for all matters (including future adjustments to the Service Fee subject to the provisions of this Section 6.05) other than the payment of such waived portions of the Service Fee. Alternatively, the affected Company may elect to terminate this Agreement, effective one hundred and eighty (180) days after receipt by the District of such notice of termination. If the affected Company makes no election within such sixty (60) day period, then the Company shall be deemed to have reduced the adjusted Service Fee as provided herein. To the extent that the Change in Law affects one Company and results in a termination of this Agreement with respect to one, but not both Companies, the District and the remaining Company agree to revise this Agreement as necessary to reflect the termination.

(c) If either party elects to terminate this Agreement pursuant to this Section 6.05, except with respect to any obligations arising prior to the date of termination (including but not limited to, payment of Service Fees for Processable Waste delivered prior to termination), neither the affected Company nor the District shall have any rights or obligations hereunder with respect to any period after the effective date of such termination, except as otherwise provided herein.

#### **Article VII. INSURANCE AND INDEMNIFICATION**

Section 7.01 Indemnity. Each Company shall protect, indemnify, and hold harmless the District, the Contract Communities, their officers, members, employees and agents (the "Indemnified Parties") from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees (collectively, "Liabilities"), and shall defend the Indemnified Parties in any suit, including appeals, for personal injury to or death of any Person or Persons, or loss or damage to property, or pollution or environmental contamination, arising out of the operation of such Company's Facility, or the performance (or nonperformance) of the Company of its obligations under this Agreement, or the choice of sub-contractors by the Company (whether or not subject to the approval of the District). The Companies' obligation to indemnify, defend, and hold harmless under this Section 7.01 includes but is not limited to Liabilities arising from or related to the Companies' contesting the validity or application of a law or regulation pursuant to Section 3.02(d) herein. A Company is not, however, required by this Section 7.01 to reimburse or indemnify any

Indemnified Party for loss or claim due to the negligence or willful misconduct of any Indemnified Party.

Section 7.02 Insurance. Each Company will procure and maintain the following minimum insurance with companies acceptable to the District and, where applicable, include the interest of the District as an additional insured:

(a) Comprehensive General Liability Insurance including products, completed operations, blanket contractual, and personal injury insurance covering liabilities to third parties with minimum limits of \$1,000,000 each occurrence combined bodily injury and property damage, \$1,000,000 aggregate.

(b) Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired vehicles with minimum limits of liability of \$1,000,000, each occurrence combined bodily injury and property damage.

(c) Workers' Compensation Insurance as required by law and Employer's Liability Insurance with a minimum limit of \$100,000.

(d) Umbrella Liability Insurance with a minimum limit of \$25,000,000 per occurrence, \$25,000,000 aggregate.

(e) Environmental Pollution Insurance with a minimum limit of \$10,000,000 per occurrence, \$20,000,000 aggregate.

All policies will be endorsed to provide the District with thirty (30) days advance written notice of material change, cancellation or non-renewal of coverage. The District shall be a named insured in the policies described in Sections 7.02(a), (b), (d) and (e), above.

At least ten (10) days before the Commencement Date, the Companies shall provide the District with certificates of insurance evidencing the above coverages, and the Companies shall provide the District with renewal certificates of insurance on each subsequent anniversary of the Commencement Date.

## **Article VIII. TERMINATION; BREACH; DISPUTE RESOLUTION**

### Section 8.01 Termination for Breach or Event of Default.

(a) In the event there should occur any material breach or material default in the performance of any covenant or obligation of a party hereunder which has not been remedied within sixty (60) days after receipt of notice from the non-breaching party specifying such breach or default, subject to the terms and conditions of this Section 8.01, the non-breaching party may, if such breach or default is continuing, terminate this Agreement upon sixty (60) 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. If only one Company is the defaulting party, the District shall be entitled to terminate this Agreement as to the defaulting Company only or both Companies. If the District terminates this Agreement with regard to one Company only, the District and the remaining Company agree to revise this Agreement to give effect to the intent of the parties, as modified by such termination.

Notwithstanding the preceding sentence, it shall be presumed that damages or, if available, the remedy of specific performance, would provide the non-breaching party with an adequate remedy, and the rights of termination provided under this Section 8.01(a) may not be exercised if damages or specific performance would provide an adequate remedy. In any case in which rights of termination are available, they are not exclusive of, and may be exercised without prejudice to, any rights provided by law or equity to any party hereunder for any breach or default by the other party.

Nothing set forth in Section 8.01 hereof shall limit the right of a Company or the District to enforce against the other any judgment for breach or default.

(b) Notwithstanding the foregoing, should a Company Event of Default (as defined below) occur during the term this Agreement, the District shall have the right to terminate this Agreement upon sixty (60) days written notice to the affected Company in the event of a Company Event of Default pursuant to sub-paragraphs (i) or (ii) below (unless the affected Company, in the case of one, and not more than one, Company Event of Default arising under Section 8.01(b)(i), shall have cured such Event of Default within such sixty (60) day period), or upon written notice in the event of a Company Event of Default pursuant to subparagraphs (iii) and (iv), below. "Company Events of Default" shall be limited to the following

(i) If a Company shall have Abandoned (as hereinafter defined) the operation of its Facility for a period of thirty (30) days unless caused by an event of Force Majeure or County Fault. As used herein, the term "Abandon" shall refer to a voluntary cessation of operations and a withdrawal of most or all operating, maintenance and repair personnel (other than security personnel).

(ii) If a Company shall be generally not paying its debts when they become due; shall have filed, or consented by answer or otherwise to the filing against it of a petition for relief or reorganization and bankruptcy, for liquidation, or to take advantage of any bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of

any such bankruptcy or insolvency law; shall consent to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect of any substantial part of its property; shall be adjudicated insolvent; or shall take corporate action for the purpose of any of the foregoing.

(iii) If a court or governmental agency of competent jurisdiction shall enter an order appointing, without the consent of a Company, a custodian, receiver, trustee or other officer with similar powers with respect to it or any substantial part of its property, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization, or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of a Company or if any petition for any such relief shall be filed against a Company in any court of appropriate jurisdiction, and such order or petition shall not have been vacated or dismissed, as the case may be, within ninety (90) days.

(iv) If, in any Contract Year (and other than as a result of Force Majeure) a Facility fails to Process District Waste in an amount equal to the lesser of 465,000 Tons, or 90% of the Tons of District Waste Delivered to such Facility in such Contract Year.

(c) No controversy or claim arising out of or relating to the termination of this Agreement pursuant to this Section 8.01 shall be arbitrable, except with the prior written consent of the District and the affected Company.

#### Section 8.02 Independent Engineer

(a) Designation. At least thirty (30) days prior to the Commencement Date, the parties shall meet to select and agree in writing on three engineering firms each of which has the qualifications to serve as Independent Engineer. Such engineering firms shall be given notice of such selection by the parties and the parties shall secure their agreement to serve as the Independent Engineer and be referred to anyone of them for determination pursuant to Section 8.02(b). If one or more of such engineering firms shall not agree to serve as the Independent Engineer, the parties shall select and agree on replacement engineering firms and secure their acceptance to serve until those engineering firms have agreed to so serve in such position. The engineering firm selected by the District from those three firms agreed upon by the parties shall be the Independent Engineer for purposes of rendering a decision on the matter in controversy between the parties. In no event shall a selected Independent Engineer be compensated or perform services unless and until a matter is referred to such Independent Engineer for resolution pursuant to the procedures specified in this Section 8.02(a). The Independent Engineer's costs and expenses after referral of the matter to it for resolution shall be shared equally by the parties.

(b) Resolution of Disputes. Any and all disputes, differences, controversies or claims under

this Agreement which are required by the terms hereof to be resolved by the Independent Engineer shall be submitted to and finally resolved by the Independent Engineer selected by the District pursuant to Section 8.02(a). Within three (3) business days after the selection of the Independent Engineer, the parties shall each provide to the Independent Engineer written notice stating in detail the contested matter and such party's basis for its position. Within five (5) business days thereafter, the parties shall meet with the Independent Engineer to resolve the matter in controversy. Within thirty (30) calendar days after such meeting or as soon thereafter as possible, the Independent Engineer shall decide the matter in controversy and issue a written memorandum decision to the parties. The Independent Engineer shall be empowered, after consultation with the affected Company and the District, to designate and retain any expert that the Independent Engineer deems necessary to assist in the resolution of any dispute.

(c) Binding Effect. In any dispute to be resolved by the Independent Engineer pursuant to this Agreement, the determination of the Independent Engineer shall be final and binding on the affected Company and the District. The Companies and the District hereby waive any rights to appeal or to review of such final decision in any judicial proceeding and agree that a final determination of the Independent Engineer made pursuant to this Section 8.02 will be a complete defense to any claim in any action or proceeding with respect to the issues subject to resolution by the Independent Engineer. However, nothing in this Section 8.02(c) shall require the parties to submit any dispute to the Independent Engineer or empower the Independent Engineer to determine any matters except as elsewhere explicitly provided in this Agreement.

(d) Conflicts of Interest. Each Person identified as a potential expert or Independent Engineer shall disclose all of the prior work that such Person performed for the Companies and their Affiliates, and each such Person shall disclose all other matters that may create a conflict of interest or appearance of impropriety if the Person is selected to serve as an expert or Independent Engineer pursuant to this Article VIII. The District shall have the right to reject any Person that is proposed to be an expert or Independent Engineer under this Agreement, based on the District's reasonable evaluation of the potential for conflicts or the appearance of impropriety.

#### **Article IX. CONFIDENTIALITY**

The District acknowledges that each of the Companies and its Affiliates, and its and their licensees, will have valuable and confidential proprietary data and information with respect to solid waste disposal and resource recovery, and that any disclosure of any of such data and information to the District or its representatives is solely for the purpose of facilitating the transactions contemplated by this Agreement and is made solely on the terms and conditions set forth below. The District acknowledges that the Consulting Engineer, the Independent Engineer, and the authorized representatives of the Contract

Communities will be required to execute a confidentiality agreement with the Company substantially similar to this Article IX before the Companies or any of its Affiliates shall be obligated to disclose any Confidential Information (as defined below) to such Engineer or representative.

As used herein, the term “Confidential Information” means all data and information now or hereafter disclosed in writing by or on behalf of each of the Companies, Wheelabrator, and their Affiliates, or its and their licensees (the “Disclosing Party”) to the District, its Consulting Engineer, the Independent Engineer, or the authorized representative of a Contract Community, which is prominently labeled as a “trade secret” and which qualifies as such under applicable Florida law.

The District, to the extent permitted by applicable Florida law:

(a) shall treat in strict confidence all Confidential Information disclosed to it in compliance with this Article IX by the Disclosing Party and shall not use such information for any purpose other than to monitor the performance by the Companies and enforce their duties under this Agreement;

(b) shall limit access to Confidential Information disclosed to it to those of its consultants, attorneys and employees who require such access in order to enable it to perform such monitoring or enforcement function and shall use best efforts to ensure that the use of such Confidential Information by such consultants, attorneys and employees shall be limited to such purposes;

(c) shall not disclose and shall use best efforts to insure that its consultants, attorneys and employees shall not disclose any Confidential Information to any third party except as hereinafter provided and shall, upon the request of the Disclosing Party, cause such consultants, attorneys and employees to execute and deliver confidentiality agreements acceptable to the Disclosing Party with respect to the Confidential Information.

The confidentiality obligations of the District shall cease on the later of the twentieth (20th) anniversary of the Contract Date and the tenth (10th) anniversary of the disclosure of any Confidential Information to the District.

The disclosure of any Confidential Information to an authorized representative of a Contract Community shall be subject to the same conditions and limitations imposed on the District, as described in this Article IX.

The foregoing shall not preclude the District from disclosing Confidential Information upon the lawful demand of any governmental court or agency having jurisdiction, provided that, consistent with applicable law: (i) prior to the District's disclosing such Confidential Information to such agency, the Disclosing Party shall have the opportunity to review and comment upon the Confidential Information

requested and to participate with the District in discussions with such court or agency concerning the scope and content of the requested Confidential Information; (ii) the District shall take reasonable steps not to prejudice the Disclosing Party's proprietary right to its Confidential Information; and (iii) upon the Disclosing Party's request, the District shall request such court or agency to maintain the confidentiality of such Confidential Information.

Consistent with applicable law, the Disclosing Party shall have the right to respond to any demand for disclosure pursuant to applicable law and to require the District to withhold disclosure to the extent permitted by applicable law, and may take any action deemed necessary by the Disclosing Party, at its expense, including legal action, prior to release of such Confidential Information.

Notwithstanding the foregoing, the Companies recognize that the District is subject to the public records requirements in Chapter 119, Florida Statutes. Information that is not exempt from disclosure, or is required to be disclosed under Florida law, shall not be subject to the confidentiality provisions in this Article IX.

#### **Article X. REPRESENTATIONS, WARRANTIES, AND OPINIONS**

##### **Section 10.01 Representations and Warranties; Legal Opinions.**

(a) The District hereby represents and warrants as follows, and hereby agrees to provide to the Companies' counsel a favorable opinion of its counsel dated as of such date as the Companies may request (but not later than the Commencement Date) that:

(i) 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;

(ii) 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 laws related to bankruptcy, moratorium, reorganization or similar laws affecting the right of creditors generally); provided however that the District's counsel shall not be required to express an opinion as to the enforceability of Section 5.03(g) of this Agreement;

(iii) Neither the execution nor delivery by it of this Agreement, nor the performance of its obligations hereunder, nor the fulfillment of the terms and conditions herein: (i) conflicts with, violates or results in a breach of any law or government regulation of the State of Florida, or any other applicable local law or ordinance; or (ii) conflicts with, violates or results in any breach of any term or condition of any judgment or decree, or any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound, or constitutes a default thereunder;

(iv) No approval authorization, or order of, or any consent or declaration, registration of filing with, any governmental authority of the State of Florida or any referendum or other action of voters by election, action by town or city council or otherwise is required for the valid execution, delivery and performance of this Agreement by it; and

(v) Except as disclosed in writing to the Companies prior to its execution and delivery of this Agreement, there is no action, suit or proceeding, at law or in equity, or any official investigation before any court or governmental authority nor any referendum or other voters' initiative pending or, to its knowledge, threatened against it which might materially adversely affect the taking or exercise by the District of the actions required to be taken by the District under the Agreement and the performance of its obligations hereunder, or if adversely determined might materially adversely affect the validity, legality or enforceability of this Agreement.

(b) Each Company hereby represents and warrants as follows as of the Contract Date:

(i) It is duly organized and validly existing under the constitution and laws of the State of Delaware, with full legal right, power and authority to enter into and perform its obligations hereunder;

(ii) 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 laws related to bankruptcy, moratorium, reorganization or similar laws affecting the right of creditors generally);

(iii) Neither the execution nor delivery by it of this Agreement, nor the performance of its obligations hereunder, nor the fulfillment of the terms and conditions herein: (i) conflicts with, violates or results in a breach of any law or government regulation of the State of Florida, or any other applicable local law or ordinance; or (ii) conflicts with, violates or results in any breach of any term or condition of any judgment or decree, or any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound, or constitutes a default thereunder;

(iv) No approval authorization, or order of, or any consent or declaration, registration of filing with, any governmental authority of the State of Florida is required for the valid execution, delivery and performance of this Agreement by it; and

(v) Except as disclosed in writing to the District prior to its execution and delivery of this Agreement, there is no action, suit or proceeding, at law or in equity, or any official investigation before any court or governmental authority pending or, to its knowledge, threatened against it which might materially adversely affect the taking or exercise by such Company of the actions required to be

taken by it under the Agreement and the performance of its obligations hereunder, or if adversely determined might materially adversely affect the validity, legality or enforceability of this Agreement.

**Article XI. GENERAL PROVISIONS**

Section 11.01 Further Assurances. Each of the Companies and the District agree to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement.

Section 11.02 Notices. Any notice or communication required or permitted hereunder shall be in writing and shall be effective when received or, if sent by certified or registered mail, postage prepaid, four business days after mailing, addressed as follows:

If to WSB:

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

If to WNB:

Wheelabrator North Broward Inc.  
2600 Wiles Road  
Pompano Beach, Florida 33073  
Attn: Plant Manager

With a copy in the case of any notice or communication to WSB or WNB to:

Wheelabrator Environmental Systems Inc.  
4 Liberty Lane West  
Hampton, New Hampshire 03842  
Attention: General Counsel

If to the District:

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

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other parties. During the term hereof, unless a Company receives notice to the contrary from the District, the Executive Director will be authorized and empowered to act for and on behalf of the District on operational and administrative matters necessary to give effect to this Agreement, within the limits of the Plan of Operations, which may be amended from time to time, to the extent consistent with this Agreement. The Executive Director and each Company's Plant Manager are without authority to act, approve of, consent to, or otherwise bind the District or a Company, respectively, on any matter which in any way alters, amends or modifies the terms of this Agreement, or is not contemplated by the terms of this Agreement, or is beyond the scope of this Agreement.

Section 11.03 Limitation of Liability. In no event, whether based upon contract, tort, warranty or otherwise, arising out of the performance or nonperformance by a Company of its or their obligations under this Agreement, shall any Company be liable or obligated in any manner or pay special, consequential, punitive, incidental or similar damages for any reason in connection with this Agreement and the transactions contemplated hereby. Each of the Company's obligations hereunder shall be limited to those expressly set out and assumed by each of them under this Agreement.

In no event whether based upon contract, tort, warranty or otherwise, arising out of the performance or nonperformance by the District of its obligations under this Agreement, shall the District or any Contract Community be liable or obligated in any manner to pay special, consequential, punitive, incidental or similar damages for any reason in connection with this Agreement and the transactions contemplated hereby. The District's obligations hereunder shall be limited to those expressly set out and assumed by the District under this Agreement.

Section 11.04 Assignment; Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each of the Companies and the District, together with their respective successors and assigns. This Agreement may not be assigned or encumbered by any party without the consent of the other party, except that without the consent of the other party, a Company may assign its rights and obligations under this Agreement to any wholly-owned direct or indirect subsidiary or Affiliate of Wheelabrator. Nothing contained in this Agreement prevents the transfer of any interest in a Company to any person, so long as all of the voting shares of the Company are controlled directly or indirectly by Wheelabrator.

Section 11.05 Sale of the Facilities. In the event that a Company proposes or elects to sell or otherwise transfer all or any portion of its ownership interest in a Facility, the Company shall, before entering into arrangements with any person for such sale or transfer, provide the District with written notice of its proposed transaction, and the District, within thirty (30) days from receipt of such notice,

shall have the right to make an offer to purchase the Facility (directly or through the County). If the District makes an offer to purchase the Facility within such thirty (30) day period, the parties thereafter agree to negotiate for a sixty (60) day period to reach agreement on a transaction between the parties for the purchase of the Facility. If, during such sixty (60) day period the parties are unable to come to an agreement regarding the purchase of the Facility, the Company shall thereafter be free to make the transfer described in the notice. Notwithstanding the foregoing, the provisions of this Section 11.05 shall not apply to a sale or transfer of any interest in the Facility to an Affiliate of either Company, or a transfer or pledge of a Company's interest in a Facility in connection with any financing or re-financing activity, or leveraged leasing arrangement, or similar transaction which is entered into primarily for tax purposes.

Section 11.06 Alternate Performance Security. The Companies reserve the right to substitute a performance bond in a form and from an issuer reasonably acceptable to the District and in an amount which shall not be less than one half of the total Service Fee paid to the Companies in the prior Contract Year in lieu of the Parent Guarantee. If the Companies wish to provide a performance bond in lieu of the Parent Guarantee, the Companies shall provide the District written notice thereof, which notice shall include a proposed form of performance bond. Once the form and issuer of the performance bond has been approved by the District (which approval shall not be unreasonably withheld or delayed), the Companies shall provide the executed bond to the District. The District shall return the original signed Parent Guarantee to either Company within five (5) business days of receipt of the executed bond.

Section 11.07 Governing Law, Jurisdiction, Venue; Attorney's Fees. This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Each Company agrees to submit to service of process in, and to the jurisdiction of the courts of, the State of Florida in connection with any claim or controversy arising out of the interpretation, application or enforcement of this Agreement, or the transactions contemplated hereby, or breach hereof, brought against a Company by or on behalf of the District. In any litigation involving any such claim or controversy between the parties, venue shall reside solely in the courts in and for Broward County, Florida, and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the non-prevailing party, including the fees and costs incurred in trial and on appeal.

Section 11.08 Waiver of Jury Trial. The parties agree that any claim or controversy filed in any state or federal court concerning this Agreement shall be heard by a judge, sitting without a jury. The parties hereby knowingly, voluntarily, and permanently waive any right they may have to a jury trial concerning the interpretation, application or enforcement of this Agreement, or the transactions contemplated thereby, or breach hereof.

Section 11.09 Reference and Headings; Schedules and Exhibits. All references herein to

Sections, Articles, Schedules and Exhibits are to sections and articles of and schedules and exhibits to this Agreement. All Schedules and Exhibits are hereby incorporated into and made a part of this Agreement. Section and Article headings herein have been inserted for convenience of reference only and will not limit, expand or otherwise affect the construction of this Agreement.

Section 11.10 Counterparts. This Agreement may be executed in counterparts, all of which when so executed and delivered will together constitute one and the same instrument.

Section 11.11 Severability. In the event that any provision of this Agreement is, for any reason, determined to be invalid, illegal or unenforceable in any respect, the Companies and the District will negotiate in good faith and agree as to the amendments, modifications or supplements of or to this Agreement or any other appropriate actions as will, to the maximum extent practicable in light of that determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement will, as so amended, modified or supplemented, or otherwise affected by that action, remain in full force and effect.

Section 11.12 Construction. The parties acknowledge and agree that each party has participated in the drafting of this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any Schedule or Exhibit hereto.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF, the parties have duly signed, sealed and executed this Agreement as of the date first above stated.

Witnesses:

Broward Solid Waste Disposal District

\_\_\_\_\_  
[SEAL]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mary G. Vergile

Wheelabrator North Broward Inc.

By: David M. Beavers  
Name: DAVID M. BEAVERS  
Title: VICE PRESIDENT

[SEAL]

Mary G. Vergile

Wheelabrator South Broward Inc.

By: David M. Beavers  
Name: DAVID M. BEAVERS  
Title: VICE PRESIDENT

[SEAL]

**Exhibit A: Adjustment Factor**

**Adjustment Factor for Fiscal Year(n) shall be calculated as follows:**

32.5% X % Change in Value of Series ID: CEU0500000008 from April Yr (n-1) through April Yr (n) plus

32.5% X % Change in Value of Series ID: CEU4422000008 from April Yr (n-1) through April Yr (n) plus

35.0% X % Change in Value of Series ID: WPU114 from April Yr (n-1) through April Yr (n)

Note: The Adjustment Factor shall be based on the 12 month period beginning in April and extending through April of the following year. If the net result of the above equation is less than 1% then the Adjustment Factor for that period shall be 1% or if the net result of the above equation is more than 5% then the Adjustment Factor for that period shall be 5%. Notwithstanding anything herein to the contrary, for the calculation of the Adjustment Factor in Section 5.02(a)(i)(1), the period shall start from October 2009 and end in April 2011.

**Example: The Adjustment Factor for a theoretical January to January contract in 2008 would have been calculated as follows =**

$$32.5\% \times (17.81 - 17.16) / 17.16 +$$
$$32.5\% \times (28.64 - 27.35) / 27.35 +$$
$$35.0\% \times (187.6 - 180.1) / 180.1 = 0.04221 \text{ or } 4.221\%$$

**"Agreed Upon BLS Series" Descriptions:**

All Series IDs refer to data published by the United States Department of Labor, Bureau of Labor Statistics ([www.bls.gov](http://www.bls.gov)).

**Employment, Hours, and Earnings from the Current Employment Statistics survey (National)**

(1) Series ID: CEU0500000008	Example	Jan 07 = 17.16	Jan 08 = 17.81
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Not Seasonally Adjusted  
Super Sector: Total private  
Industry: Total private  
NAICS Code: N/A  
Data Type: AVERAGE HOURLY EARNINGS OF PRODUCTION AND NONSUPERVISORY EMPLOYEES

(2) Series ID: CEU4422000008	Example	Jan 07 = 27.35	Jan 08 = 28.64
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Not Seasonally Adjusted  
Super Sector: Utilities  
Industry: Utilities  
NAICS Code: 22 (utility)  
Data Type: AVERAGE HOURLY EARNINGS OF PRODUCTION AND NONSUPERVISORY EMPLOYEES

**Producer Price Index - Commodities**

(3) Series ID: WPU114

Example	Jan 07 = 180.1	Jan 08 = 187.6
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Not Seasonally Adjusted

Group: Machinery and equipment

Item: General purpose machinery and equipment

Base Date: 198200

**EXHIBIT B: FLOW CONTROL AND ENFORCEMENT ORDINANCE**

**EXHIBIT C: INTERLOCAL AGREEMENT**

**EXHIBIT D: PARENT GUARANTEE**

**EXHIBIT E: SOUTH FACILITY SITE LEASE**

**SCHEDULE 1: WASTE DELIVERY SCHEDULE**

**SCHEDULE 1**  
**FOR SOLID WASTE DISPOSAL SERVICE AGREEMENT**

# Exhibit 5

## Resource Recovery Board's Contract Communities

	<i>Municipalities</i>	<i>City Comm. Dates</i>	<i>Approved ILA</i>
1	<b>Coral Springs</b>	11-03-10	11-03-10
2	<b>Davie</b>	11-17-10	11-17-10
3	<b>Hollywood</b>	11-17-10	11-17-10
4	<b>Lighthouse Point</b>	10-26-10	10-26-10
5	<b>Margate</b>	10-06-10	10-06-10
6	<b>Plantation</b>	11-10-10	11-10-10
7	<b>Southwest Ranches</b>	11-16-10	11-16-10
8	<b>Tamarac</b>	10-25-10	10-27-10
9	<b>West Park</b>	10-20-10	10-20-10
10	<b>Weston</b>	10-18-10	10-18-10
11	Coconut Creek	11-18-10	
12	Cooper City	11-30-10	
13	Deerfield Beach	12-07-10	
14	Fort Lauderdale	12-07-10	
15	Hillsboro Beach	12-07-10	
16	Lauderdale by-the-Sea		
17	Lauderdale Lakes	11-22-10 5pm	
18	Lauderhill	11-29-10	
19	Lazy Lake		
20	Miramar	11-29-10	
21	North Lauderdale		
22	Oakland Park	12-01-10 12-17-10	
23	Pembroke Park	12-08-10	
24	Sea Ranch Lakes		
25	Sunrise	12-14-10	
26	Wilton Manors	12-14-10	
27	Unincorporated Broward County	12-07-10 12-14-10	

As of November 17, 2010, 10 municipalities have decided to enter into the new ILA, representing 46.5% of the Districts population and 44.4% of the solid waste of the district.

## SUMMARY OF THE ILA

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- 1) The Interlocal Agreement Providing For the Resource Recovery System Within Broward County and For the Broward Solid Waste Disposal District (the “ILA”) is a contract between Broward County (the “County”) and the named municipalities (collectively, the “Contract Communities”) for processing disposable waste, recyclables, hazardous waste, and electronics recycling at waste-to-energy plants.
- 2) The ILA creates a special district known as the Broward Solid Waste Disposal District. The District has the authority and duty to establish, operate and maintain facilities for the purpose of transferring, disposing and recycling solid waste. The County grants its power to manage solid waste to the District.
- 3) The District will be governed by the Resource Recovery Board (the “RRB”), which will contain one County Commissioner and one member of each Contract Community. The full RRB shall meet twice yearly.
- 4) The RRB will contain an Executive Board composed of eleven (11) members, all of whom must be elected officials of their respective Contract Communities or the County Commission. See Exhibit 2, Section 3.3, page for the make-up of the Executive Committee. The Executive Board shall exercise general duties unless such duties are specifically provided to be exercised by the full Resource Recovery Board.
- 5) The ILA establishes a Technical Advisory Committee (the “TAC”) to serve in an advisory capacity to the RRB in technical matters of integrated solid waste planning, as it does currently.
- 6) The District shall create a Resource Recovery System within the County for the disposal of all solid waste collected from the Contract Communities and the unincorporated County. The County and Contract Communities shall make all its solid waste available for delivery to the District facilities.
- 7) The County and Contract Communities will each enact, maintain, and enforce a solid waste flow control ordinance and solid waste reporting ordinance before August 4, 2011. These ordinances shall be included in any agreement entered into with haulers after December 31, 2010.
- 8) The County and Contract Communities will allow the District to implement a district-wide code enforcement program, including the appointment of inspectors and special magistrates, for the enforcement of these ordinances. The program will be operated by the County pursuant to an agreement with the District. The District will fund the program.

## SUMMARY OF THE ILA

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- 9) The County and Contract Communities will each enact an ordinance that requires haulers to submit certain reports about the solid waste they collect in the District.
- 10) The District, County and Contract Communities agree to a Plan of Operations maintained by the RRB. The Plan of Operations will delineate matters relating to operation, management and administration of the Resource Recovery System.
- 11) The District may not enter into any agreement for the disposition of solid waste for other persons, firms or corporations that materially impairs its ability to perform its obligations under the ILA.
- 12) The District agrees to maintain complete and accurate accounting records for solid waste transfer or disposal services provided to the County and Contract Communities. Each year, a qualified CPA will conduct an external audit of such records. Copies of these records will be available for inspection by the Contract Communities, unincorporated County, and the RRB.
- 13) The ILA creates no fiduciary relationship between the parties.
- 14) The District, County, and each Contract Community shall indemnify, defend and hold harmless the other, their officers, employees and agents from any liabilities, including for intentional and negligent acts of each arising out of the performance of the obligations under this Agreement.
- 15) If one party fails to perform or observe a material term or condition of the ILA for a 60 day period after receipt of default notice from another party or the RRB, the party giving the notice may be entitled to seek specific performance under the Agreement.
- 16) Failure of a party to exercise its rights under the ILA does not constitute a waiver of such rights, unless such waiver is in writing and signed by the waiving party. Such waiver will be limited to the terms specifically contained therein.
- 17) The ILA may not be assigned, transferred or otherwise encumbered without prior written consent of all parties.
- 18) The ILA shall be effective for ten (10) years, beginning on August 4, 2011. The ILA may be renewed once for an additional ten (10) years, but the County and each Contract Community has the option not to renew.
- 19) The Proposed ILA shall become effective only if it is ratified by December 31, 2010 by (a) Contract Communities representing 51% of the population of the present District and (b) Contract Communities representing 80% of the processable waste delivered to the Wheelabrator Waste-to-Energy Plants in 2009.

## SUMMARY OF THE ILA

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### Broward County, FL - Waste & Recycling Services

Example Proration of Wheelabrator's Bonus to Members of the Broward Solid Waste Disposal District based on tonnages delivered to the Waste-to-Energy Plants (using FY08 tonnage for illustrative purposes)

City	Fiscal Year 2008 (1) Tonnage (2)	% of Total Tonnage	Estimated Signing Bonus (3)
Coconut Creek	33,661.670	2.99%	\$359,362.98
Cooper City	23,891.840	2.13%	\$255,062.89
Coral Springs	96,379.040	8.57%	\$1,028,916.85
Davie	96,146.470	8.55%	\$1,026,433.99
Deerfield Beach	64,825.360	5.77%	\$692,058.20
Fort Lauderdale	190,981.560	16.99%	\$2,038,868.05
Hillsboro Beach	1,975.680	0.18%	\$21,091.83
Hollywood	115,906.040	10.31%	\$1,237,381.88
<b>Lauderdale by the Sea</b>	<b>6,824.630</b>	<b>0.61%</b>	<b>\$72,857.92</b>
Lauderdale Lakes	22,621.390	2.01%	\$241,499.91
Lauderhill	40,945.400	3.64%	\$437,122.14
Lazy Lake	-	0.00%	-
Lighthouse Point	9,087.310	0.81%	\$97,013.69
Margate	37,268.500	3.32%	\$397,868.54
Miramar	67,896.110	6.04%	\$724,840.71
North Lauderdale	23,157.170	2.06%	\$247,219.75
Oakland Park	39,535.520	3.52%	\$422,070.64
Pembroke Park	5,658.680	0.50%	\$60,410.55
Plantation	58,106.830	5.17%	\$620,332.97
Sea Ranch Lakes	1,198.770	0.11%	\$12,797.75
South West Ranches	6,402.230	0.57%	\$68,348.49
Sunrise	75,196.190	6.69%	\$802,774.41
Tamarac	33,064.450	2.94%	\$352,987.22
Unincorporated	15,482.710	1.38%	\$165,289.29
West Park	8,669.860	0.77%	\$92,557.11
Weston	37,904.900	3.37%	\$404,662.57
Wilton Manors	11,256.340	1.00%	\$120,169.67
	1,124,044.650	100.00%	\$12,000,000.00

**NOTES:**

- (1) Estimate is based on the FY 2008 tonnage data from 10/01/07 through 09/30/08.
- (2) Based on origins provided by licensed haulers during the period indicated.
- (3) In accordance with the Memorandum of Understanding, the actual bonus of \$12 million will be prorated based on total deliveries during the 12 months prior to August 4, 2011.