

Janette Smith

From: John Stunson
Sent: Wednesday, February 29, 2012 5:04 PM
To: Janette Smith
Subject: FW: BCCMA Solid Waste Disposal Service Agreement
Attachments: BCCMA Solid Waste Disposal Agreement.Final Draft.pdf

From: John R. Flint [<mailto:JFlint@westonfl.org>]

Sent: Wednesday, February 29, 2012 4:18 PM

To: Bertha Henry (Broward County); David Rivera; Bruce D. Loucks; Erdal Donmez; Robert Baldwin; Burgess Hanson; Mark Antonio; jonathana@lauderdalelakes.org; connieh@lbs-fl.gov; Charles Faranda (Lauderhill); John Lavisky (Lighthouse Point); Robert Payton; Ambreen Bhatti; John Stunson; Caryn Gardner-Young; Robert Levy; Charlie Dodge (Pembroke Pines); Dennis Beach; Bruce Moeller; Michael Cernech; W Ajibola Balogun; Joseph Gallegos (Wilton Manors); Richard Lemack; Greenstein, Ron; Frank Porcella; kfields@swranches.org; cswanson-rivenbark@hollywoodfl.org; gshimun@plantation.org

Cc: Jamie Cole

Subject: BCCMA Solid Waste Disposal Service Agreement

To All:

Attached is the Final Draft of the template for the Solid Waste Disposal Services Agreement.

With best regards,

John



John R. Flint
City Manager
JFlint@westonfl.org



THE CITY OF WESTON
17200 Royal Palm Blvd.
Weston, Florida 33326
P: (954) 385-2000
F: (954) 385-2010
<http://www.westonfl.org>



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AGREEMENT
BY AND BETWEEN
WHEELABRATOR TECHNOLOGIES, INC.,
AND
_____, **FLORIDA**
FOR
SOLID WASTE DISPOSAL SERVICES

This Agreement is made and entered into this ____ day of _____, 2012, by and between WHEELABRATOR TECHNOLOGIES, INC., a Delaware Corporation, (hereinafter referred to as “Contractor”), and the _____, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as the “City”).

WHEREAS, Contractor and the City desire to enter into this Agreement (the “Agreement”) to provide for the disposal of solid waste generated within the municipal boundaries of the City and to set forth how such solid waste disposal services will be provided; and

WHEREAS, it is the intent of the parties that this form Agreement will be used by all municipalities in Broward County (and Broward County for the unincorporated areas) that deliver solid waste to the Contractor’s Disposal Facilities; and

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

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

NOW THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, Contractor and the City do hereby agree as follows:

ARTICLE 1
DEFINITIONS

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

“City Waste” shall refer to Commercial Waste and Residential Waste.

“Commercial Waste” shall refer to all waste, refuse, garbage, trash and rubbish generated within the City from non-residential property and that is capable of being processed at the Disposal Facility, but shall not include construction and demolition debris, tropical storm or hurricane

related debris, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

“Disposal Commencement Date” shall refer to the date upon which the Interlocal Agreement has either terminated or expired, or such earlier date as the Broward County Resource Recovery Board may allow the City to dispose of City Waste pursuant to this Agreement.

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

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

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

“Disposal Services Fee Adjustment Factor” shall refer to the adjustment that may be applied to the Disposal Services Charge on an annual basis, as calculated using the Bureau of Labor Statistics Index Series ID CWUR0300SA0, Consumer Price Index - Urban Wage Earners and Clerical Workers.

“Effective Date” shall refer to the date that this Agreement has been executed by both the City and the Contractor.

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

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

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

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

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

“Licensed City Waste Haulers” shall refer to Licensed Commercial Waste Haulers and Licensed Residential Waste Haulers.

“Licensed Commercial Waste Hauler(s)” shall refer to the private haulers that are permitted to conduct collection and hauling of Commercial Waste generated from non-residential property within the City and to deliver the Waste to the Disposal Facilities.

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

“North Disposal Facility” shall refer to the waste to energy facility located at 2600 Wiles Road, Pompano Beach, FL, which is owned and operated by Contractor or its affiliates, where the City Waste may be delivered for final disposal as part of the Disposal Services.

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

“Residential Waste” shall refer to all waste, refuse, garbage, trash and rubbish generated within the City from residential property and that is capable of being processed at the Disposal Facility, but shall not include construction and demolition debris, tropical storm or hurricane related debris, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

“South Disposal Facility” shall refer to the waste to energy facility located at 4400 S State Road 7, Davie, FL, which is owned and operated by Contractor or its affiliates, where the City Waste shall be delivered for final disposal as part of the Disposal Services.

“Unacceptable Waste” shall refer to (a) Hazardous Waste, (b) cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (c) any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (d) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (e) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 *et seq.*, or any equivalent state law; (f) non-burnable construction materials and demolition debris; (g) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners,

water coolers, and dehumidifiers; and (h) all other items of waste which a Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations.

ARTICLE 2
DISPOSAL SERVICES

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

2.2 *Delivery of City Waste.* City shall deliver or caused to be delivered to the _____ Disposal Facility all City Waste collected by the City and the Licensed City Waste Hauler(s).

2.2.1 *Residential Waste delivered by City.* If City collects the Residential Waste and hauls the Residential Waste to Contractor, City shall be responsible for Unacceptable Waste brought to either Disposal Facility.

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

2.2.3 *Commercial Waste delivered by Licensed Commercial Waste Haulers.* The City shall require Licensed Commercial Waste Haulers to execute a License Agreement with the City that (a) sets forth the payment procedure in Article 4.6 for Commercial Waste Disposal Services, (b) requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to the Disposal Facilities as otherwise provided pursuant to Section 5.2, and (c) requires the Licensed Commercial Waste Hauler(s) to provide a performance bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a 90 day Disposal Services Fee payment period for Commercial Waste Disposal Services calculated pursuant to Article 4 and based on the 60 day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the 12 month period immediately preceding execution of the License Agreement between City and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations.

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

ARTICLE 3 **TERM OF AGREEMENT**

- 3.1 *Initial Term.* This Agreement shall take effect upon the Effective Date, and beginning upon the Disposal Commencement Date shall continue for a five year period of time ("Initial Term"), unless renewed or terminated earlier by the parties as set forth herein. [Note: WTI desires 10 year term; WTI offers innovative technology opt-out and/or a more favorable Disposal Service Fee if 10 year agreement]
- 3.2 *Renewals.* City and Contractor shall meet to discuss renewal terms not less than 18 months prior to the expiration of the current term of this Agreement. This Agreement may be renewed for up to three additional, successive five year terms (each renewal is a "Renewal Term") upon mutual written consent by the City and Contractor at least 12 months prior to the expiration of the Initial Term or Renewal Term. If City and Contractor fail to agree on the terms and conditions of renewal at least 12 months prior to the expiration of the Initial Term or Renewal Term, this Agreement shall expire at the end of the Initial Term or Renewal Term, as applicable.
- 3.3 *Termination and extension.* This Agreement may only be terminated as provided in Article 7 of this Agreement. In the event that this Agreement is terminated as a result of Contractor's default or City's default not due to City's non-payment, City shall have the right to an extension of Disposal Services for up to 12 months provided that the City specifies the desired length of the extension in the termination letter, or extension request letter, transmitted to Contractor. In the event City exercises its right to an extension, this Agreement shall be deemed automatically extended for the period specified in the notice transmitted to Contractor. The remunerations to be paid to the Contractor during this extension period shall be based upon the Disposal Service Fees in effect at the time of such termination, which shall be escalated as provided herein as if the term extended through the extension period. City shall not be entitled to an extension of Disposal Services if Contractor terminates this Agreement due to City's default for failure to make payment to Contractor in accordance with this Agreement. Notwithstanding any language herein to the contrary, City and Contractor retain their rights during any such extension to seek damages for material breach or material default of this Agreement by either party.

ARTICLE 4 **SERVICE FEE**

- 4.1 *Disposal Services Fee.* After each operating month, the Contractor shall invoice the City for Residential Waste Disposal Services and the Licensed Commercial Waste Hauler(s) for Commercial Waste Disposal Services based upon the per ton Disposal Service Fee, as set forth in attached Exhibit "A".

4.2 *Disposal Services Fee adjustments.* Beginning on the first October 1 after the one year anniversary of the Disposal Commencement Date of this Agreement, and on each October 1 thereafter, the Disposal Services Fee shall be subject to adjustment by multiplying the Disposal Services Fee by the Disposal Services Fee Adjustment Factor. The result of the calculation shall become the maximum Disposal Services Fee permitted to be charged by Contractor to City for the 12 months following the Disposal Services Fee adjustment. The 12 month change (using March of each year as the base month) in the Bureau of Labor Index Series ID CUUR0000SA0, Consumer Price Index – All Urban Consumers shall be used to calculate the Disposal Services Fee Adjustment Factor.

4.3 *Increased participation adjustments.* It is the intention of the parties that other municipalities in Broward County (and Broward County for the unincorporated areas) may also choose to dispose of waste at the North Disposal Facility and South Disposal Facility. To the extent that such governmental entities do so, the Disposal Services Fee shall be adjusted as set forth in Exhibit “B”.

[Note: Section 4.3 subject to further discussion]

4.4 *Most favored pricing and material terms.*

[Note: The finalization of this clause is dependent on the Cities, WTI and the County reaching a common understanding of the application of the “10% Discount” clause in the SWDA’s.]

4.4.1 In the event that Contractor subsequently enters into an agreement for a term of more than 12 months (including renewal and option periods) for the disposal of solid waste generated anywhere within Broward, Miami-Dade or Palm Beach County (an “Eligible Agreement”), Contractor shall provide the City with a copy of the Eligible Agreement within 60 days of execution thereof. If the City determines that the contract includes a net disposal fee that is less than the Disposal Services Fee set forth herein, the City may provide written notice to Contractor of City’s determination, and, if the City does so, the Disposal Services Fee shall automatically be reduced to the net disposal fee set forth in the Eligible Agreement, such change to be effective retroactively as of the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower net disposal fee (subject to annual adjustments as provided in Section 4.2).

4.4.2 For the purposes of clarification, the “net disposal fee” offered under the Eligible Agreement will be the actual per-ton cost to the counterparty to the Eligible Agreement, and shall be determined net of any costs (e.g., pass-throughs etc.) paid by such counterparty or economic benefits (e.g., signing bonus, revenue sharing, other credits etc.) received by such counterparty.

4.5 *Discriminatory Tax adjustments.* If the State of Florida, Broward County, or any City within Broward County, enacts a tax or fee applicable only to municipal solid waste, or specifically targets Contractor as the owner or operator of one or both of the Disposal Facilities, then the Disposal Services Fee shall be increased by the pro-rata amount (based upon the amount of City Waste as a proportion of all waste delivered to the Disposal Facility) of the tax or fee attributable to the Disposal of the City’s Waste pursuant to this Agreement.

4.6 *Payment procedure.*

4.6.1 Each month, Contractor shall calculate the amount of Disposal Service Fees owed to the Contractor by the City for Residential Waste Disposal Services based on the provisions of this

Agreement, and shall submit an invoice to the City for payment. The invoice to the City shall be due within 30 days of receipt.

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

4.6.3 *Residential Waste Disposal Services.* If the City disagrees with the amount stated in the invoice for Residential Waste Disposal Services, the City shall notify the Contractor of such dispute. The City shall make payment to Contractor of undisputed invoiced amounts within thirty days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within 45 days of receipt of the invoice, the parties shall resolve the dispute in a manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of its obligations to City under this Agreement.

4.6.4 *Commercial Waste Disposal Services.* If the Licensed Commercial Waste Hauler(s) disagrees with the amount stated in the invoice for Commercial Waste Disposal Services, the Licensed Commercial Waste Hauler(s) shall notify the Contractor of such dispute. The Licensed Commercial Waste Hauler(s) shall make payment to Contractor of undisputed invoiced amounts within thirty days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within 45 days of receipt of the invoice, the parties shall resolve the dispute in a manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or, except as set forth herein, relieve Contractor of its obligations to City under this Agreement. In the event the Licensed Commercial Waste Hauler(s) fails to make payment to Contractor for Commercial Waste Disposal Services as required by this Agreement, Contractor shall notify the City of such non-payment and Contractor shall have the right to make a claim for payment under the performance bond (required by Article 2.2(d)) for the properly invoiced outstanding amounts due for Commercial Waste Disposal Services pursuant to this Agreement. If the unpaid amount exceeds 80% of the performance bond provided by the Licensed Commercial Hauler pursuant to Section 2.2.3 and then available to Contractor, Contractor shall be entitled to reject any Commercial Waste delivered by such Licensed Commercial Waste Hauler until such time as all unpaid amounts have been received by Contractor and the Contractor is in possession of a performance bond meeting the requirements of Section 2.2.3.

ARTICLE 5
OPERATION OF DISPOSAL FACILITY

- 5.1 *Personnel and equipment requirement.* Contractor shall provide, at its sole expense, all necessary personnel, materials and equipment for the operation, maintenance and repair of the Disposal Facilities.
- 5.2 *Disposal locations and Alternative Disposal Facility.* It is the intent of this Agreement that City Waste shall be disposed of at a waste-to energy disposal facility, specifically the South Disposal Facility or the North Disposal Facility. At least 30 days prior to the Disposal Commencement Date, Contractor shall provide City with the location of an alternative disposal facility, subject to City's approval, that may be utilized to dispose of City Waste in the event that both Disposal

Facilities are rendered incapable, for any reason, to receive the City Waste for any length of time (the “Alternative Disposal Facility”). In the event that either the South or North Disposal Facility (but not both) is rendered incapable to receive the City Waste for any length of time, the City and the Licensed City Waste Hauler(s) shall be required to dispose of City Waste at the other Disposal Facility at no additional disposal expense to City or City’s Licensed Waste Hauler. In the event that both Disposal Facilities are rendered incapable, for any reason, to receive the City Waste for any length of time, the City and the Licensed City Waste Hauler(s) shall be required to dispose of City Waste at the Alternative Disposal Facility. In the event that both Disposal Facilities and the Alternative Disposal Facility are rendered incapable, for any reason, to receive the City Waste for any length of time, Contractor shall, within 24 hours, provide the City with another designated alternative disposal facility, subject to City’s approval (which shall not be unreasonably withheld), where the City and the Licensed City Waste Hauler(s) shall be required to dispose of City Waste. Reimbursements for any incremental tipping fee amount paid that exceeds the Disposal Services Fee, and for any actual reasonable documented incremental cost for transportation of the City’s Waste necessitated by the incapacity of both the Disposal Facilities and the Alternative Disposal Facility shall be determined in accordance with Section 5.3 below. Contractor shall not transport and/or dispose of the City Waste at a different disposal facility, unless approved by the City in its sole and absolute discretion.

5.3 *Alternative Disposal Facility associated costs.*

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

5.3.2 In the event that the designated Disposal Facility is rendered incapable to receive the City Waste for any length of time due to Force Majeure or the negligence or intentional misconduct of City or City’s Licensed Waste Hauler, the City and the City’s Licensed Waste Hauler shall not receive any reimbursement for any additional tipping fee paid at the Alternate Disposal facility or other disposal facility designated pursuant to Section 5.2 or transportation costs necessitated by the incapacity of Contractor’s Disposal Facility.

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

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

5.6 *Unacceptable Waste.*

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

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

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

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

ARTICLE 6 **TRANSITION FEE**

Beginning upon the Effective Date of this Agreement and ending upon the Disposal Commencement Date (the “Transition Period”), Contractor shall pay the City \$_____ per ton for every ton of City Waste that the City and its Licensed Waste Hauler delivers to Contractor within the Transition Period pursuant to the Interlocal Agreement.

[Note: Section 6 subject to further discussion - WTI desires different type or structure, prefers signing bonus not tied to tonnage]

ARTICLE 7 **DEFAULT**

In the event there should occur any material breach or material default in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty days after receipt of notice from the non-breaching party specifying such breach or default, subject to the terms and conditions of this Section 7.1, the non-breaching party may, if such breach or default is continuing, terminate this Agreement upon thirty days notice to the party in breach; provided that if such default is not a payment default and can be cured, and the party in breach shall have commenced to take reasonably appropriate

steps to cure such breach or default within a reasonable period of time, the same shall not give rise to a right of termination on behalf of the non-breaching party for so long as the breaching party is continuing to take reasonable steps to cure such default or breach.

ARTICLE 8
INSURANCE

8.1 *Policy limits.* Contractor shall not commence performance under this agreement until Contractor has obtained all insurance required under this section and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the City Manager.

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

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

8.2 *City as additional insured.* The City shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation.

8.3 *Insurance company standards.* Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with a minimum rating from AM Best Company of A- Excellent: FSC VII.

8.4 *Notice of cancellation.* Contractor agrees to furnish City with at least 30 days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least ten days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

8.5 *Minimum level of coverage.* To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor’s performance under this Agreement, Contractor shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of \$25,000,000 after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the three year period set forth in Article 8.1 of this Agreement.

- 8.6 *Premium payment responsibility.* Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

ARTICLE 9
LIABILITY

- 9.1 The City and the Contractor shall each be separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.
- 9.2 To the extent permitted by law, the Contractor shall protect, indemnify and hold the City, its officials, agents, servants and employees, harmless from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the City in any suit, including appeals, for personal injury to or death of any person(s), or loss or damage to property, or pollution or environmental contamination, arising out of the operation of Contractor's Disposal Facilities, or the performance (or non-performance) of Contractor of its obligations under this Agreement. Contractor is not, however, required by this Article 9.2 to reimburse or indemnify City for loss or claim due to the negligence or willful misconduct of the City or any Licensed City Waste Hauler(s).

ARTICLE 10
MISCELLANEOUS

- 10.1 *Parental Guaranty.* Contractor shall have its parent company, Waste Management, Inc., guarantee Contractor's performance under this Agreement by executing the Parental Guaranty set forth in Exhibit "C". The City's receipt of the Parental Guaranty executed by Waste Management, Inc. is a condition precedent to the effectiveness of this Agreement.
- 10.2 *Joint preparation.* The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 10.3 *Merger/Amendment.* This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement.
- 10.4 *Assignment.* Except as provided herein, the Contractor may not assign its obligations as set forth in this Agreement without the prior written consent of the City. The Contractor may (i) without the consent of the City, (a) transfer, assign or pledge Contractor's interest in this Agreement in connection with any financing or re-financing activity or (b) assign this Agreement to another affiliate of Contractor (provided that the parent guaranty remains in place); and (ii) with the consent of the City, which may not be unreasonably withheld or delayed, assign this Agreement in connection with a sale or assignment of its interest in the Disposal Facilities, provided that

Contractor can reasonably demonstrate that the assignee has a financial strength which is equal to or better than that of Contractor at the time of the proposed assignment. This Agreement shall be binding on any and all successors to Contractor.

- 10.5 *Records.* Except as otherwise provided herein, the City and Contractor shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- 10.6 *Audit and inspection rights and retention of records.* City shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Contractor shall keep such books, records, and accounts reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Article 2.4.

Contractor shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless Contractor is notified in writing by City of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by City to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry.

- 10.7 *Governing law and venue.* This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. If either party is required to enforce this Agreement by court proceedings or otherwise, whether or not formal action is required, each party shall pay its own attorney's fees and costs.
- 10.8 *Severability.* In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provision shall continue to be effective.
- 10.9 *Independent contractor.* Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of Contractor. This Agreement shall not constitute or make the parties a partnership or joint venture.

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

FOR CONTRACTOR:

FOR THE CITY:

[WTI NOTE: WTI to add North and South Plants (Attn: Plant Manager)]

With a copy to:

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

With a copy to:

10.11 *Third party beneficiaries.* Neither the City nor Contractor intend that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that is not their intent to create any rights or obligations in any third person or entity under this Agreement.

10.12 *Priority of provision.* If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 of this Agreement shall prevail and be given effect.

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

10.14 *Multiple originals.* This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[THIS SPACE INTENTIONALLY LEFT BLANK]

AGREEMENT BY AND BETWEEN WHEELABRATOR TECHNOLOGIES, INC., AND _____, FLORIDA, FOR SOLID WASTE DISPOSAL SERVICES

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Contractor, through its _____, and the _____ by and through its Mayor, duly authorized to execute same.

CITY OF _____, FLORIDA

ATTEST:

, City Clerk

By: _____
, Mayor
____ day of _____, 2012

Approved as to form and legality:

By: _____
, City Attorney
____ day of _____, 2012

By: _____
, City Manager
____ day of _____, 2012

(CITY SEAL)

CONTRACTOR

WHEELABRATOR TECHNOLOGIES, INC.

By: _____
____ day of _____, 2012

**AGREEMENT BY AND BETWEEN WHEELABRATOR TECHNOLOGIES, INC., AND
_____, FLORIDA, FOR SOLID WASTE DISPOSAL SERVICES**

EXHIBIT “A”

DISPOSAL SERVICES FEE

**AGREEMENT BY AND BETWEEN WHEELABRATOR TECHNOLOGIES, INC., AND
_____, FLORIDA, FOR SOLID WASTE DISPOSAL SERVICES**

EXHIBIT “B”

INCREASED PARTICIPATION ADJUSTMENTS TO DISPOSAL SERVICES FEE

**AGREEMENT BY AND BETWEEN WHEELABRATOR TECHNOLOGIES, INC., AND
_____, FLORIDA, FOR SOLID WASTE DISPOSAL SERVICES**

EXHIBIT “C”

PARENTAL GUARANTY