

AMENDED AND RESTATED AGREEMENT

between

BROWARD COUNTY

and

WASTE MANAGEMENT, INC. OF FLORIDA

for

MATERIALS RECOVERY FACILITY

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MATERIALS RECOVERY FACILITY

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

AND

WASTE MANAGEMENT, INC. OF FLORIDA, a Florida corporation, hereinafter referred to as "CONTRACTOR."

WHEREAS, COUNTY and Browning-Ferris Industries of Florida, Inc. (hereinafter referred to as "BFI") entered into an agreement for siting, construction and operation of a Materials Recovery Facility (hereinafter referred to as "MRF") and for marketing of recyclable materials, dated October 6, 1992, which was amended by the First Amendment, dated February 27, 1996, the Second Amendment, dated February 26, 1997, the Third Amendment, dated November 24, 1998, the Fourth Amendment, dated February 8, 2000, and the Fifth Amendment, dated March 6, 2007, (collectively referred to as "MRF Agreement"); and

WHEREAS, COUNTY, BFI Waste Systems of North America, Inc, as successor-in-interest to BFI, and CONTRACTOR entered into a Consent to Assignment of Agreement for Materials Recovery Facility, dated October 21, 2003, which was amended by the First Amendment, dated March 6, 2007, which was acknowledged and agreed to on behalf of the Broward Solid Waste Disposal District by the Broward County Resource Recovery Board (hereinafter referred to as "District"); and

WHEREAS, COUNTY, District and CONTRACTOR entered into a Memorandum of Understanding For Materials Recovery Facility, dated October 21, 2003, which was amended by the First Amendment, dated March 6, 2007 (the MRF Agreement, as amended, the Consent to Assignment, as amended, and the Memorandum of Understanding, as amended, are hereinafter collectively referred to as "Prior

Agreements"); and

WHEREAS, the Prior Agreements terminate on September 30, 2009; and

WHEREAS, the parties desire to enter into this Amended and Restated Agreement, superseding the Prior Agreements to provide for an extension of the term and amend the Scope of Services under such terms and conditions as agreed to below; NOW, THEREFORE,

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

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

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

1.1 **Adjusted Market Value or "AMV"** –A market index used to adjust the revenue paid by the CONTRACTOR to the COUNTY on an annual basis based on fluctuations in the recyclables commodity markets. The AMV per ton of Program Materials delivered to the CONTRACTOR's Recovered Materials Processing Facility or associated Transfer Facility(ies) for the preceding year shall be calculated pursuant to Attachment 2 of this Agreement.

1.2 **Agreement** – means this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.

1.3 **Base Market Value or "BMV"** – The initial market index to which the AMV is compared as calculated in Attachment 2, or \$137.71 per ton.

1.4 **Board** – The Broward County Board of County Commissioners.

1.5 **Commencement Date** – The Commencement Date of this Agreement shall be October 1, 2009.

1.6 **Commercial User** – Any person who owns, leases, or occupies any property within the COUNTY or its cities used for commercial purposes and delivers non-Program Materials to the CONTRACTOR's Facility via self-haul or a commercial hauler.

1.7 **Community Disadvantaged Business Enterprise or "CDBE"** – is a business located in Broward County, Florida, that is owned by an economically disadvantaged

individual whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not economically disadvantaged. To qualify as a CDBE business, a firm must meet the criteria and eligibility requirements of Broward County's CDBE Program and must be certified by Broward County's Small Business Development Division.

1.8 **Contamination** – Materials other than Program Materials that cannot be processed into Recovered Materials.

1.9 **Contract Administrator** – The Broward County Administrator, the Director of the Broward County Recycling and Contract Administration Division, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CONTRACTOR and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

1.10 **Contract Community(ies)** – A Broward County municipal corporation that exists under the laws of the State of Florida and has entered into the Broward County Resource Recovery System / Broward Solid Waste Disposal District Interlocal Agreement with the COUNTY.

1.11 **Contract Hauler** – For the purpose of this Agreement shall mean those persons, firms or corporations or governmental agencies responsible (under either oral or written contract, or otherwise) for the collection of Program Materials within the geographic boundaries of the Contract Communities, when so directed by COUNTY or unincorporated COUNTY and the transport and delivery of Program Materials to CONTRACTOR's Facility or as directed by this Broward Solid Waste Disposal District's Plan of Operations.

1.12 **Contract Year** – Beginning on the Commencement Date (October 1, 2009) and ending (12) months thereafter for the term of this Agreement.

1.13 **County Administrator** – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.

1.14 **County Attorney** – The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.

1.15 **District** – The Broward Solid Waste Disposal District, a dependent district of Broward County.

1.16 **Dual-Stream** – A recycling process in which commingled containers (one stream) are collected separately from paper products (the other stream).

1.17 **Effective Date** – The Effective Date shall be the date upon which this Agreement is fully executed by both parties.

1.18 **Facility** – The CONTRACTOR's Recovered Materials Processing Facility (RMPF) or Transfer Facility. The term may be used interchangeably throughout this RFP and may be used to refer to one or more RMPFs or Transfer Locations.

1.19 **Governmental Entities** – Includes Broward County Government offices, facilities and parks; Broward County Public Schools, Broward College campuses and municipal government offices, facilities and parks from among the District's Contract Communities.

1.20 **Governmental Program Recyclables** – Recyclables originating from Governmental Entities and that are collected and delivered by Contract Haulers and/or by direct haul by the COUNTY or Contract Communities.

1.21 **Hazardous Waste** – Waste which is defined as hazardous waste in Chapter 62-730, Florida Administration Code (FAC), as may be amended; the U.S. Environmental Protection Agency definition pursuant to the Resource Conservation and Recovery Act, 42 USC, Section 6901 et. seq., and implementing regulations, as may be amended; or Chapter 403, Part IV, Florida Statutes, Section 403.703(21).

1.22 **Net Revenue Per Ton** – The monthly payment made by the CONTRACTOR to the COUNTY for receipt of Program Materials.

1.23 **Program Materials** – Includes newspapers and inserts; mixed paper (including, magazines, catalogs, office paper, shredded paper, envelopes, junk mail, chipboard, phonebooks and kraft bags); corrugated cardboard; glass food and beverage containers (clear, brown, green); aluminum cans; Steel and bimetal food and beverage containers; aerosol cans; PET plastic bottles; Natural HDPE plastic bottles; Colored HDPE plastic bottles; Aseptic or polycoated food and beverage containers; and other recyclables which may be designated, if mutually agreed by the COUNTY and CONTRACTOR (through Amendment to the Agreement) for separation, collection and/or processing as part of the program if additional Recyclable Materials and viable markets are identified.

1.24 **Program Recyclables** – Means Program Materials which are generated from residential units and local Governmental Entities within the COUNTY and its Contract Communities, which are collected by the COUNTY, Contract Haulers, or as a result of the Interlocal Agreements entered into between the COUNTY and Contract Communities and Governmental Entities or are delivered as a result of an agreement between the COUNTY and any other government entity located in the COUNTY,

provided that the Program Materials are actually generated by the governmental entity.

1.25 **Project** – The Project consists of the services described in Article 2.

1.26 **Recovered Materials** – Per RRS Plan of Operations: Program Materials which have been collected, separated, and/or processed into a marketable form in accordance with the requirements of such materials. Per Chapter 403.7065, FS: Means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.

1.27 **Recovered Materials Processing Facility or "RMPF"** – A facility engaged solely in the storage, processing, resale, or reuse of recovered materials (definition per Chapter 403.7065, FS.). Previously referred to a Materials Recovery Facility (or "MRF").

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

1.29 **Recyclable Materials** – Means those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.

1.30 **Rejects**– Materials other than Residue that cannot be processed into Recovered Materials.

1.31 **Residential Program Recyclables** – Recyclables originating from residential sources within Broward Solid Waste Disposal District Contract Communities and that are collected and delivered by Contract Haulers and/or by direct haul by Contract Communities.

1.32 **Residue** – Shall mean that portion of the Program Recyclables accepted by the RMPF which is not converted to Recovered Materials due to spoilage, breakage, contamination and/or transportation or processing inefficiencies, other than Rejects removed during the processing of Program Materials in order to meet Recovered Materials specifications.

1.33 **Resource Recovery Board or "RRB"** – Shall mean the governing Board of the Broward Solid Waste Disposal District established by the COUNTY and Interlocal Agreement which performs the responsibilities as set forth in the Interlocal Agreement.

1.34 **Resource Recovery System or "RRS"** – Shall mean the facilities which are

constructed, operated, maintained and repaired or caused to be constructed, operated, maintained and repaired pursuant to the Interlocal Agreement with Broward County for the purpose of transfer or disposal of Solid Waste of the Contract Communities, non-contract communities, and unincorporated COUNTY, and the recovery and sale of materials and energy, there from, including all landfills, contingency landfills, transfer stations, treatment facilities, electrical generation facilities and Materials Recovery Facility.

1.35 **Single-Stream** – A recycling process in which all Program Materials are collected mixed together with no sorting required by residents. For the purpose of this Agreement, an appropriate educational program for residents must be in place and mutually approved by the Contractor and County prior to the delivery of Single Stream Program Recyclables.

1.36 **Ton** – A unit of weight equal to 2,000 pounds, also referred to as a "short ton."

1.37 **Transfer Facility** – A site and/or structure utilized to accept and consolidate Program Recyclables prior to transport to the CONTRACTOR's RMPF.

ARTICLE 2 SCOPE OF SERVICES

2.1 CONTRACTOR shall perform all work identified in this Agreement and Exhibit "A," attached hereto and made a part hereof. The parties agree that the Scope of Services is a description of CONTRACTOR's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by CONTRACTOR impractical, illogical, or unconscionable.

2.2 CONTRACTOR acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall begin on October 1, 2009 and shall end on July 2, 2013; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 Upon mutual agreement of the parties, this Agreement may be renewed for two (2) successive periods of five (5) years each. Such option to renew shall be

exercised by COUNTY, acting through its Contract Administrator or CONTRACTOR by giving written notice by certified U.S. mail to the other party not less than sixty (60) days prior to the expiration of the then existing term. Each renewal term shall be upon the same terms and conditions as provided in this Agreement.

- 3.3 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement shall be completed no later than July 2, 2013. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

ARTICLE 4
MINIMUM TONNAGE COMMITMENT AND PAYMENTS TO COUNTY

- 4.1 COUNTY shall deliver Program Recyclables in quantities no less than the Minimum Tonnage Commitment (MTC) for each full Contract Year for the term of this Agreement. The MTC shall be 56,000 tons per Contract Year commencing on the Commencement Date. For any partial Contract Year, the MTC shall be prorated for that year based on the partial year percentage. The COUNTY shall receive credit towards the MTC for all Program Recyclables described herein delivered to the CONTRACTOR's RMPF or associated Transfer Facility(ies), whether delivered by a Contract Hauler or direct hauled by the COUNTY or its Contract Communities or Governmental Entity. For any Contract Year during which the COUNTY fails to deliver to the CONTRACTOR the MTC the COUNTY shall be obligated to pay the CONTRACTOR a fee equal to \$33.15 per ton for each ton under the MTC.
- 4.2 CONTRACTOR shall pay the COUNTY a Net Revenue per Ton in the amount of Fifty Eight and 50/100 Dollars (\$58.50) for One Hundred Percent (100%) of inbound Program Recyclables delivered to the CONTRACTOR's RMPF and associated Transfer Facility(ies).
- 4.3 No later than the tenth (10th) day of each month, the CONTRACTOR shall submit a monthly report detailing the total revenue due to the COUNTY in a form acceptable to the COUNTY, for the Program Recyclables delivered to the CONTRACTOR's Facility(ies) during the previous month. Payment of said revenue, detailed in the monthly report, shall be submitted to the COUNTY within thirty (30) calendar days from the end of the month for which the payment is outstanding.
- 4.3.1 The monthly invoice shall determine the actual revenues paid to the COUNTY by the CONTRACTOR. If the price of fuel as defined in Attachment 1 exceeds the prescribed limits the net revenue payments will be adjusted accordingly. At the end of each Contract Year, the Net Revenue Per Ton shall be compared to the recyclables commodity market

indices during the preceding year. The CONTRACTOR shall calculate the Adjusted Market Value (AMV) for the preceding year and compare it to the Base Market Value (BMV) of **\$137.71, as outlined in Attachment 2, and adjust the subsequent annual Net Revenue rate, if appropriate.**

- 4.4 The CONTRACTOR shall pay to the COUNTY an amount equal to Fifty Thousand Dollars (\$50,000) to be used for recycling public education purposes on October 1, 2009, and at the commencement of each Contract Year, in order to promote recycling and help increase the amount of Program Materials delivered to the CONTRACTOR's Facility. Said payment shall be submitted to the COUNTY within thirty (30) days of the beginning of each Contract Year.
- 4.5 Surety Bond. Prior to or upon the Effective Date, CONTRACTOR shall furnish a Surety Bond ("Bond") in the amount of Five Hundred Thousand Dollars (\$500,000) in the form attached hereto and made a part hereof as Exhibit "B." The Bond shall guarantee to COUNTY the completion and performance of the work identified in this Agreement and Exhibit "A," as well as, full payment of all suppliers, laborers, or subcontractors employed pursuant to this Agreement. The Bond shall be with a surety company which has twice the minimum surplus and capital required by the Florida Insurance Code, is otherwise in compliance with the provisions of the Florida Insurance Code, and holds a currently valid certificate of authority issued by the United States Department of the Treasury under Sections 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. The Certificate and Affidavit, attached hereto and made a part hereof as Exhibit "F," so certifying should also be submitted with the Bond. The Bond shall continue in effect for one year after termination of this Agreement as provided in this Agreement. CONTRACTOR shall ensure that the Bond referenced herein shall be recorded in the public records of Broward County and provide COUNTY with evidence of such recording.

ARTICLE 5 INDEMNIFICATION

CONTRACTOR shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY and District, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by the alleged illegality of this agreement and by intentional or negligent act of, or omission of, CONTRACTOR, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other

proceeding is brought against COUNTY and District by reason of any such claim, cause of action or demand, CONTRACTOR shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY. CONTRACTOR shall have the full authority to settle or compromise any and all such claims, lawsuits and causes of action, provided that any proposed settlement shall be submitted to the COUNTY for its review and approval, which approval shall not be unreasonably withheld. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due CONTRACTOR under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 6 INSURANCE

- 6.1 To ensure the indemnification obligation contained above, CONTRACTOR shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Sections 6.3, 6.4, 6.5, and 6.6, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.
- 6.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. CONTRACTOR shall pay all deductible amounts, if any. CONTRACTOR shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds under the Commercial General Liability Policy as well as on any Excess Liability Policy coverage. The official title of the certificate holder is Broward County Board of County Commissioners. This official title shall be used in all insurance documentation. In addition, the CONTRACTOR shall include the District as an additional insured.
- 6.3 Commercial General Liability Insurance. A Commercial General Liability Insurance Policy shall be provided which shall contain minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of Five Million Dollars (\$5,000,000.00) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability

Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations.

Independent contractors or CONTRACTOR's Owners Protection Liability which includes liability coverage for operations performed for the name of the insured by independent and /or subcontractor(s) that is(are) hired, and acts or omissions of the named insured in connection with his/her general supervision of such operation.

Products and/or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000.00). CONTRACTOR shall maintain in force until at least five years after completion of all work required under the Agreement coverage for Products and Completed Operations, including Broad Form Property Damage. CONTRACTOR shall provide such Certificate of Insurance or endorsements evidencing this insurance coverage to COUNTY for five (5) years after completion of all work required under the contract.

Broad Form Contractual Coverage, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Broad Form Property Damage.

- 6.4 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.

Hired and Non-Owned Vehicles, if applicable.

Employers' Non-Ownership, if applicable.

Any Auto, if applicable.

- 6.5 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand_ Dollars (\$100,000.00) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

- 6.6 Environmental Impairment Liability/Pollution Liability. Environmental Impairment Liability/Pollution Liability which includes clean up costs and insurance coverages in the minimum amount of Two Million Dollars (\$2,000,000.00) per claim, subject to a maximum deductible of One Hundred Fifty Thousand Dollars (\$150,000.00) per claim. Such policy shall include a Two Million Dollars (\$2,000,000.00) annual policy aggregate and name Broward County Board of County Commissioners and the District as additional insureds.
- 6.7 COUNTY is to be expressly included as an Additional Insured in the name of Broward County Board of County Commissioners with respect to liability (General and Excess/Umbrella) for operations performed for the name of the insured by independent and/or subcontractor(s) that is (are) hired, and acts or omissions of the named insured in connection with his/her general supervision of such operations. In addition, the CONTRACTOR shall include the District as an additional insured.
- 6.8 Waste Management agrees to endorse COUNTY and District as additional insured with either a CG 2020 Additional Insured – Owners, Lessees, or CONTRACTORS or CG 2026 Additional Insured – Owners, lessees, or CONTRACTORS --Scheduled Person Organization endorsement, or similar endorsements, to the Commercial General Liability, Umbrella or Excess Liability. The additional insured shall read "Broward County Board of County Commissioners, Florida" and "Broward Solid Waste Disposal District."
- 6.9 CONTRACTOR shall furnish to the COUNTY's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified by this Article within fifteen (15) calendar days after notification of award of the Agreement and attached hereto and made a part hereof as Exhibit "C." The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The Certificate of Insurance shall be in form similar to and contain the information set forth in Form 00708, to be provided by the COUNTY's Risk Management Division. CONTRACTOR's failure to provide to COUNTY the

Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.

- 6.10 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONTRACTOR is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 6.11 COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If CONTRACTOR uses a subcontractor, the CONTRACTOR shall ensure that subcontractor names COUNTY and District as an additional insured.

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, CONTRACTOR's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may also be terminated by the Board:
 - 7.2.1 Upon the disqualification of CONTRACTOR as a CDBE by COUNTY's Director of Small Business Development Division if CONTRACTOR's status as a CDBE was a factor in the award of this Agreement and such status was misrepresented by CONTRACTOR;
 - 7.2.2 Upon the disqualification of CONTRACTOR by COUNTY's Director of Small Business Development Division due to fraud, misrepresentation, or

material misstatement by CONTRACTOR in the course of obtaining this Agreement or attempting to meet the CDBE contractual obligations;

7.2.3 Upon the disqualification of one or more of CONTRACTOR's CDBE participants by COUNTY's Director of Small Business Development Division if any such participant's status as a CDBE firm was a factor in the award of this Agreement and such status was misrepresented by CONTRACTOR or such participant;

7.2.4 Upon the disqualification of one or more of CONTRACTOR's CDBE participants by COUNTY's Director of Small Business Development Division if such CDBE participant attempted to meet its CDBE contractual obligations through fraud, misrepresentation, or material misstatement; or

7.2.5 If CONTRACTOR is determined by COUNTY's Director of Small Business Development Division to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CDBE status of its disqualified CDBE participant.

7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

7.4 In the event this Agreement is terminated for any reason, any amounts due CONTRACTOR shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

ARTICLE 8 EEO and CDBE COMPLIANCE

8.1 EEO COMPLIANCE

CONTRACTOR shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. CONTRACTOR shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-

discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

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

By execution of this Agreement, CONTRACTOR represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CONTRACTOR all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

8.2 CDBE COMPLIANCE

8.2.1 The CDBE Program, which is implemented under COUNTY's Community Disadvantaged Business Enterprise Act of 2007 (Broward County Ordinance No. 2007-32, as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CDBE participation goals, initiatives, and other opportunities for COUNTY contracts. In completing this Project, CONTRACTOR agrees to and shall comply with the CDBE Program. Failure by CONTRACTOR to carry out any of the CDBE Program requirements shall constitute a material breach of this Agreement, which shall permit COUNTY to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative. CONTRACTOR acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CDBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to CONTRACTOR and shall include a deadline for

CONTRACTOR to notify COUNTY if CONTRACTOR concludes that the modification exceeds the authority of this section of this Agreement. Failure of CONTRACTOR to timely notify COUNTY of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by CONTRACTOR.

The COUNTY, acting by and through its Small Business Development Division, shall have the right to review each proposed amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial Agreement price by ten percent (10%) or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of CDBE firms already involved in this Agreement. CONTRACTOR shall make a good faith effort to include CDBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the Small Business Development Division.

8.2.2 COUNTY and CONTRACTOR agree that subcontract awards to CDBE firms are crucial to the achievement of the Project's CDBE participation goal. CONTRACTOR understands that each CDBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Small Business Development Division. In an effort to assist COUNTY in achieving its established goal for this Project, CONTRACTOR agrees to meet the following CDBE participation goal by utilizing the CDBE firms for the work and dollar values described in Subsection 8.2.3:

Total CDBE Goal	0%
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CONTRACTOR shall inform COUNTY immediately when a CDBE firm is not able to perform or if CONTRACTOR believes the CDBE firm should be replaced for any other reason, so that the Small Business Development Division may review and verify the good faith efforts of CONTRACTOR to substitute the CDBE firm with another CDBE firm. Whenever a CDBE firm is terminated, CONTRACTOR shall make good faith efforts to find another CDBE firm to perform the work required of the original CDBE firm.

8.2.3 In performing services for this Project, COUNTY and CONTRACTOR hereby incorporate CONTRACTOR's participating CDBE firms, addresses, scope of work, and dollar value identified on the Schedule of CDBE Participation into this Agreement (Exhibit "D"). Upon execution of this Agreement by COUNTY, CONTRACTOR shall enter into a formal contract with the CDBE firms CONTRACTOR selected to fulfill the CDBE participation goal for this Agreement and agrees to provide copies of its contracts with such firms to the Contract Administrator and the Broward

County Small Business Development Division. CONTRACTOR shall not terminate a CDBE firm listed on the Schedule of Participation without cause unless CONTRACTOR has received COUNTY's prior written consent. CONTRACTOR understands that each replacement CDBE firm utilized on the Project to meet the participation goal must also be certified by the Broward County Small Business Development Division.

- 8.2.4 CONTRACTOR shall allow COUNTY to engage in on-site reviews to monitor CONTRACTOR's progress in achieving and maintaining its contractual and CDBE Program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the Small Business Development Division. COUNTY shall have access, without limitation, to CONTRACTOR's books and records, including payroll records, tax returns and records, and books of account, on five (5) business days notice, to allow COUNTY to determine CONTRACTOR's compliance with its commitment to the CDBE participation goal and the status of any CDBE firm performing any portion of this Agreement.
- 8.2.5 CONTRACTOR understands that it is the responsibility of the Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the CDBE requirements. In that regard, CONTRACTOR agrees to furnish monthly reports regarding compliance with its CDBE obligations to the Contract Administrator with its partial pay requests under Section 4.2 of this Agreement, which report shall, as a minimum, include all expenditures made to achieve compliance with its assigned goal or other contractual conditions agreed to by CONTRACTOR, the name and business address of each CDBE firm participating in this Agreement; a description of the work performed and/or product or service supplied by each CDBE firm; the date and amount of each expenditure; and any other information requested by COUNTY's representative which may assist COUNTY in determining CONTRACTOR's compliance with its contractual obligations, or which may assist in the implementation and enforcement of the Act. The submission of the report required by this subsection shall be a condition of payment to CONTRACTOR. The monthly reports shall be submitted on a form which may be obtained at the Small Business Development Division. The first report shall be due at the end of the first month of this Agreement.
- 8.2.6 In the event of CONTRACTOR's noncompliance with its participation commitment to a CDBE firm (including without limitation the unexcused reduction of the CDBE firm's participation), the affected CDBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CDBE firm, and alleged to be due to the willful action or omission of CONTRACTOR:

- 8.2.6.1 The affected CDBE firm shall be entitled to damages pursuant to its agreement with CONTRACTOR.
- 8.2.6.2 If the CDBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by CONTRACTOR, then in such event the CDBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between CONTRACTOR and COUNTY; nor shall COUNTY incur any cost, fee, or liability relative to any arbitration proceeding.
- 8.2.6.3 Nothing under this Subsection 8.2.6 shall be construed to limit the rights of and remedies available to COUNTY, including the right to seek its own damages pursuant to this Agreement.
- 8.2.7 CONTRACTOR agrees that nonpayment of a CDBE subcontractor or CDBE supplier as required by Section 4.3.2 of this Agreement shall be a material breach of this Agreement and that COUNTY's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in its contract with a CDBE firm shall not preclude COUNTY or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Subsection 8.2.7 shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its CDBE subcontractor or supplier.
- 8.2.8 If CONTRACTOR fails to comply with the requirements of this Agreement, COUNTY shall have the right to exercise any administrative remedies provided by the Act, or any other right or remedy provided in this Agreement or under applicable law.

ARTICLE 9 MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents regarding Program Recyclables provided or created in connection with this Agreement are and shall remain the property of COUNTY; and, if a copyright is claimed, CONTRACTOR grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any

reports, photographs, surveys, and other data and documents regarding Program Recyclables prepared by CONTRACTOR, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by CONTRACTOR to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

9.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit, review and inspect the books, records, and accounts of CONTRACTOR that are related to the processing of Program Recyclables and the disposition of Residue. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the processing of Program Recyclables and disposition of Residue. All books, records, and accounts regarding Program Recyclables kept by CONTRACTOR shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR shall make same available at no cost to COUNTY in written form.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement regarding the processing of Program Recyclables and disposition of Residue for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by a court of competent jurisdiction 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 substantial and material incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

9.3 FORCE MAJEURE

If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, or any other cause beyond the reasonable control of

either party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

9.4 PUBLIC ENTITY CRIME ACT

CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

9.5 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

COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to CONTRACTOR or CONTRACTOR's agents any authority of any kind to bind COUNTY in any respect whatsoever.

9.6 THIRD PARTY BENEFICIARIES

Except as provided under Subsection 8.2.6, neither CONTRACTOR nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.7 NOTICES

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

FOR COUNTY:

Peter Foye, Director
Broward County
Recycling & Contract Administration
1 N. University Drive, Suite 400
Plantation, Florida 33324

FOR CONTRACTOR:

Waste Management, Inc. of Florida
2700 NW 48th Street
Pompano Beach, Florida 33073
Attn.: Ron Kaplan, Esq.

9.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement, except as provided in Exhibit "D." COUNTY may terminate this Agreement, effective immediately, if there is any assignment, or attempted

assignment, transfer, or encumbrance, by CONTRACTOR of this Agreement or any right or interest herein without COUNTY's written consent.

CONTRACTOR represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

Notwithstanding the above, the Parties agree that this Agreement may be assigned to the Broward Solid Waste Disposal District, or any successor organization designated pursuant to Section 403.706(19), Florida Statutes.

9.9 CONFLICTS

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

CONTRACTOR further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or CONTRACTOR is not a party, unless compelled by court process. Further, CONTRACTOR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude CONTRACTOR or any persons in anyway from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event CONTRACTOR is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

9.10 MATERIALITY AND WAIVER OF BREACH

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

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.11 COMPLIANCE WITH LAWS

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

9.12 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

9.13 JOINT PREPARATION

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

9.14 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.15 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

9.16 AMENDMENTS

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

9.17 PRIOR AGREEMENTS

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

9.18 HIPAA COMPLIANCE

It is expressly understood by the parties that COUNTY personnel and/or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 CFR 164.502 and related regulations. In the event CONTRACTOR is considered to be a covered entity or business associate and/or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (hereinafter known as "HIPAA"), CONTRACTOR shall fully protect individually identifiable health information as required by HIPAA and, if requested by COUNTY, shall execute a Business Associate Agreement in the

form attached hereto and made a part hereof as Exhibit "E" for the purpose of complying with HIPAA. Where required, CONTRACTOR shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of CONTRACTOR's and COUNTY's uses of client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement. COUNTY hereby authorizes the County Administrator to sign Business Associate Agreements on its behalf.

9.19 DRUG-FREE WORKPLACE

It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by CONTRACTOR shall serve as CONTRACTOR's required certification that it either has or that it will establish a drug-free work place in accordance with Section 287.087, Florida Statutes, as may be amended from time to time, and Chapter 21.31(a)(2) of the Broward County Procurement Code as may be amended from time to time.

9.20 CONTINGENCY FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, COUNTY shall have the right, at its discretion, to terminate this Agreement without liability, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

9.21 LIVING WAGE REQUIREMENT

To the extent CONTRACTOR is a "covered employer" within the meaning of Broward County Ordinance No. 2002-45, as may be amended from time to time, CONTRACTOR agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and CONTRACTOR shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete all of the obligations set forth therein. CONTRACTOR shall be responsible for and shall ensure that all of its subcontractors that qualify as covered employers fully comply with the requirements of such ordinance and satisfy, comply with, and complete all of the obligations set forth therein. If the term of this Agreement is less than six (6)

months, then CONTRACTOR shall nevertheless provide the reports and records identified in Section 26-103 of the Living Wage Ordinance. Such reports and records shall be provided within thirty (30) days of the expiration or termination of this Agreement.

9.22 ADMINISTRATIVE CHARGES

The COUNTY will monitor and review the CONTRACTOR's compliance with the performance standards listed below. If any of these performance standards are violated, the COUNTY shall have the option to issue the CONTRACTOR a written Notice of Non-Compliance. If no other period is specified by the COUNTY in the Notice of Non-Compliance, CONTRACTOR shall have seven (7) calendar days to correct the violation, unless otherwise stated. If the violation is not corrected within the specified time period, the Administrative Charges will be assessed retroactively to the date of the Notice of Non-Compliance. The CONTRACTOR will add any assessed Administrative Charges to the following month's payment.

<u>Performance Standard Violations</u>	<u>Administrative Charges</u>
Failure to provide complete and timely reports to the COUNTY within ten (10) calendar days of the end of each month.	\$1,000/occurrence
Failure to accept Program Recyclables at all designated facilities (RMPF and Transfer Facilities) during scheduled receiving hours.	\$11,500/day
Failure to accept Program Recyclables at a designated facility which requires diversion to an alternate site.	\$300/vehicle
Failure to maintain an average thirty (30) minute turnaround time at the RMPF or Transfer Facility.	\$100/day
Failure to certify and calibrate scales annually.	\$10,000/occurrence
Unapproved disposal of Program Recyclables.	\$100/ton

The COUNTY shall notify the CONTRACTOR in writing of its decision to assess Liquidated Damages. If the CONTRACTOR desires to challenge the decision it must do so in writing within seven (7) calendar days after receipt of notice from the COUNTY. The request shall specify the grounds upon which the CONTRACTOR objects to the assessment of Liquidated Damages by the

COUNTY. The matter shall be referred to the Contract Administrator who shall rule on the CONTRACTOR's challenge. The Contract Administrator's ruling shall constitute a final determination of the matter. Liquidated Damages payment shall be made separate from monthly revenue payments and shall be due thirty (30) days from the date of final determination.

9.23 NON-COUNTY OR DISTRICT RECYCLABLES MATERIALS ACCEPTANCE AND MOST FAVORED TERMS

The CONTRACTOR may accept Recyclable Materials at the RMPF or Transfer Facility(ies) from other sources (out-of-County users or non-District cities) provided acceptance of such materials does not preclude or interfere with the daily delivery, acceptance, or processing of Program Materials from the COUNTY in accordance with this Agreement.

Moreover, the CONTRACTOR, shall not enter into any agreement, contract or arrangement, either directly or indirectly by way of a third party, with any county, municipal or governmental entity delivering Program Recyclables as defined herein, wherever located within the State of Florida, for a higher Net Revenue Per Ton payment than is provided for in this Agreement unless such more favorable terms are also extended to the COUNTY.

COUNTY and CONTRACTOR agree to minimum thresholds to determine a Most Favored Nations "like contract." Such thresholds shall include the following:

- a. a contract with a governmental entity;
- b. minimum term of five years;
- c. a minimum tonnage commitment of 56,000 tons;
- d. transfer obligations or transfer stations;
- e. no hauling provisions;
- f. compensation to governmental entity by net revenue fee.

This clause shall only apply to the initial term of the agreement and is subject to renegotiation for any future renewal term. The Most Favored Nations clause shall be limited in its application to contracts entered into within the State of Florida.

9.24 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" through "F" and Attachments 1 through 6 are incorporated into and made a part of this Agreement.

9.25 REPRESENTATION OF AUTHORITY

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

9.26 MULTIPLE ORIGINALS

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

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

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

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

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

By _____
(Date)

By _____
Purvi A. Bhogaita (Date)
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND WASTE MANAGEMENT, INC. OF FLORIDA FOR MATERIALS RECOVERY FACILITY

RESOURCE RECOVERY BOARD

WITNESSES

Signature

Print/Type Name

Signature

Print/Type Name

BROWARD SOLID WASTE DISPOSAL DISTRICT, by and through its RESOURCE RECOVERY BOARD

By _____

Print Name: _____

Title: _____

____ day of _____ 20____.

Approved as to form:

By: _____

Eugene Steinfeld (Date)
Counsel, Resource Recovery Board

PAB:dmv
12/04/08
MRF-WM.AmendRestatedAgmt.DOC

AGREEMENT BETWEEN BROWARD COUNTY AND WASTE MANAGEMENT, INC.
OF FLORIDA FOR MATERIALS RECOVERY FACILITY

CONTRACTOR

WASTE MANAGEMENT, INC.
OF FLORIDA

WITNESSES:

By _____
_____, President

____ day of _____, 20____

(SEAL)

EXHIBIT A

SCOPE OF SERVICES

I. OBJECTIVES

It is the intent of the County that the following objectives be accomplished through this Agreement:

- Maximize per ton revenues derived from the sale of Program Recyclables and minimize transportation and Contract Community collection costs;
- Maximize the diversion of Program Materials from the County's solid waste stream.
- Have the ability to deliver Program Recyclables in either Dual-Stream or Single-Stream manner.

CONTRACTOR shall be responsible for the complete fiscal, administrative, legal, and managerial responsibility for the delivery of the required services.

II. MATERIALS TO BE PROCESSED

Program Materials are defined in Paragraph 1.22 of the Agreement.

The CONTRACTOR shall be required to process Program Recyclables as defined herein. Additional Program Recyclables may be added to this Agreement by mutual agreement between the County and CONTRACTOR.

The CONTRACTOR shall be required to accept, process and market Program Recyclables delivered in either Dual-Stream or Single-Stream manner. The County makes no guarantees as to what volumes of Program Materials will be delivered Single-Stream or Dual-Stream.

Recyclable Materials delivered by commercial users, nonprofit groups, and other governmental agencies located within the County, will not be subject to Net Revenue Per Ton payments to the County. Broward County makes no assurances or guarantees that other Recyclables will be delivered to the CONTRACTOR's facility.

III. PROGRAM MATERIALS COMPOSITION PERCENTAGE

The relative Program Materials composition percentages (%) for both Residential and Governmental Program Recyclables are detailed as part of Attachments 3 and 4. These relative percentages shall remain in effect throughout the term of this Agreement. However, a review and possible adjustment to the composition percentages may be requested by the CONTRACTOR or the County at any time after the initial Contract Year. In such an event, the cost of performing a review of the Program Materials

composition percentages shall be borne by the requesting party, and the review methodology will need to receive advance review and approval by the non-requesting party. Adjustments to the composition percentage shall be formalized through a written Memorandum of Understanding executed by the CONTRACTOR and Contract Administrator and shall include any adjustment in the BMV and AMV processes.

IV. ADDITIONAL RECYCLABLES

The County reserves the right to add or delete other recyclable materials to the program if the parties agree. These items may include, but are not limited to, paper recyclables and other types of container recyclables. If recyclable materials are added or deleted to the current program, mutually agreeable and appropriate modifications to the baseline Program Materials definition and composition, Net Revenue Per Ton, Base Market Value (BMV) and Adjusted Market Value (AMV) processes will be agreed upon through written Memorandum of Understanding executed by the Contractor and Contract Administrator.

V. SERVICE AND PROCESSING REQUIREMENTS

The CONTRACTOR shall be responsible for all aspects of management, operations, and maintenance of the RMPF and comply with the applicable local, state, or federal regulations and county requirements. Processing of all Program Recyclables shall be done in accordance with this agreement, the specifications and the requirements of the secondary materials buyers.

At a minimum, the CONTRACTOR shall operate the RMPF and any associated Transfer Facility(ies) to meet the following requirements:

- Accept Program Recyclables from a variety of different trucks normally used for the collection and/or transport of Recyclable Materials; deliveries in rear-load vehicles of Single-Stream Program Recyclables are acceptable, provided that such vehicles are clearly distinguishable from those that deliver solid waste by permanent signage or other mutually approved manner; rear-load vehicles may be used in emergency situations with the prior approval of the Contract Administrator and advanced notice to CONTRACTOR;
- Accept Program Recyclables at the RMPF or Transfer Facility specified in the RRS Plan of Operations;
- Provide an average turn-around time no more than thirty (30) minutes for collection vehicles delivering recyclable materials to the facility, subject to weather condition or other Force Majeure events;
- CONTRACTOR shall be capable of accepting at least 70,000 tons per year of Program Materials from Contract Communities and Governmental Entities. CONTRACTOR shall accommodate the additional tonnage from any Contract Communities that transition to single stream collection;
- Covered areas for receiving, sorting, and processing Program Materials and storage and shipping areas for recovered materials;

- Certified scale tested and calibrated at least annually either by the county or by an independent CONTRACTOR/scale company approved by the county.
- Provide tracking system for Program Materials and Non-Program Materials/Non-District Recyclables/Out-of-County Recyclables;
- Shall have an ongoing system of preventive maintenance to track maintenance activities and keep non-breakdowns to a minimum.

VI. SCHEDULED DAYS AND RECEIVING HOURS

The CONTRACTOR's RMPF or Transfer Facilities shall be open and available to receive Program Recyclables from 6:00 a.m. to 6:00 p.m. Monday through Saturday with the exception of December 25th. Program Materials are normally delivered Monday through Friday. No changes shall be made to these hours without the prior written approval of the Contract Administrator or his/her designee.

VII. MARKETING

The CONTRACTOR shall be responsible for marketing all Program Materials received and processed at the RMPF as a result of this Agreement. The CONTRACTOR shall bear all costs associated with marketing including, without limitation, providing or arranging for transportation of materials to end markets. All recovered materials shall be marketed within a reasonable period of time after delivery and processing except where special or seasonal conditions would require accumulation of materials. The CONTRACTOR shall maintain complete and accurate records of all material inflows and outflows.

VIII. MATERIALS QUALITY AND REJECTION

The County and its Contract Communities shall make reasonable efforts to ensure that only Program Recyclables are collected through their individual recyclables collection programs. However, the County makes no guarantee as to the quality of the Program Recyclables delivered to the CONTRACTOR's Facility.

The CONTRACTOR shall inspect each delivery of Program Recyclables at the Facility. The CONTRACTOR shall have the right to reject deliveries of materials which fail to meet the Acceptance Standards as provided in the Broward Solid Waste Disposal District's Plan of Operations (Attachment 5). Notwithstanding the Acceptance Standards set forth in Attachment 5, the CONTRACTOR may deem unacceptable any load which contains non-Program Recyclables comprising more than ten percent (10%) of the load by weight or volume, whichever is more restrictive. The CONTRACTOR shall inform the Contract Hauler or entity delivering the Recyclable Material, as well as the Contract Administrator and the appropriate Contract Community by providing electronic pictures of the load clearly showing the level of contamination. Electronic mail addresses for each Contract hauler and entity delivering Recyclable Material, appropriate Contract Community and for the Contract Administrator shall be provided to CONTRACTOR for

notification purposes. The CONTRACTOR shall bill the Contract Hauler for the cost of handling, managing and disposing the contaminated load. In the event the Contract Hauler does not pay such charges within sixty (60) days, the County will reimburse the CONTRACTOR within fifteen (15) days and the County may debit the charges from the revenues due to the Contract Community.

The cost of handling, hauling and disposal of Residue and Rejects as defined herein is the sole responsibility of the CONTRACTOR. All processable Residue derived from Program Recyclables shall be delivered to the facility designated by the Contract Administrator.

If any Hazardous Waste is detected in either the Program or non-program Materials delivered to the RMPF or Transfer Facility(ies), the CONTRACTOR will properly isolate and containerize the materials and dispose of them in accordance with all applicable laws. CONTRACTOR shall be responsible for disposal at the CONTRACTOR's expense, unless the source of the material can be determined to have come from a specific Commercial User. The expense of handling, removal and disposal of Hazardous Waste will be borne solely by the Commercial User. The Commercial User may be billed by the CONTRACTOR for the associated costs. Instances involving the discovery of Hazardous Waste in loads shall be communicated to the Contract Administrator at the time of occurrence.

IX. DISPOSITION OF RECYCLABLE MATERIALS

Unless the CONTRACTOR has prior permission from the County, the CONTRACTOR shall not dispose through landfilling or delivery to a waste-to-energy facility of any Recyclable Materials or Recovered Materials collected under this Agreement. The CONTRACTOR shall not knowingly, or without reasonable assumption, sell Recyclable Materials or Recovered Materials to another agent that disposes of them other than through recycling. This does not apply to Rejects and Residue.

X. WEIGH SYSTEM AND SCALE TICKETS

All scale information and data shall be maintained and formatted on a system compatible with the County's system currently used by Waste and Recycling Services, or as otherwise directed by the Contract Administrator. The CONTRACTOR shall provide the County, on a monthly basis, all itemized transactions covered by this Agreement in an electronic format acceptable to the Contract Administrator. This information shall be submitted no later than the 10th day of each month following the period represented by the invoice. As set forth in Section 9.2, all transactions that occur at the CONTRACTOR's Facility(ies) regarding Program Recyclables shall be subject to on-site audit and reviews by the County or its agents to ensure proper recordation of Program Recyclables tonnages.

CONTRACTOR shall provide weight receipts for each load of recyclable material delivered. The weight tickets shall show the facility's name, a unique transaction or

ticket number, material type, material origin, designated hauler name, gross weight, intermediate weight (if Program Materials are delivered dual-stream), net weight, date, in and out time, and vehicle number. The County may elect to have an employee or agent in the scale house at any time to observe scale operations and review weighing procedures for Program Recyclables upon reasonable notice.

CONTRACTOR shall provide and maintain documentation that scales are in full compliance with all required permits under the federal, state, and local laws. The scales shall be regularly calibrated to ensure accurate measurement of the weights of Recyclables delivered. Weighing procedures shall be utilized which insure that all material is properly accounted for with regard to quantities transported to, from and stored at the RMPF or Transfer Facility(ies).

XI. SCALE OUTAGE PROCEDURES

If the permanent vehicle scales at the CONTRACTOR's RMPF or Transfer Facility(ies) are not working properly, the CONTRACTOR shall use portable scales or other alternate weighing equipment certified by the Florida Department of Agriculture. If portable scales or other alternate weighing equipment meeting the requirements of applicable law are not available, a "scale outage" will occur, and the CONTRACTOR shall estimate the quantity of Recyclables delivered on the basis of truck volumes and historical information supplied by the County. Within one hour of a scale outage, the CONTRACTOR shall notify the Contract Administrator or designee by phone, which may require leaving a recorded message on voice-mail, or through electronic mail to advise the Contract Administrator or designee of the need to estimate tonnages. These estimates will take the place of actual weighing records during the scale outage. In order to participate in the estimating of quantities of Program Recyclables during a scale outage, the County may elect to station an employee or agent in the scale house when each collection vehicle arrives.

XII. RECORDS AND REPORTS

The CONTRACTOR shall create, maintain, and make available records as defined in, and required by all applicable local, state, and federal laws, rules and regulations, and any reports as are reasonably necessary to:

- Document Recyclable Materials deliveries by date, place, type, quantities, and county of origin. Quarterly and annual reports will be submitted, throughout and at the conclusion of each Contract Year, to FDEP and the County per Section 403.7065, Florida Statutes and Rule 62-722, Florida Administrative Code. See links below:
 - <http://www.flsenate.gov/statutes/index.cfm?Mode=ViewStatutes&Submenu=1>
 - http://www.dep.state.fl.us/waste/quick_topics/rules/documents/62-722.pdf

- Track all Program Recyclables delivered by Contract Communities and Governmental Entities as defined herein separate from non-Program Materials, including amounts received at the CONTRACTOR's RMPF or Transfer Facility(ies). A monthly and annual report will be submitted to the County in a format reviewed and approved by the Contract Administrator.
- Such other documents and reports as the County may reasonably require to verify compliance with the Agreement or to meet the County's reporting requirements with the State of Florida.

Monthly reports are due within ten (10) calendar days of the beginning of the month. Payments are due within thirty (30) calendar days of the beginning of the month. Annual report/summaries will be submitted to the County within thirty (30) calendar days following the Contract Year end.

Thirty (30) calendar days prior to the Commencement Date, the CONTRACTOR will be required to submit to the Contract Administrator for his/her approval, the format and sample contents of the records to be maintained, and the reports to be generated in fulfillment of the requirements of the Agreement.

BASE MARKET VALUE OF PROGRAM MATERIALS

A Base Market Value (BMV) of **\$137.71** per ton has been established for Program Materials to be processed and marketed under the terms of this Agreement. The BMV will be utilized to calculate changes in the aggregate value of a ton of Program Materials based on fluctuations in the recyclables commodity markets. The BMV has been determined by calculating the average of the weekly-published market values for Program Materials for July, 2008, in the following market-index publications:

- Newspaper (PS No. 8 grade) are taken from the Southeast Region index published in the first issue of July, 2008 from the Official Board Markets Publication (Yellow Sheet).
- Mixed Paper (PS No. 1) grade prices are taken from the Southeast Region index published in the first issue of July, 2008 from the Official Board Markets Publication (Yellow Sheet).
- Corrugated Cardboard (PS No. 11 grade) prices are taken from the Southeast Region index published in the first issue of July, 2008 from the Official Board Markets Publication (Yellow Sheet).
- Aluminum food and beverage containers prices are taken from the Atlanta index (Southeast, USA) for sorted and baled materials, published July 1, 2008 from the Waste News Secondary Materials Pricing webpage.
- Steel and bimetal food and beverage containers prices are taken from the Atlanta index (Southeast, USA) for sorted and densified materials, published July 1, 2008 from the Waste News Secondary Materials Pricing webpage.

- PET plastic bottles, natural HDPE plastic bottles and colored HDPE plastic bottles prices are taken from the Atlanta index (Southeast, USA) for baled materials, published July 1, 2008 from the Waste News Secondary Materials Pricing webpage.
- For the purpose of this Agreement, the value of glass food and beverage containers shall be considered \$0 per ton. However, CONTRACTOR is encouraged to locate and identify more cost-effective glass end-markets. CONTRACTOR shall be required to recycle glass food and beverage containers consistent with the Florida Department of Environmental Protection's Administrative Rules for glass recycling and a County's receipt of "recycling credit" towards its annual recycling goals.
- For the purpose of this Agreement, the value of aseptic or polycoated food and beverage containers shall be considered \$0 per ton. CONTRACTOR shall be required to recycle these materials and are encouraged to consider highest and best use recycling markets for these materials.
- For the purpose of this Agreement Program Materials Residue shall be valued at \$0 per ton. The CONTRACTOR shall be expected to comply with all local laws and ordinances as it relates to residue disposal. The cost of residue disposal should be considered by CONTRACTOR when determining the Net Revenue Per Ton payment to the County.

For Program Materials values that tied to a market index that quotes prices as a range, the BMV was computed using the high-side price quotation of the range. The Adjusted Market Value (AMV) shall utilize the high-side price of any market index range as well.

Program Materials values that are quoted in cents per pound have been converted to dollars per ton in calculating the BMV. Program Materials values quoted in cents per pound as part of the AMV shall be converted to dollars per ton as well.

In the event that the market indices as specified above cease publication or drastically change the manner in which they quote average Program Materials market values, the County and CONTRACTOR shall promptly and mutually decide upon alternate publications and/or indices through a written Memorandum of Understanding executed by the CONTRACTOR and Contract Administrator.

XIII. COUNTY ACCESS AND RIGHT TO INSPECT

The COUNTY shall have quarterly access to the CONTRACTOR's Facility, with due notice, during operational hours. The COUNTY shall have the right, during the CONTRACTOR's hours of operation, to tour the Facility. The CONTRACTOR shall reasonably accommodate the COUNTY's request to tour the Facility, provided it does not create a safety hazard or inhibit the CONTRACTOR's operation.

XIV. EARLY USE OF RMPF AND TRANSFER FACILITIES

In the event the COUNTY or any Contract Community desires early use of the RMPF and/or the Transfer Facilities for Single Stream material prior to the Commencement Date, the parties agree to use good faith efforts to mutually agree upon the terms and conditions of such early use period. Said terms and conditions shall be set forth in a memorandum of understanding executed by the CONTRACTOR and Contract Administrator and approved as to legal form by the County Attorney's Office of Broward County and counsel for the Resource Recovery Board.

XV. COMPLIANCE WITH LAWS AND REGULATIONS

The CONTRACTOR shall ensure that the RMPF will comply at all times with all applicable local, State and Federal laws, regulations, permits and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions.

XVI. PUBLIC EDUCATION AT CONTRACTOR'S RMPF

CONTRACTOR shall make available its Educational Center at the Reuter Recycling Facility to COUNTY/District staff, Broward County based non-profit organizations, schools and other civic groups with an interest in recycling and environmental issues. The COUNTY shall arrange for such activities on behalf of those groups by calling CONTRACTOR for an appointment. Appointments are subject to operational concerns and other contractual commitments. Groups shall not exceed 25 members.

ATTACHMENT 1

FUEL ADJUSTMENT

- 1) The parties desire to protect against extreme changes in the cost of fuel during the term of this Agreement. Accordingly, the cost of diesel fuel will be determined by referring to the Energy Information Administration of the US Department of Energy ("EIA/DOE") website that reports average prices of diesel fuel for the "Lower Atlantic" United States on a weekly basis. The link is as follows:
<http://tonto.ela.doe.gov/cog/info/wohdp/diesel.asp>. The first Monday of each month will be used or the first Tuesday when Monday is a federal holiday.

2)

Average Price/Gallon			Adjustment per ton
\$ 1.000	to	\$ 1.500	+\$1.50
\$ 1.501	to	\$ 2.000	+\$1.00
\$ 2.001	to	\$ 2.500	+\$0.50
\$ 2.501	to	\$ 3.000	0
\$ 3.501	to	\$ 4.000	0
\$ 4.001	to	\$ 4.500	0
\$ 4.501	to	\$ 5.000	0
\$ 5.001	to	\$ 5.500	0
\$ 5.501	to	\$ 6.000	0
\$ 6.001	to	\$ 6.500	0
\$ 6.501	to	\$ 7.000	-\$0.50
\$ 7.001	to	\$ 7.500	-\$1.00
\$ 7.501	to	\$ 8.000	-\$1.50

- 3) Adjustments for fuel costs \$2.500 or less or exceeding \$6.500 per gallon shall be made for the month thereafter to the guaranteed revenue paid to the County by Contractor. Accordingly, by way of example, if fuel costs as determined by the aforesaid website on the first Monday of the month (or Tuesday if Monday is a federal holiday) should be \$6.55 per gallon, for such month the Contractor shall deduct from the payment to the County \$0.50 per ton of material delivered to the Facility. If fuel costs should be \$2.10 per gallon, the Contractor will add to the payment to the County \$0.50 per ton of material delivered to the Facility for that month.
- 4) For fuel costs not shown on the chart, the adjustment will be extrapolated from the adjustments shown.

ATTACHMENT 2

ADJUSTED MARKET VALUE

The AMV shall be calculated at the end of each Contract Year by averaging the monthly market commodity value for each material for the preceding year based on the market indices noted in herein, multiplying the average market value for each material by the material percentage figure for that material as noted herein, and then totaling these figures. These figures will be tracked quarterly with the final submission at the end of each Contract Year constituting the official AMV for that contract. The annual AMV adjustment will only impact the Net Revenue Per Ton for next Contract Year and will not be used to “true up” the previous year’s Net Revenue Per Ton fees.

Calculation of Revenue Adjustment Based on BMV and AMV

The AMV will then be compared with the BMV (\$137.71). If the AMV is within twenty-five percent (25%) higher or lower than the BMV (\$103.28 - \$172.14), no revenue adjustment will be made. If the AMV is more than twenty-five percent (25%) higher than the BMV (>\$172.14), the CONTRACTOR will pay to the COUNTY fifty percent (50%) of the amount in excess of \$172.14 for each in-bound ton of Program Recyclables delivered to the CONTRACTOR during the preceding Contract Year. If the AMV is more than twenty-five percent (25%) lower than the BMV (<\$103.28), the CONTRACTOR will deduct from future payment(s) to the COUNTY an amount equal to fifty percent (50%) of the amount lower than \$103.28 for each in-bound ton of Residential Program Materials delivered to the CONTRACTOR during the Preceding Contract Year.

- Base Market Value (\$137.71) X 1.25 (25 % increase) = Allowable Increase in Market Value Not Requiring Adjustment (\$172.14)
- Base Market Value (\$137.71) X 0.75 (25 % decrease) = Allowable Decrease in Market Value Not Requiring Adjustment (\$103.28)

Example Calculation #1 – No Revenue Adjustment:

The following example assumes the Adjusted Market Value is \$124.32/ton (a decrease from the BMV), and 60,000 tons of Program Recyclables were processed in the Contract Year.

- \$124.32 (AMV) > \$103.28 (Allowable Market Decrease)
- And
- \$124.32 (AMV) < \$172.14 (Allowable Market Increase)

Therefore, no adjustment in revenue is warranted.

Example Calculation #2 – Increased Market Value:

The following example assumes the Adjusted Market Value is \$179.80/ton, and 60,000 tons of Program Recyclables were processed in the Contract Year.

Step 1: $\$179.80 \text{ (AMV)} - \$172.14 \text{ (Allowable Market Increase)} = \$7.66/\text{ton}$

Step 2: $\$7.66/\text{ton} \times 50\% = \$3.83/\text{ton} \text{ (Payment Increase)}$

Example Calculation #3 – Decreased Market Value

The following example assumes the Adjusted Market Value is \$98.68/ton, and 60,000 tons of Program Recyclables were processed in the Contract Year.

Step 1: $\$103.28 \text{ (Allowable Market Decrease)} - \$98.68 \text{ (AMV)} = \$4.60/\text{ton}$

Step 2: $\$4.60/\text{ton} \times 50\% = \$2.30/\text{ton} \text{ (Payment Decrease)}$

BASE MARKET VALUE

Calculating the Base Market Value of COUNTY's Program Materials:

Annual Tonnage:

60,000

<i>Commodity</i>	<i>Commodity Share Percentage</i>	<i>Weighted Average Tons</i>	<i>Market Value/Ton</i>	<i>Weighted Average Price</i>
Newspaper (1)	57.73%	34,638	\$140.00	\$4,849,320
Mixed Paper (2)	5.21%	3,126	\$95.00	\$296,970
Corrugated Cardboard (3)	0.34%	204	\$110.00	\$22,440
Aluminum Cans (4)	0.83%	498	\$2,000.00	\$996,000
Steel Cans (5)	1.31%	786	\$195.00	\$153,270
PET (6)	3.45%	2,070	\$420.00	\$869,400
HDPE Natural (7)	1.41%	846	\$760.00	\$642,960
HDPE Colored (8)	1.44%	864	\$500.00	\$432,000
Mixed Glass (9)	21.30%	12,780	\$0.00	\$0
Rejects/Residue (10)	6.98%	4,188	\$0.00	\$0
Total:	100.0%	60,000		\$8,262,360
Base Market Value Per Ton:			\$137.71	

Notes:

(1) Newspaper prices are the first published price of each month on the Secondary Fiber Pricing website (PS 8 news, Southeast average).
(2) Corrugated cardboard prices are the first published price of each month on the Secondary Fiber Pricing website (PS 11, Southeast average).
(3) Mixed paper prices are the first published price of each month on the Secondary Fiber Pricing website (PS 1, Southeast average).
(4) Aluminum can prices are the first published price of each month on the Secondary Materials Pricing Index for Atlanta/Southeast (high) as published on the Waste News website (sorted, baled, cents/lb. del.).
(5) Steel can prices are the first published price of each month on the Secondary Materials Pricing Index for Atlanta/Southeast (high) as published on the Waste News website (sorted, densified, \$/ton del.).
(6) PET prices are the first published price of each month on the Secondary Materials Pricing Index for Atlanta/Southeast (high) as published on the Waste News website (baled, cents/lb. picked up).
(7) Colored HDPE prices are the first published price of each month on the Secondary Materials Pricing Index for Atlanta/Southeast (high) as published on the Waste News website (baled, cents/lb. picked up).
(8) Natural HDPE prices are the first published price of each month on the Secondary Materials Pricing Index for Atlanta/Southeast (high) as published on the Waste News website (baled, cents/lb. picked up).
(9) Glass bottles and jars are valued at \$0 per ton.
(10) Residue is valued at \$0 per ton.

Example 1: AMV – NO REVENUE ADJUSTMENT

Calculating the Adjusted Market Value of COUNTY's Program Materials and Annual Revenue Adjustment - No Revenue Adjustment Scenario:

Annual Tonnage:	60,000
Proposed Net Revenue Per Ton:	\$58.50

Commodity	Commodity Share Percentage	Weighted Average Tons	Market Value/Ton	Weighted Average Price
Newspaper	57.73%	34,638	\$120.00	\$4,156,560
Mixed Paper	5.21%	3,126	\$95.00	\$296,970
Corrugated Cardboard	0.34%	204	\$115.00	\$23,460
Aluminum Cans	0.83%	498	\$1,700.00	\$846,600
Steel Cans	1.31%	786	\$225.00	\$176,850
PET	3.45%	2,070	\$460.00	\$952,200
HDPE Natural	1.41%	846	\$720.00	\$609,120
HDPE Colored	1.44%	864	\$460.00	\$397,440
Mixed Glass	21.30%	12,780	\$0.00	\$0
Rejects/Residue	6.98%	4,188	\$0.00	\$0
Total:	100.00%	60,000		\$7,459,200
Adjusted Market			\$124.32	
Base Market			\$137.71	
Percentage			-9.72%	

Example 2: AMV – ADDITIONAL REVENUES

Calculating the Adjusted Market Value of COUNTY's Program Materials and Annual Revenue Adjustment - Increased Revenue Adjustment Scenario:

Annual Tonnage:	60,000
Proposed Net Revenue Per Ton:	\$58.50

<i>Commodity</i>	<i>Commodity Share Percentage</i>	<i>Weighted Average Tons</i>	<i>Market Value/Ton</i>	<i>Weighted Average Price</i>
Newspaper	57.73%	34,638	\$165.00	\$5,715,270
Mixed Paper	5.21%	3,126	\$135.00	\$422,010
Corrugated Cardboard	0.34%	204	\$170.00	\$34,680
Aluminum Cans	0.83%	498	\$2,500.00	\$1,245,000
Steel Cans	1.31%	786	\$350.00	\$275,100
PET	3.45%	2,070	\$760.00	\$1,573,200
HDPE Natural	1.41%	846	\$920.00	\$778,320
HDPE Colored	1.44%	864	\$640.00	\$552,960
Mixed Glass	21.30%	12,780	\$15.00	\$191,700
Rejects/Residue	6.98%	4,188	\$0.00	\$0
Total:	100.00%	60,000		\$10,788,240
25% Revenue Sharing Threshold:			\$172.14	
Adjusted Market Value Per Ton:			\$179.80	
Base Market Value Per Ton:			\$137.71	
Percentage Change AMV vs. BMV:			30.6%	
Difference between AMV and Revenue Sharing Threshold:			\$7.66	
50/50 split of excess above Revenue Sharing Threshold:			\$3.83	
Revised Net Revenue Per Ton:			\$62.33	

Example 3: AMV – DECREASED REVENUES

Calculating the Adjusted Market Value of COUNTY's Program Materials and Annual Revenue Adjustment - Decreased Revenue Adjustment Scenario:

Proposed Net Revenue Per Ton: **\$58.50**

Commodity	Commodity Share Percentage	Weighted Average Tons	Market Value/Ton	Weighted Average Price
Newspaper	57.73%	34,638	\$85.00	\$2,944,230
Mixed Paper	5.21%	3,126	\$75.00	\$234,450
Corrugated Cardboard	0.34%	204	\$90.00	\$18,360
Aluminum Cans	0.83%	498	\$1,400.00	\$697,200
Steel Cans	1.31%	786	\$175.00	\$137,550
PET	3.45%	2,070	\$500.00	\$1,035,000
HDPE Natural	1.41%	846	\$540.00	\$456,840
HDPE Colored	1.44%	864	\$460.00	\$397,440
Mixed Glass	21.30%	12,780	\$0.00	\$0
Rejects/Residue	6.98%	4,188	\$0.00	\$0
Total:	100%	60,000		\$5,921,070
25% Revenue Sharing Threshold:			\$103.28	
Adjusted Market Value Per Ton:			\$98.68	
Base Market Value Per Ton:			\$137.71	
Percentage Change AMV vs. BMV:			- 28.3%	
Difference between Revenue Sharing Threshold and AMV:			\$4.60	
50/50 split of excess below Revenue Sharing Threshold:			\$2.30	
Revised Net Revenue Per Ton:			\$56.20	

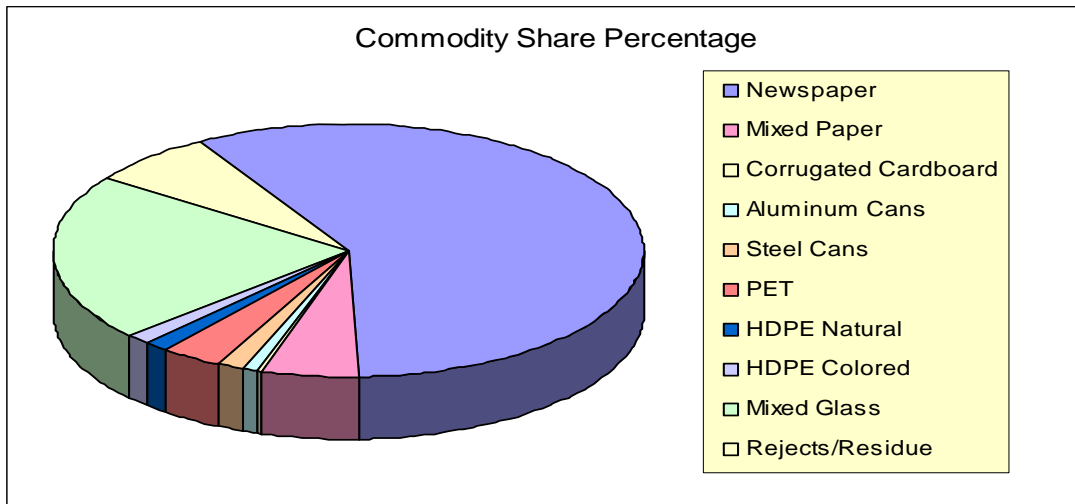
ATTACHMENT 3

RESIDENTIAL PROGRAM RECYCLABLES COMPOSITION - 2007

Commodity	Commodity Share Percentage	Weighted Average Tons
Newspaper	57.73%	34,638
Mixed Paper	5.21%	3,126
Corrugated Cardboard	0.34%	204
Aluminum Cans	0.83%	498
Steel Cans	1.31%	786
PET	3.45%	2,070
HDPE Natural	1.41%	846
HDPE Colored	1.44%	864
Mixed Glass	21.30%	12,780
Rejects/Residue	6.98%	4,188
Total	100.0%	60,000

Source:

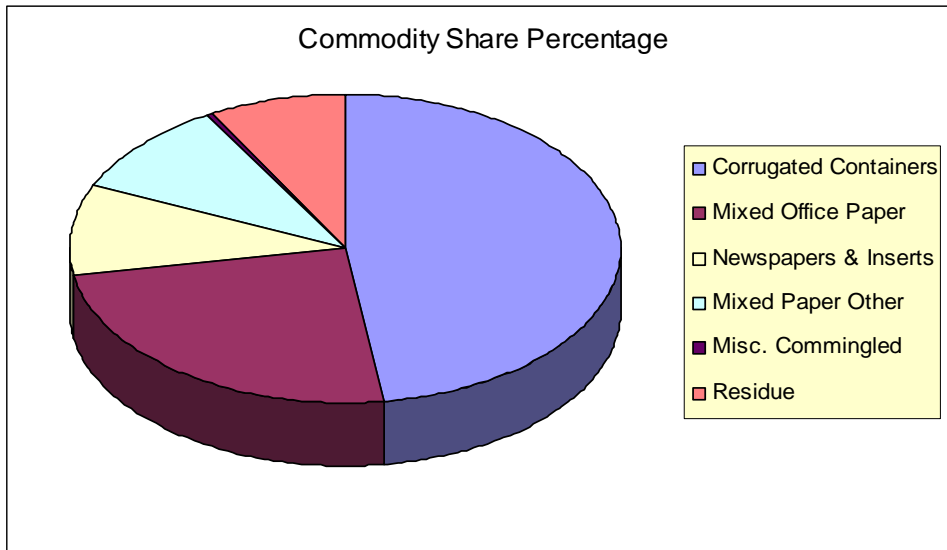
Malcolm Pirnie / WM-RA MRF Throughput Test, October 22-26, 2007; based on sampling of one-week's worth of Program Recyclables (1,800 tons).



ATTACHMENT 4

GOVERNMENTAL PROGRAM RECYCLABLES COMPOSITION

Commodity	Commodity Share Percentage	Weighted Average Tons
Corrugated Containers	47.8%	1,434
Mixed Office Paper	24.4%	732
Newspapers & Inserts	9.4%	282
Mixed Paper Other	10.1%	303
Misc. Commingled	0.3%	9
Residue	8.0%	240
Total	100%	3,000



ATTACHMENT 5

ACCEPTANCE STANDARDS

OLD NEWSPAPER:

Newspaper as produced with normal percentage of inserts and colored sections. Newspapers may be placed directly inside recycling bins, inside brown Kraft paper bags, or bundled and tied with string. Newspaper should not be bundled with wire or tape.

MIXED PAPER:

Mixed paper shall include magazines, catalogs, phone books, office papers (including shredded paper), file folders, envelopes, junk mail, chipboard and kraft bags. Mixed paper shall be reasonably dry and may be placed directly inside recycling bins along with newspapers and corrugated cardboard, placed inside brown Kraft paper bags, or bundled and tied with string. Mixed paper should not be bundled with wire or tape.

CORRUGATED CARDBOARD:

Corrugated cardboard containers must be flattened and not larger than 3 feet by 3 feet square. Corrugated Cardboard may be placed directly inside recycling bins along with newspapers and corrugated cardboard, placed inside brown Kraft paper bags, or bundled and tied with string. Material shall be free of food, dirt, grease, excess moisture or liquid and other contaminants. Wax coated cardboard and pizza boxes are not acceptable.

ALUMINUM CONTAINERS:

Aluminum used beverage cans should be clean and reasonably dry. Aluminum foil, foil trays and pie plates are not acceptable.

STEEL & BI-METAL CONTAINERS:

Steel and bi-metal, including empty aerosol, cans should be reasonably dry, clean and empty / free of organic material.

GLASS CONTAINERS:

Food and beverage bottles and jars should be reasonably clean and reasonably dry, and recycling program participants will be encouraged to remove the bottle caps. Clear, brown and green will be accepted.

PET, HDPE NATURAL AND HDPE COLORED PLASTIC BOTTLES :

All plastic bottles, or those with an opening narrower than the base shall be acceptable as part of this program. Plastic bottles should be reasonably clean and dry, and recycling program participants will be encouraged to remove the bottle caps. Containers that held motor oils, pesticides, herbicides, hazardous chemicals or other hazardous materials are not acceptable.

POLYCOATED CONTAINERS & ASEPTIC PACKAGES:

Paper milk and fruit juice containers, gable and flat tops should be clean and reasonably dry and recycling program participants will be encouraged to remove the straws from drink boxes.

ATTACHMENT 6

RECOVERED MATERIALS PROCESSING FACILITY INSPECTION PROTOCOL

Delivered materials will be inspected by the Spotter located on the tipping floor. If a load is determined to contain greater than ten (10) percent non-Program Material by weight or volume, whichever is more restrictive, the Spotter will have the RMPF OR TRANSFER FACILITY(IES) Manager or designee examine the load.

Should the RMPF OR TRANSFER FACILITY(IES) Manager determine that the load does not meet the criteria for Program Materials, CONTRACTOR will perform the following procedure:

1. Inform the driver that the Contractor has determined that there is greater than ten (10) percent non-Program Materials
2. Take photos of the load that clearly shows level of contamination.
3. Forward electronic photos to Hauler, Contract Administrator and the Contract Community's designated representative
4. Document the load:
 - Time, date, delivering company and driver
 - Type of contamination
 - Photos of load
 - Action taken

CONTRACTOR will prepare charges for handling and disposition of the reject material and advise the Contract Administrator of the costs involved. The charges CONTRACTOR assesses shall be reasonable labor costs and costs involved for disposal of material at a Resource Recovery Facility. The costs involved for handling, transporting and disposing of the contaminated load shall be billed to the Contract Hauler and shall be the Contract Hauler's responsibility subject to Exhibit A, Section VIII.

EXHIBIT B
SURETY BOND

KNOW ALL BY THESE PRESENTS:

That we, _____ as PRINCIPAL, and _____ as SURETY, are bound to BROWARD COUNTY, as the Obligee (hereinafter "COUNTY"), a political subdivision of the State of Florida, in the full sum of _____ (U.S. Dollars) (\$ _____), for payment of which PRINCIPAL and SURETY jointly and severally bind ourselves, our successors, assigns, and personal representatives:

SEALED with our Seals, this ____ day of _____, ____ (date).

WHEREAS, PRINCIPAL and COUNTY have entered into an Amended and Restated Agreement for Materials Recovery Facility, attached hereto and made a part hereof as Exhibit "_____";

WHEREAS, pursuant to the terms of the Agreement, PRINCIPAL agreed to a surety bond to the COUNTY to ensure completion and performance of the work identified in this Agreement;

WHEREAS, PRINCIPAL is desirous of providing the required surety bond; NOW, THEREFORE,

A. CONDITIONS OR SURETY BOND:

All obligations as required by the Agreement to which this SURETY BOND is attached as Exhibit "_____" shall be completed in order for this bond to be released; otherwise it shall remain in full force and effect.

B. DEFAULT:

PRINCIPAL and SURETY jointly and severally understand, in the event the obligations required by the agreement to which this SURETY BOND is attached as Exhibit "_____" are not completed, the COUNTY has the right to:

- (1) demand that the SURETY promptly remedy the default; or
- (2) demand payment by the SURETY of the amount due to COUNTY, including amounts required to remain secured, up to the face amount of the Bond by letter signed by the County Administrator, or a designee, stating that there has been a default in the performance of the required obligations as set forth

in the Agreement to which this SURETY BOND is attached, which obligations were a condition of approval of the Project; or

- (3) institute an immediate suit against SURETY to recover the full amount of this SURETY BOND for the purpose of completing the obligations set forth in the Agreement to which this SURETY BOND is attached.

Notice to COUNTY that this SURETY BOND will expire prior to performance of the required obligations shall be deemed a default.

PRINCIPAL and SURETY jointly and severally understand that failure to complete the obligations required by the Agreement to which this SURETY BOND is attached in accordance with the time periods set forth in the Agreement, or at the latest, to commence or recommence completion of the obligations within thirty (30) days after written notice by the County Administrator, or a designee, to PRINCIPAL and SURETY to do so, shall be deemed to be a failure and refusal to complete such obligations.

PRINCIPAL and SURETY also understand that in the event the COUNTY elects to institute suit against SURETY and the funds recovered thereby prove insufficient to complete the obligations required in the Agreement to which this SURETY BOND is attached, the PRINCIPAL shall be liable hereunder to pay to COUNTY, any sums required to complete the obligations hereunder, including, but not limited to, legal and contingent costs, together with any damages, direct or consequential, which the COUNTY may sustain because of PRINCIPAL'S failure to comply with all the requirements hereof.

C. NOTICE:

Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by registered or certified mail, return receipt requested, 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 notice:

TO BROWARD COUNTY:

Director, Broward County Recycling & Contract Administration
1 N. University Drive
Suite 400
Plantation, Florida 33324

TO PRINCIPAL:

TO SURETY:

D. BOND TO REMAIN IN FULL FORCE AND EFFECT:

This SURETY BOND shall be kept in full force and effect by the PRINCIPAL at all times, including the warranty/maintenance period, if applicable, as provided in the Agreement to which this SURETY BOND is attached. In the event of any material change, cancellation, expiration or non-payment of premiums, SURETY shall notify COUNTY by certified mail or registered mail, return receipt requested, at least thirty (30) days prior to the effective date of the change, cancellation, or expiration of said SURETY BOND. Notice obligations shall be deemed a default pursuant to section B above.

IN WITNESS WHEREOF, the PRINCIPAL has caused this SURETY BOND to be executed by _____ (and attested by its Secretary and its corporate seal to be affixed, if the PRINCIPAL is a corporation); the SURETY has caused this bond to be executed in its Attorney-in-Fact duly authorized to do so, and its corporate seal to be affixed, on the _____ day of _____, _____.

PRINCIPAL

Signed, sealed and delivered
In the presence of:

Witness:

Witness

By _____

Title: _____

SEAL

(Title Name and Title signed above)

SURETY

Witness:

By _____
Agent and Attorney-in-Fact

Witness:

Address: _____

(City/State/Zip Code)

Telephone No. : _____

Surety Bond No.: _____

PRINCIPAL

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, who is personally known to be or who has produced _____ as identification and who did/did not take an oath.

WITNESS, my hand and official seal, this _____ day of _____, _____.

NOTARY PUBLIC:

Signature: _____
Print Name: _____
State of Florida at Large
My Commission Expires: _____
Serial # (if any) _____

SURETY

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, who is personally known to be or who has produced _____ as identification and who did/did not take an oath.

WITNESS, my hand and official seal, this _____ day of _____, _____.

NOTARY PUBLIC:

Signature: _____
Print Name: _____
State of Florida at Large
My Commission Expires: _____
Serial # (if any) _____

EXHIBIT C

CERTIFICATE OF INSURANCE

EXHIBIT D

SCHEDULE OF CDBE PARTICIPATION

CONTRACTOR agrees that the CDBE participants listed below have agreed by written subcontract to perform the work for the dollar value set forth and that the following information regarding participating Subcontractors is true and correct to the best of his/her knowledge:

(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)

PLEASE ATTACH ADDITIONAL INFORMATION IF NECESSARY.

EXHIBIT E

**BUSINESS ASSOCIATE ADDENDUM TO AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA
AND
[INSERT COMPANY NAME HERE]
FOR
[INSERT AGREEMENT DESCRIPTION]**

This BUSINESS ASSOCIATE ADDENDUM amends the following Agreement by and between Broward County, Florida (hereinafter called "County"), and [INSERT COMPANY NAME HERE] (hereinafter called "Business Associate"), [INSERT COMPANY ADDRESS HERE], for [INSERT AGREEMENT DESCRIPTION HERE]:

[Date of original contract and date of most recent amendment], [hereinafter the "Existing Agreement."]

IN CONJUNCTION WITH the Existing Agreement, this Business Associate Addendum is made and entered into by and between the County and the Business Associate.

WHEREAS, the County and the Business Associate have previously entered into an Agreement related to the operation of certain activities related to the provision of health care;

WHEREAS, the operation of such programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA);

WHEREAS, the requirements of HIPAA mandate that certain responsibilities of contractors with access to Protected Health Information as defined under HIPAA must be documented through a written agreement;

WHEREAS, the County and the Business Associate desire to comply with the requirements of HIPAA and acknowledge respective responsibilities;

NOW, THEREFORE, the parties enter into this Business Associate Addendum for the consideration set out below, all of which is deemed to be good and sufficient consideration in order to make this Business Associate Addendum a binding legal instrument.

Section 1: Definitions.

All terms used in this Addendum not otherwise defined shall have the meaning as those terms in 45 CFR § 164 [hereinafter called, the "HIPAA Privacy Rule"].

Section 2: Obligations and Activities of the Business Associate.

- 2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this special agreement or as required by law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as permitted or required by this Addendum or as required by law.
- 2.3 Business Associate agrees to mitigate, to the extent possible, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.
- 2.4 Business Associate agrees to report to the County any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware.
- 2.5 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from the County or created or received on behalf of the County by the Business Associate, agrees to the same restrictions and conditions that apply through this Addendum to the Business Associate with respect to such information.
- 2.6 Business Associate agrees to provide access to the County to all Protected Health Information in Designated Record Sets in a timely manner in order to meet the requirements under 45 CFR § 164.524.
- 2.7 Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set as directed or agreed to by the County pursuant to 45 CFR § 164.526 in a timely manner.
- 2.8 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the County or created or received on behalf of the County available to the County or to the Secretary of Health and Human Services or designee within five business days for the purposes of determining the Business Associate's compliance with the Privacy Rule.
- 2.9 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

- 2.10 Business Associate agrees to provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR § 164.528.

Section 3: Permitted Uses and Disclosures.

- 3.1 Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the County as specified in the Existing Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County that are communicated to the Business Associate in writing.
- 3.2 Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information to provide Data Aggregation services to the County as permitted by 42 CFR § 164.504 (e)(2)(i)(B).
- 3.4 Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 CFR § 164.504 (j)(1).

Section 4: Obligations of the County.

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use of Protected Health Information.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use of Protected Health Information.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which the County has agreed in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use of Protected Health Information.
- 4.4 The County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County.

Section 5: Term.

The term of this Addendum shall be effective upon execution by all parties, and shall terminate when all of the Protected Health Information provided by the County or contractors for the County, or created or received by the Business Associate on behalf of the County, is destroyed, turned over to the County, or turned over to Contractors designated by the County.

Section 6: Amendment.

The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 27th day of January, 2009, and CONTRACTOR, signing by and through its Chair, duly authorized to execute same.

COUNTY

ATTEST:

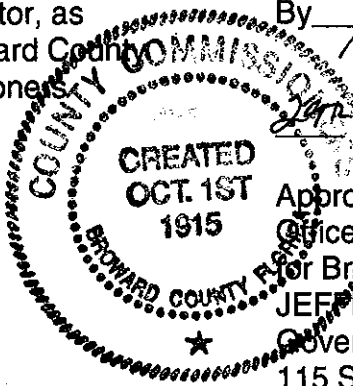
BROWARD COUNTY, by and through its Board of County Commissioners



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

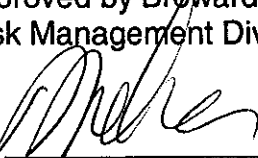
By 
Mayor

day of January, 2009



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

Insurance requirements approved by Broward County Risk Management Division

By  12/18/08
(Date)

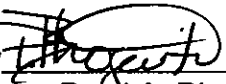
By  12/18/08
Puvi A. Bhogaita (Date)
Assistant County Attorney

EXHIBIT F

FORM OF CERTIFICATE AND AFFIDAVIT FOR BONDS
\$500,000.00 OR LESS

TO: BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY

RE CONTRACTOR: _____

Address: _____

Phone: _____
City/State _____ Zip _____

AMOUNT OF BOND: _____

SURETY BOND COMPANY:

Name: _____

Address: _____

Phone: _____
City/State _____ Zip _____

This is to certify that, in accordance with Chapter 85-104, Laws of Florida (HB 1266), the insurer named above:

Holds a certificate of authority authorizing it to write surety bonds in the state of Florida.

Has twice the minimum surplus and capital required by the Florida Insurance Code.

Holds a current valid certificate of authority issued by the United States Department of Treasury under Sections 9304 through 9308 of Title 31 of the United States Code.

(Date Signed)

Agent and Attorney-in-Fact

AFFIDAVIT

STATE OF FLORIDA)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, Agent and Attorney-in-Fact of _____, who, is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this ____ day of _____, 20__.

(SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)

(Title or rank)

(Serial number, if any)

My commission expires: