

**Resource Recovery Board**

**County Members:** Ben Graber • Ilene Lieberman • Jim Scott • Diana Wasserman-Rubin • Lois Wexler  
**City Members:** Peter Bober • Jim Naugle • Joseph Scuotto • Jim Waldman  
**Executive Director:** Ron Greenstein  
**Counsel:** Eugene Steinfeld

## AGENDA

### MRF CONTRACT AD HOC COMMITTEE OF THE RESOURCE RECOVERY BOARD

Thursday September 21, 2006 - 1:30 - 2:00 p.m.

**BROWARD COUNTY GOVERNMENTAL CENTER  
115 SOUTH ANDREWS AVENUE, ROOM 430**

1. **Call to Order**
  
2. **Approval of MRF Contract Ad hoc Committee Minutes - July 28, 2006** Pgs. 2 - 5
  
3. **Fifth Amendment to Agreement for MRF - Draft** Pgs. 6 - 21
  
4. **Other**
  
5. **Adjournment**

In compliance with the ADA (Americans with Disabilities Act), equipment is available for the handicapped and hearing impaired upon request. If you require auxiliary aid, please call (954) 474-1849 at least two days prior to meeting.



**MINUTES  
RRB MRF CONTRACT COMMITTEE  
BROWARD COUNTY  
GOVERNMENT CENTER  
Friday, July 28, 2006**

**MEMBERS**

**PRESENT:** Mayor Jim Waldman, City of Coconut Creek, Chair  
Commissioner Lois Wexler, Broward County  
Tom Good, RRB TAC Chair, City of Miramar

**OTHER**

**PARTICIPANTS:**

Ron Greenstein, Executive Director, RRB  
John Albert, Waste Management, Inc  
Tony Spadaccia, Waste Management, Inc.  
Steve Crawford, Recycle America  
Peter Foye, WRS, RCAD Director

**I. CALL TO ORDER**

The meeting of the Resource Recovery Board MRF Contract ad hoc committee was called to order by Coconut Creek Mayor Jim Waldman, Chair, at 11:13 a.m. on July 28, 2006, at Broward Governmental Center. Roll call was taken and all committee members were present.

**II. PRESENTATION - *Peter Foye, WRS/RCAD Director***

Mr. Foye provided the group with the following information regarding the MRF contract issue:

- When Waste Management (WM) acquired the assets of BFI in Davie, there was discussion regarding the possibility of facility expansion and term extension. This did not materialize due to site limitations and other factors.
- During the same time period, the RRB TAC Programs subcommittee was discussing the possibility of adding additional materials.
- About a year ago, Waste Management approached the Resource Recovery Board with a proposal that included:
  1. Extending the contract
  2. Changing the contract costs
  3. Moving the facility
  4. Adding additional materials

Since that time, Waste Management representatives have met with RRB Executive Director Ron Greenstein, Mayor Waldman, and Mr. Foye to discuss some of these issues which were, to a certain extent, covered in the September 8, 2005, letter written by Mike Taylor, Waste Management (pages 2-3 of the July 28, 2006 MRF Contract Committee Agenda accessible on the Waste and Recycling Services website).

Mr. Foye pointed out that from the RRS perspective, moving the MRF is a significant item:

- The location was part of the original contract

- The MRF was strategically centrally located
- It has been providing service for thirteen years.

Given the situation Waste Management is facing with the lease, Mr. Foye opined that anything in a contract can be modified if both parties agree to modify it. He said he believed the reason Waste Management has sought to provide alternatives is to minimize the impact a different location might have on the cities.

He acknowledged that the Waste Management proposal of a station in Pompano might be beneficial to the cities of the north part of the county, but expressed concern over the negative impact a relocation of the MRF might have on the southeastern part of the county, since the new location would require further travel.

Mr. Foye considered Waste Management's proposal to be reasonable, but not in the same attractive nature as the current contract.

He said the current contract with Waste Management expires in three years and the Interlocal Agreement (ILA) expires in seven years, so it would make sense during the renegotiation to consider extending the WM contract to the term consistent with the current ILA.

He concluded that it would be staff's recommendation that the terms of the contract be kept somewhat intact - for instance the process of sharing the revenue. He said it gives the vendor an interest in doing a good market job and gives the cities an interest in getting more material into the system.

(Mr. Foye's overview of the Waste Management proposal may be found on page 6 of the July 28, 2006 MRF Contract Committee Agenda).

### III. **RECYCLING UPDATE** -Ron Greenstein, RRB Executive Director

Mr. Greenstein referred to RRB Legal Counsel Eugene Steinfeld's opinion letter of February 20, 2006, regarding the relocation of the MRF. He said the contractual arrangement that WM adopted from BFI fundamentally locked in a central location and it would be illegal for WM to unilaterally change the location. He said relocation would require an action from the RRB and ratification by the County Commission. (See Mr. Steinfeld's opinion letter on pages 7-9 of the July 28, 2006 MRF Contract Committee Agenda.)

Mr. Greenstein informed the group that this morning, by majority vote, TAC made a motion to request that the RRB put a bid out for the MRF. Mr. Greenstein agreed that if the WM contract could not extend to September 2009, the RRB would need to put a bid out in order to find a central location.

### IV. **WASTE MANAGEMENT** - Steve Crawford, District Manager for Florida Operations for Waste Management Recycle America

Mr. Crawford clarified many points regarding the relocation of the MRF:

- WM acquired the property lease for the current MRF location - it was not negotiated by WM.
- The lease will expire in 2007 - two years before WM's MRF contract is over.
- The current landlord is unwilling to negotiate a two-year extension with WM - the landlord will only agree to a lease of many more years and WM cannot sign a lease for which they do not have guaranteed tonnage.
- WM has a very large operating facility in Pembroke Pines (Broward County) and it is in their budget and on their agenda to retrofit that facility with several million dollars worth of new equipment in the latter half of 2006 so it would be modernized. It can accommodate all of the tons associated with this contract in a very efficient manner. It is a property they own and can put money into.
- WM asked the RRB for permission to move. Realizing there may be some legalities to deal with, they are willing to make appropriate arrangements to "hold cities harmless." They have offered the use of their Pompano facility as a transfer station for some of the cities that would otherwise be required to

travel further if the MRF were relocated. Now they are aware that there may also be issues with the southeastern portion of Broward County and are willing to discuss that.

- To stay ahead of technology, they will install single-stream capabilities, but this will not affect collections or how any of the cities would operate. It can be delivered in dual-stream and/or single stream.
- In regard to possible contamination or loss of material integrities if recyclables were transferred, Mr. Crawford said their company transfers in excess of 10,000 tons per month throughout the state of Florida with no adverse effects whatsoever on revenues or quality of products.
- He sought to dispel the rumor that there would be a huge cost-savings for WM involved in the move. He said the final stages of the current contract is a money-loser for the company and a portion of any savings would go to the bottom line and the other portion to make up for the losses.
- He said that if WM were to extend the contract beyond its current term, they would want some type of compensation (see this meeting's hand-out titled *MRF Negotiation Opportunities [07/28/06]*).
- In conclusion of his presentation, Mr. Crawford discussed plastics, glass, and fiber materials.

## V. OTHER

Mayor Waldman asked the WM representatives to introduce themselves including their titles:

1. Tony Spadaccia, Manager of Government Affairs
2. John Albert, Waste Management, Government Affairs Manager
3. Steve Crawford, District Manager for Florida Operations for WM Recycle America

There was discussion among the participants regarding plastics and glass.

There was discussion clarifying that the negotiation was related only to the two years left of the MRF contract.

Mr. Greenstein said that the motion made earlier in the day by the RRB Technical Advisory Committee to put the MRF out for bid applied only if the contract were to go beyond the two years. He emphasized that no one wants to vacate the current contract. He said there are two separate issues:

1. Waste Management would like the approval of the RRS to move the MRF location at the end of July 2007 to Reuters in Pembroke Pines until 2009.
2. RRB staff believes that if the relocation is allowed, it would help the Resource Recovery System if the contract were extended to 2013. TAC does not want to extend past 2009 without an RFP.

Tom Good, TAC Chair, clarified that the decision TAC made today was based on the September 8, 2005, letter from Recycle America which mentions a proposed extension to the operating agreement.

**Commissioner Lois Wexler said she was willing to make a motion to recommend to the RRB to allow the relocation of the MRF to the Pembroke Pines site - and everything remains exactly the same as far as revenue, "hold-harmless" to the cities, the provision of two transfer stations (north and southeast parts of the county) for that two year period.**

**Mayor Jim Waldman, Chair, said the motion would need to include "expense neutral" as well, and Commissioner Wexler asked him to help her frame the motion.**

**Commissioner Wexler said the spirit of the motion would be that basically Waste Management would move the physical plant (the location of processing) and not harm the cities or their bottom line revenue in any way for that two year period.**

**Mayor Waldman said there is a motion on the floor and asked for a second.**

**Mr. Good seconded the motion and discussion followed regarding how the cities would get a percentage of the savings WM would gain with only one facility to pay for.**

**Mr. Crawford accepted the recommendation that WM add additional fiber materials for the remainder of the contract; however, he said they would like the education for that enhancement to be agreed upon by both sides. Commissioner Wexler said she would incorporate that into the motion when it goes before the RRB for consideration.**

**Mr. Foye suggested the motion also include:**

- **"Hold-harmless" to be defined**
- **Add the additional fiber materials**
- **Retention of the current processing costs and revenue share through September 30, 2009**

**(The above also shall be incorporated into Ms. Wexler's motion)**

There was further discussion.

**Summary Motion: WM may relocate the MRF processing site subject to making hold-harmless, expense-neutral accommodations (arrangements); current processing fees and revenue share remain unchanged; county may add additional fiber materials through the term of the agreement - September 30, 2009.**

**Mayor Waldman called the question, a roll call vote was taken, and the motion passed unanimously.**

Commissioner Wexler asked Mr. Good to explain how TAC came up with their motion this morning and Mr. Good told her that due to limited time and information before today's MRF Contract Committee meeting, TAC could not accept the relocation of the MRF and other changes without wondering if there were other options and opportunities for exploration. Commissioner Wexler said that under the circumstances, she was not prepared to negotiate with Waste Management.

Mayor Waldman agreed that it would be premature to do more without direction from the RRB in terms of what they would like the MRF Contract Committee to do. He said he thought they had served their purpose for right now, assuming the RRB and then the County Commission ratified their decision.

The MRF Contract Committee will not meet again until TAC has had the opportunity to further explore the MRF relocation issues.

Mr. Eugene Steinfeld will be requested to define the term "hold harmless" and his opinion letter will be emailed to the appropriate parties.

## **V. ADJOURNMENT**

**There being no further business to come before the committee at this time, on motion of Mayor Waldman, and unanimously carried, the meeting adjourned at 12:25 p.m.**

**(Document Control #06-SC-239)**

**FIFTH AMENDMENT TO AGREEMENT FOR MATERIALS  
RECOVERY FACILITY, AMENDMENT TO CONSENT TO ASSIGNMENT OF  
AGREEMENT FOR MATERIALS RECOVERY FACILITY AND AMENDEMNT  
TO MEMORANDUM OF UNDERSTANDING FOR MATERIALS RECOVERY  
FACILITY**

WHEREAS, in October 1992 Broward County (hereafter referred to as County) executed an Agreement with Browning-Ferris Industries of Florida, Inc. (hereinafter referred to as B.F.I.) for siting, construction and operation of a Materials Recovery Facility (hereinafter referred to as M.R.F) and for marketing of recyclable materials; and

WHEREAS, County and B.F.I. executed four amendments to the Agreement above referred to, in February 1996, February 1997, November 1998 and February 2000: and

WHEREAS, County and Waste Management of Florida, Inc., (hereinafter referred to as Waste Management) entered into a consent to assignment of Agreement for M.R.F. , in October 2003, which was acknowledged and agreed to for the Broward Solid Waste Disposal District by the Broward County Resource Recovery Board (hereinafter referred to as District); and

WHEREAS, County, District and Waste Management entered into a Memorandum of Understanding For Materials Recovery Facility , also dated October 2003; and

WHEREAS, the purpose of the two 2003 agreements was to provide for the assignment to ~~operate operation of and marketing of~~ the M.R.F. ~~and operation~~ located at 2380 College Avenue, Davie, Florida 33317 under such terms and conditions as provided under all agreements above referred to; and

WHEREAS, Waste Management wishes to move the site of the M.R.F. from its present contracted for site at 2380 College Avenue, Davie, Florida 33317 to a location at 20701 Pembroke Rd., Pembroke Pines, Florida; and

WHEREAS, the above referred to transfer of locations of the M.R.F. will have adverse effects on both County and the Member Communities composing the District and operation and marketing of the M.R.F. as accomplished pursuant to all agreements to date; and

WHEREAS, the re-location of the M.R.F. without the consent of County and District would be a breach of all the above referred to agreements subjecting Waste

Management to injunctive relief and damages without the written consent of County and District;  
and

WHEREAS, Waste Management as an inducement to County and District to allow a re-location of the M.R.F. from a leased location in Davie (a member city of the District) to a location in Pembroke Pines (a non-member city of the District) owned by Waste Management, will save operating expenses for Waste Management.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises, covenants set forth, County, District and Waste Management agree to amend the Agreement between Broward County and Browning-Ferris Industries of Florida, Inc., for Materials Recovery Facility, all amendments thereto, (consent to Assignment of Agreement for Materials Recovery Facility and Memorandum of Understanding for Materials Recovery Facility referred to the foregoing recitals of this agreement as follows:

- 1). The parties agree the above referred to recitals are true and correct and incorporated herein.
- 2). All agreements, and exhibits and attachments to the agreements, the agreements of which are referred to in the foregoing recitals are acknowledged by all parties as correct and in full force and effect between the parties, except as specifically provided herein.
- 3). Waste Management may re-locate the operation of the M.R.F. to Their MRF at 20701 Pembroke Rd., Pembroke Pines.
- 4). Waste Management agrees to be responsible for all additional collection and transportation costs which are occasioned by **County, District or** Member Communities of the District which are caused by the relocation of the M.R.F. as contemplated herein.
- 5). Waste Management agrees to indemnify, hold harmless and pay on behalf of, all claims costs, fees, suits or judgments made by third parties against County, District or Member Communities of the District caused by the relocation of the M.R.F. **County, District and** each Member Community shall be defended as provided for County in section 12.1.1 of the Agreement between Broward and B.F.I. dated October, 1992.
- 6). The following sections of the Agreement between Broward County and Browning-Ferris Industries of Florida, Inc. for Materials Recovery Facility, as amended, are further amended to read:

1.13 Program Material – means newspapers, Residential Mixed Paper, corrugated cardboard; ~~phone books (as designated by Article 5, Subsection 5.2 g)~~ corrugated cardboard; glass containers (clear, brown, green); aluminum, steel and bi-metal containers: plastic container (Types 1, 2, and 3); polycoated gable top containers

and aseptic packages; incidental kraft paper and film plastic bags used to contain Program materials; and other Recyclables which shall from time to time be designated, in mutually agreed by the parties (as evidenced by a change order) for separation, collection and/or processing as part of the program when additional Recyclables and viable markets are identified.

1.18a Residential Mixed Paper - means phonebook, magazines, catalogs, office paper, junk mail, chipboard and other fiber materials as mutually agreed by the parties.

4.6 Notwithstanding Sections 4.1 – 4.5, the County acknowledges that the processing operation will be relocated to 20701 Pembroke Rd., Pembroke Pines, Florida. Waste Management will establish one or more Transfer Station(s), which shall receive Program Recyclables in the same manner as the MRF to mitigate any possible increased costs for transporting Program Recyclables for processing.

All facilities utilized for the execution of this contract shall comply with all Federal, State and Local government permitting and licensing and zoning ordinances, regulations and rules. All facilities utilized for the execution of this contract shall be recognized as a Certified Recovered Materials Processing Facility by the Florida Department of Environmental Protection (FDEP).

#### 4.6.1 Transfer Stations

A Transfer Station shall be located at the Delta Transfer / Recycling Facility, 1951 Powerline Road, Pompano Beach. Waste Management shall obtain the written approval of the County before placing any other transfer stations in services under this amendment.

The Transfer Station(s) shall receive Program Recyclables in the same manner as the MRF. The Transfer Station(s) will be covered, provided with weighing scales and associated software shall be compatible with the MRF and the County's data management systems. Program Recyclables delivered to the Transfer Station(s) shall be stored under cover until transferred to MRF for processing.

#### 4.6.2 MRF Implementation

##### 4.6.2.1 MRF Design and Construction

Waste Management shall provide a Technical Submittal related to the general processing designs, facility storage capacity, material processing subsystems, recovered material storage and shipment plans, on-site traffic handling systems, operational and maintenance approaches for the relocated MRF and any associated Transfer Stations. County or their agent shall review and confirm that equipment specifications and operational plans do not adversely impact

efficiency, performance or durability. The Technical Submittal, as approved, will be considered part of this Agreement.

#### 4.6.2.2 MRF Demonstration Testing

Waste Management shall conduct a Demonstration Test as specified in Exhibit “B”, prior to relocating the operations. The Demonstration Test shall be observed by the County or its agent. The Demonstration test shall be deemed to have been passed when the District provides its concurrence with the Demonstration Test report specified in Exhibit “B”. Processing costs will be waived or proportionately reduced if performance measures are not achieved.

#### 4.6.2.3 MRF Operations and Performance

MRF processing equipment shall meet or exceed the performance criteria and operational standards listed in Exhibit “C”, and Waste Management affirms that the marketability of materials will be maintained.

**4.6.2.3 (a) Newspaper:** Newspaper will continue to be marketed as a # 8 News grade or higher.

**4.6.2.3 (b) Glass:** Waste Management shall compensate the County for any negative costs impacts should the amount of broken mixed glass exceed 57% of the total glass received on an annual basis..

#### 4.6.3 Program Materials Composition

County and Waste Management agree to conduct semi annual composition analyses of incoming Program Recyclables to determine the relative percentage (%) of mixed paper and newspaper. The County and Waste Management agree to share equally the cost of these composition analyses and that the results will be used to compute Revenue Share as illustrated in Exhibit “A” revised.

#### 4.6.4 Plan of Operations Conformance

County and Waste Management acknowledge that the MRF and related Transfer Station(s) shall conform with applicable provisions of the Resource Recovery System Plan of Operations and any subsequent revisions.

5.2 (c)–As of October 1, 1997–2006, Revenue Share (RS) is defined to mean the COUNTY’s share of cumulative net revenues from the sale of Recovered Materials, based on ~~ninety seven (97) percent~~ of the total Program Recyclables delivered to BFI pursuant to this Agreement. This amount is calculated monthly based on actual sales (including transactions in which BFI may be required to pay the buyers of Recovered Materials) net of freight and other approved delivery costs. The COUNTY’s Revenue Share percentage for Program Recyclables delivered to BFI from any

Residential Unit wherever located and for which the County receives credit pursuant to Section 5.1, up to the MTC, shall be eighty (80) percent for the term of this Agreement. ~~The County's Revenue Share percentage for Program Recyclables in excess of the MTC delivered to BFI under this Agreement pursuant to any agreement entered into between COUNTY and other entity shall be fifty (50) percent until September 30, 2001. Beginning on October 1, 2001, County's Revenue Share percentage for Program Recyclables in excess of the MTC delivered to BFI under this Agreement pursuant to any agreement entered into between County and other entity shall be eighty (80) percent for the term of this Agreement.~~

~~5.2(g) Effective January 1, 1997, and each year thereafter, the County shall designate a three (3) month period coinciding with and following the distribution of new phone books ("Phone Book Term") for the delivery of up to one thousand (1,000) tons of used phone books ("Phone Books") to the MRF. The processing of used phone books in excess of one thousand (1,000) tons shall be addressed by the parties in a separate written agreement if and when such tonnage reaches the maximum amount. During the Phone Book Term, Phone Books shall be deemed a Program Material under the agreement, but shall not be subject to the Revenue Share calculation. In the event that the County designates a Phone Book Term, as provided here in, BFI shall be entitled to an annual supplemental processing fee. In 1997, the processing fee for Phone Books shall be Forty five Thousand Dollars (\$45,000) and said payment will be adjusted annually, January 1<sup>st</sup> of each year, thereafter by the "CPI Adjustment" referenced in 5.2a. In 1999, the processing fee for Phone Books shall be Thirty two Thousand Five Hundred Dollars (\$32,500), said payment to be adjusted annually thereafter, as provided herein. BFI agrees to use reasonable efforts to locate a market to recycle the Phone Books. In the event that disposal of the Phone Books is required, these shall not be subject to the disposal requirements of Paragraph 6.5 of the Agreement.~~

5.6- Beginning on October 1, 2001, at the end of each Program Year, BFI shall pay to COUNTY an amount equal to fifty cents (\$.50) per ton times the total amount of tons of Program Recyclable delivered by the COUNTY during the previous twelve (12) month period, to be used for public education purposes, in order to promote recycling. Said payment shall be submitted to COUNTY within sixty (60) days of the end of each Program Year, and is conditioned upon the COUNTY providing BFI with evidence of a contribution of matching funds for said purposes. Beginning on October 1, 2006, at the end of each Program Year, WASTE MANAGEMENT shall pay to COUNTY an amount equal to fifty thousand dollars (\$50,000) to be used for public education purposes, in order to promote recycling. Said payment shall be submitted to COUNTY within sixty (60) days of the end of each Program Year, and is conditioned upon the WASTE MANAGEMENT review and approval of information related to Residential Mixed Paper.

6.2- BFI may accept Recyclable Materials at the MRF from other sources provided the acceptance or processing of such Recyclable Materials shall not preclude or interfere with the daily delivery or processing of Program Recyclables from COUNTY. BFI agrees that in no event may it enter into any contract or other arrangement, either directly or indirectly by way of any third party, with any entity wherever located for either a lower processing fee or a greater revenue share from the sale of recovered material from a residential waste stream than is provided for in this Agreement, unless such more favorable term(s) are also extended to the COUNTY. Until September 30, 2001, for purposes of the preceding sentence, the minimum threshold processing fee shall equal the product of the then applicable AFPF divided by the then applicable MTC. Beginning on October 1, 2001, for the purposes of the preceding sentence, the minimum threshold processing fee shall be twenty-seven dollars (\$27.00) per ton, as adjusted by the CPI. Beginning on October 1, 2009, for the purposes of the preceding sentence, the minimum threshold processing fee shall be (\$ . ) per ton, as adjusted by the CPI.

6.5- BFI shall be solely responsible for processing all Program Recyclables in accordance with this Agreement, the Specifications and the requirements of the secondary materials buyers. Residue which is culled from material and accepted by BFI or which is the result of processing activity shall not exceed the Residue Allowance. Beginning October 1, 2001, at the end of each Program Year, if the Residue for the previous twelve (12) month period exceeds seven percent (7%) or falls below three percent (3%), the Residue Allowance shall be reconsidered and adjusted as mutually agreed to by COUNTY and BFI. ~~The quantity of marketable material which results from processing operations shall equal 97% of accepted Program Recyclables less the Residue Allowance and Rejects removed. (For purposes of illustration, see Exhibit "A" hereto).~~ Residue and Rejects, except Hazardous Waste, will be accepted for disposal by the County at the Landfill or Waste to Energy Facility as the County directs. Waste Management shall permit COUNTY full access to records and scale data from all facilities that accept MRF residue for disposal to allow COUNTY to verify residue disposal.

6.8- All scale information and data shall be maintained on a system compatible with the COUNTY's system. The COUNTY shall be supplied in an electronic media format as prescribed by the Office of Integrated Waste Management transactions covered by this Agreement no later than ten (10) days following the month that the transaction took place. Scale information shall be recorded at all locations, including Transfer Stations, where Program Recyclables are received. BFI shall submit to the COUNTY a monthly report of all materials flowing through and stored in the MRF to verify monthly computation of the Net Service Fee. All unprocessed material storage and processing shall be under roof. To the extent practical processed or recovered materials storage shall also be under roof.

7. In addition to any other requirement contained in this Amendment or any other prior Amendment or Agreement, Waste Management agrees that County and District, through the ~~Office of~~ Waste and Recycling Services (hereinafter referred to as W.R.S.) shall have the right of access to any Waste Management facility which receives, accepts, or transports recyclables **or residues derived from same** from Member Communities. Further, W.R.S. shall have the right to examine, monitor and audit any document, process or location upon reasonable notice and upon reasonable **working hours**.

8. Wherever one of the prior Agreements or Amendments lists “The Office of Integrated Waste Management,” it shall now mean ~~The Office of Waste and Recycling Services of Broward County~~.

9. In case of perceived conflict between the terms of this Amendment and any prior Agreements or Amendments, and this Amendment, the terms of this Amendment shall govern.

10. The individuals executing this Amendment on behalf of Waste Management represent that they have full authority to execute this document on behalf of the entity for whom they are acting herein.

11. All conditions precedent to the execution of this Amendment have been fully satisfied by the respective signatories to this Amendment.

12. The parties to this Amendment agree that any action regarding the application, interpretation or enforcement of this agreement shall be in the courts of the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida.

13. The Member Communities of the Broward Solid Waste **Disposal** District are hereby agreed to be third party beneficiaries to this Agreement.

**14. Waste Management recognizes and agrees that County, District and all Member Communities shall have all remedies allowable by law upon breach of this contract and further all remedies provided by Paragraph 10 of “Memorandum of Understanding For Materials Recovery Facility” dated October 21, 2003 between Waste Management and County and District.**

15. The parties to this Amendment agree that should it be necessary for either County, District, or Member Communities to enforce this Agreement, each shall be entitled to Attorney’s fees and court costs for such enforcement.

EXHIBIT "A" (Revised)

BROWARD COUNTY REVENUE SHARE CALCULATION

COMMINGLED CONTAINERS

**Rigid**

Inbound Tons x Residue Allow. x Avg. Price x Revenue Share % = Revenue Share

100% Inbound Tons x 95.00% \$/ton x 80%

PAPER (SEE NOTE)

**ONP**

(.97) Inbound Tons x Residue Allow. x Avg. Price x Revenue Share % = Revenue Share

97% Inbound Tons x 95.00% \$/ton x 80%

**RMP – Residential Mixed Paper**

(.03) Inbound Tons x Residue Allow. X Avg. Price x Revenue Share % = Revenue Share

3% Inbound Tons x 95.00% \$/ton x 80%

\*Note: RMP and ONP percentages will be adjusted semiannually based on latest waste composition analysis of Program Recyclables.

## Exhibit B

### START-UP AND DEMONSTRATION TESTING PROCEDURES

#### 1.0 Start-Up Operation

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MRF as described in this Exhibit B refers to the Waste Management Facility at 20701 Pembroke Rd., Pembroke Pines. For MRF start-up and Demonstration Testing, Waste Management shall be responsible to deliver or cause to be delivered to the MRF Program Recyclables in such amounts and at such times as required for equipment testing. Waste Management shall provide all labor, materials, fuel, etc. that are needed to conduct the Demonstration Test.

Revenue Share, Residue and other related provisions from the current MRF Agreement shall be applicable for any Program Recyclable used in the Demonstration Testing or any pre-tests undertaken by Waste Management.

Waste Management shall give the County forty-five (45) days prior written notice of the approximate start-up date in preparation for processing of Program Recyclables, which notice shall include projected delivery schedules and approximate Program Recyclables quantities necessary for start-up operations.

Waste Management shall provide the County with immediate notification of any subsequent material change in such quantity or schedule requested by Waste Management at least two (2) days prior to the effective date of any such change.

#### 2.0 Demonstration Test Plan

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At least 60 days prior to beginning the Demonstration Testing, Waste Management shall submit to the County a detailed Test Plan defining the test program as related to each specified objective. The Test Plan shall define the procedures to be used, the specific measurements to be made, the proposed usage of permanent and temporary

instrumentation, the organization of the test team, the testing schedule, and the operating and maintenance schedule during testing. The Test Plan shall specify the contents of the Demonstration Test report. The Test Plan shall include specific, detailed sampling protocols and procedures to be utilized in conducting the MRF Throughput Test, Residue Generation Test, and Product Specification Test

The County shall comment on, or approve the Test Plan within thirty (15) days of receipt. However, the Test Plan shall not be considered complete and approved until all County comments are resolved. The County approval shall not be unreasonably withheld provided that Waste Management makes every effort to provide expeditious response to all comments. The parties shall make a joint effort to resolve and finalize the Test Plan within forty-five (45) days from Waste Management's Test Plan submittal.

### **3.0 Demonstration Test Notice**

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Waste Management shall give at least thirty (30) days prior written notice of the schedule for Demonstration Testing, the date and time of the Demonstration Tests, and the total Program Recyclables quantities and the delivery schedule necessary for the performance of the Demonstration Test. All additional Demonstration Testing shall be subject to the requirements of the original Demonstration Test and shall also be at Waste Management's cost and expense.

### **4.0 Inspections**

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The County and the County's designated representative(s) shall have the right, at the County's expense, to verify the preparation for, and the conduct of, Demonstration Testing pursuant to the Test Plan for the purpose of verifying compliance with the approved Test Plan and verifying the integrity of the results of the Demonstration Test. Waste Management shall cooperate fully with the County and the County's designated representative(s) in this regard.

## 5.0 Test Results and Certification

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Waste Management, upon completion of the Demonstration Test, shall furnish the County with five (5) copies of a written report, within twenty (20) days following the conclusion of the Demonstration Test. The report shall include, but not be limited to, the following:

- a certification that testing was conducted in accordance with the approved Test Plan;
- a certification of the Demonstration Test results including a determination of the extent to which the MRF complies with the applicable Performance Standards(s);
- a description of the Demonstration Tests conducted;
- all data measured and recorded during the Demonstration Test period which shall include, at a minimum, quantities of Program Recyclables received, Recovered Materials processed and Residue generated;
- all calculations used in determining test results;
- any other data reasonably requested by the County to be included in such reports.

Within thirty (30) days of the County's receipt of Waste Management's final Demonstration Test report and certification as to such results, the County shall determine whether Waste Management correctly certified such results. During such thirty (30) day period the County and the County's designated representative(s) shall work to correct any discrepancies in Waste Management's certification to the extent feasible. If the County rejects Waste Management's certification of the results of the Demonstration Test, the County shall describe in reasonable detail the basis of the County's rejection and shall attach a certification of the County setting forth the basis of such rejection.

If Waste Management correctly certifies that i) the testing was conducted in accordance with the approved Test Plan and ii) the results of the testing include a determination of the extent to which the MRF complies with the applicable Performance Guarantee(s), the County shall approve Demonstration of the MRF in writing to Waste Management. The

County requires that the Demonstration of the MRF occurs within ninety (90) days of the Substantial Completion of the Waste Management MRF located at the former Rueters Facility in Pembroke Pines.

## **6.0 Demonstration Test Procedures**

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The Demonstration Test shall be comprised of the following components:

1. MRF Throughput Test
2. Residue Generation Test
3. Product Specification Test

Should Waste Management fail any component of the Demonstration Test, the County shall have a right in its sole discretion to permit Waste Management to adjust, repair, or replace the equipment, or procedures causing such failure and reconvene the Demonstration Test(s) within seven (7) days notice by the County.

## **7.0 MRF Throughput Test**

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The MRF Throughput Test shall be conducted during a six (6) day period from Monday through Saturday during which all systems shall be operating simultaneously.

The Program Recyclables may be delivered in part to the MRF in advance of the Demonstration Test and will be tipped in the appropriate section(s) of the tipping floor. The quantity of the materials delivered will be measured by the truck scales at the entrance to the MRF for use in calculating the results of the Throughput Test.

Each open-top trailer and tractor to be used during the testing will be weighed at the MRF scale prior to the commencement of the Demonstration Test to determine its tare weight, and will be marked for its designated load-out bay. Trucks entering the MRF from off-site shall be weighed upon entering the Facility Site on the MRF truck scales. The weight of all materials on the Facility Site shall be estimated after shakedown activities and prior to commencing the MRF Throughput Test. The estimating procedure shall be

specified in the Test Plan to be approved by the County and the County's designated representative.

At the specified time, Waste Management shall commence normal operations, and loading and processing of the Program Recyclables. All Program Recyclables for the purposes of the test will be processed. The time required to process the material will be recorded by Waste Management, County, and/or the County's designated representative(s). Throughput determinations will be made based on the average of the time measurements recorded by all representatives.

The following data will be recorded, as a minimum, during the MRF Throughput Test:

- The total time used to process the total quantities of Program Recyclables.
- The recordings will be made separately for each process line and for each test period.
- The total tonnage processed as recorded by the truck scales and delivered to the tipping floor.
- Logs of all clean-up, maintenance, and repair operations performed by Waste Management during the six (6) day testing period.
- Weight measurements at the MRF truck scales for each of the Program Recyclables; Recovered Products, Rejects, and Bypass Material, if any was produced at the MRF during the Demonstration Test.
- All other test data and information required for other miscellaneous tests being conducted throughout the testing period.

## **8.0 Residue Generation Test**

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The Residue Generation Test shall be scheduled to coincide with the MRF Throughput Test. Waste Management will provide a clean container with an established tare weight for both the fiber and commingled processing lines. Waste Management will direct the placement of the roll-off boxes according to the Test Plan. Waste Management will

determine the percentage of Program Recyclables in this residue will be determine and compared to the 2005 Residue Analysis performed by Malcolm Pirnie, Inc.

## **9.0 Product Specification Test**

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The Product Specification Test shall be designed to determine whether the Recovered Products produced during the test meet the specifications defined in the *2006 Guide for Nonferrous scrap, Ferrous Scrap, Glass Cullet, Paper Stock, Plastic Scrap, Electronics Scrap, and Tire Scrap; Institute of Scrap Recycling Industries, Inc. (ISRI Standards)*

In performing the Product Specification Test, the following conditions shall be satisfied:

- Sampling protocol(s) submitted with the Test Plan and approved by the County and the County's designated representatives shall be followed;
- The Product Specification Test shall be conducted each day of the Demonstration Test on each of the Recovered Products produced that day.

The Product Specification Test shall be considered to have been satisfactorily completed if all Recovered Products are demonstrated to have been processed as specified in the ISRI Standards.

## **10.0 Demonstration of the MRF**

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Upon completion of the Demonstration Test, the Demonstration of the MRF shall be approved by the County if all of the following criteria are satisfied, as certified by the Demonstration Test report and concurred with by the County's designated representative(s):

- A minimum of twice the Minimum Tonnage Commitment of Program Recyclables for three (3) consecutive days. and the Recovered Materials produced satisfy the product specifications given in Appendix C as determined by the Product Specification Test.
- All recovered products shall meet the Product Specification standards. Products not meeting their respective Product Specification Standards shall be considered Residue for the purpose of this Demonstration Test.

- Residue produced contains less Program Materials than percentages documented by MPI in the 2005 Residue Analysis for the WM MRF located in Davie, Florida., as determined during the Residue Generation Test.
- Environmental Compliance Test is satisfactorily completed, and all test parameters are determined to be within the limitations of all applicable permits, rules, regulations, laws, codes, and ordinances.

## **11.0 Additional Information**

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In the event that any of the Demonstration Test criteria outlined in Section 10.0 of this Exhibit B are not satisfied, the County, in its sole discretion may permit the deficient portions of the Demonstration Test to be repeated the at Waste Management's sole cost and expense, or proportionally adjust processing costs or rescind the 5<sup>th</sup> Amendment to the MRF Agreement in it's entirely.

Exhibit C

Performance Criteria and Operational Standards

(to be provided by Malcolm Pirnie)

DRAFT