

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (M.O.U.) dated this _____ day of _____, 2009 is between Broward County (County), Broward Solid Waste Disposal District, a dependent special district of Broward County (District) and Wheelabrator South Broward Inc. and Wheelabrator North Broward Inc. (both hereinafter Wheelabrator). This M.O.U. reflects the material terms agreed to and negotiated by their respective staffs and forms the basis of an amended Service Agreement which will replace the Service Agreements between Broward County and Wheelabrator; and all amended versions of same along with amendments thereto (the Agreements). The Service Agreement shall include the following material terms:

- 1). The term shall be ten years from August, 2011, with a 10 year extension by mutual agreement.
- 2). The County, District and the participating communities will maintain the current flow control ordinances and system. The County and the participating communities will agree to deliver all acceptable waste generated within the system, consistent with present practice (including the present exception for waste destined for out of state disposal) to the Wheelabrator Broward waste to energy facilities, but will not guarantee to deliver any minimum number of tons, provided the flow control ordinances remain in effect. If the flow control ordinances are no longer in effect then the County, District and the communities participating in the present I.L.A. shall guarantee to deliver a minimum number of tons based on their historical deliveries of such participating cities, adjusted to changes due to law.
- 3). The County, District and all participating contract communities agree to use best efforts to enforce the ordinances described in paragraph 2) above.
- 4). Wheelabrator will accept all waste generated in the system up to the present capacity at both the North and South plants. Wheelabrator and the District will mutually agree on how much waste is delivered to each plant.
- 5). ~~Wheelabrator will have the right to accept non-District waste generated within Broward County. However, District shall not be charged a service fee/tipping fee more than charged to any customer of Wheelabrator that has a commitment with Wheelabrator for one year or longer.~~
 - Waste from within the District shall not be charged a service fee/tipping fee more than charged to any customer of Wheelabrator that has a commitment with Wheelabrator for one year or longer.
 - Wheelabrator will have the right to accept non-District waste generated within Broward County, but in no event shall waste be accepted from within Broward County for a service fee for less than waste is accepted from within the District.
- 6). Wheelabrator shall charge the District a service fee of \$49.75 a ton for each ton tipped at the North or South Plant. The service fee will escalate annually via a mutually agreed upon CPI index. The service fee shall escalate annually by such index up to a maximum of 5% per year but no less than 1% per year. The first CPI adjustment shall

take place on January 1, 2011, based upon the change in CPI from October, 2009 to January, 2011.

~~In any year that the District delivers 1 million tons or more to the Wheelabrator plants, Wheelabrator shall rebate \$500,000.00 to the District.~~

~~In any year that the District delivers 1.2 million tons or more, Wheelabrator shall rebate to the District \$1.50 per ton for all tons delivered to Wheelabrator over 1 million tons.~~

7). Property, real estate, sales taxes and all other non-income taxes shall be a direct pass through expense to the District.

~~8). The service fee will be adjusted for new capital costs, increased operating and maintenance costs or reduced revenues of Wheelabrator due to a change in law occurring after the contract date. If the service fee increases by more than 40% from the prior year's service fee due to a change in law, the District may terminate the Service Agreement. If Wheelabrator has additional costs or reduced revenues due to a change in law which are not reimbursed by the District and such costs and revenue reductions are greater than 40% of the prior year's service fees, then Wheelabrator may terminate the Service Agreement. If Wheelabrator experiences a cost savings due to change in law, the service fee provided in Paragraph 6 shall reflect such savings.~~

As a result of any changes in law any costs associated, or savings realized shall be calculated as follows:

Fixed and variable costs of the Plants shall be identified on a per unit basis for all Plant capacity. Per unit surcharges or credits shall be made upon pro-ration based upon actual use by the District of Plant capacity for fixed and variable costs.

9). Wheelabrator shall pay rent for the South Waste to Energy Plant at the rate of \$1,000,000.00 pursuant to an amendment to the present lease for the South facility. Rent shall escalate yearly, subject to the same CPI adjustment as provided for in the service fee adjustment, with a minimum of 1% and maximum of 5%. The first CPI adjustment shall be on January 1, 2011, based upon the change in CPI from October, 2009 to January, 2011.

All costs for the real property located at the South Site, (excluding the Plant), but including, the Ash Monfil, shall be as presently provided, in the current service agreement, however, any costs or credits for change of law shall be determined pursuant to the formula in the previous Paragraph.

10). The provision in the current Agreements that provides the County disposal rights at the facilities at a discount to third party disposal prices if the Agreements are not renewed shall be deleted.

11). The District shall propose to reduce the tipping fees it charges participating contract communities to no more than \$12 a ton above the amount Wheelabrator charges the District.

12.) The service agreement contemplated pursuant to this M.O.U. shall have an effective date of August, 2011. The rate contemplated herein shall take effect on August, 2011 for all District waste processed at both plants.

A ~~credit payment within 60 days from April 1, 2012~~ shall be given to Wheelabrator for the difference between the then current rate, as calculated under the existing (north) service agreement, and the new rate calculated pursuant to the new service agreement (drafted pursuant to this M.O.U.) ~~for the period of August 2011 to March 2012~~, for the capacity of the North plant based on the historical District flows to each plant over the previous three years.

13. Wheelabrator agrees that the District may be substituted for the responsibilities of the County, upon agreed upon conditions.

~~14. Wheelabrator shall pay directly to each Member Community approving this M.O.U., as provided below, on August 1, 2011, a bonus. The total bonus shall be \$12,000,000 and will be pro-rata to each Community based on their historical volume as a percentage to the total volume from the District to the Wheelabrator Plants, based upon the previous 12 months. Any Community not approving this M.O.U. shall not be paid any bonus, and such portion of the \$12,000,000 remaining shall be paid by Wheelabrator to the District instead.~~

~~14- 15. The terms within this M.O.U. shall not be considered a binding offer This M.O.U. shall not be binding as to the County and the District unless and until first approved by the Broward Resource Recovery Board, as the governing body of the District and the Broward County Board of County Commissioners.~~

~~15)- 16. The terms within this This M.O.U. shall not be considered a binding offer as to Wheelabrator until and unless first approved by the Board of Directors of Waste Management Inc.~~

~~-16)-17. The offer of the terms contained within this This M.O.U. , approved pursuant to paragraphs 15 and 16 will remain as offered in effect until January 1, 2010. In addition the Service Agreement shall not become effective unless communities with expected deliveries of at least 60% of current committed volumes per year of waste under the Agreements sign new waste disposal agreements with the District for the same term as the Service Agreement.~~

~~The Parties agree that this M.O.U. while non-binding, shall form the basis for a Service Agreement which shall supersede this M.O.U. and shall reflect the final binding agreement of the parties.~~

18. The parties agree that this M.O.U. shall be binding upon the County, the District, Member Communities, and Wheelabrator, upon passage of resolutions approving the terms contained herein by Member Communities representing 80% to 100% of the historical flows of solid waste to the Wheelabrator Plants, by January 1, 2010, This binding M.O.U. shall be superceded by a service agreement negotiated between County, District and Wheelabrator which shall contain the terms contained herein.

Should Member Communities representing less than 80% of historical flows of solid waste to the Wheelabrator Plants approve this M.O.U. by 2010, this agreement shall be binding upon the County, the District, Member Communities and Wheelabrator, including paragraph 14, unless Wheelabrator notifies the Executive Director of the Broward Solid Waste Disposal District by March 1, 2010, that Wheelabrator does not wish to be bound by this M.O.U. The notice shall be by certified mail to Ron Greenstein, the Executive Director of the Broward Solid Waste Disposal District at One North University Drive, Plantation, Florida 33324.

For Wheelabrator South Broward Inc. _____

For Wheelabrator North Broward Inc. _____

For The Broward Solid Waste Disposal District _____

Chair, Resource Recovery Board

For Broward County Board of County Commissioners

Mayor