

## SOLID WASTE DISPOSAL CAPACITY AGREEMENT

**THIS AGREEMENT**, entered into this 1st day of March, 2012, by and between CITY OF FORT PIERCE, FLORIDA, a municipal corporation, hereinafter referred to as "CITY" with its principal address at 100 North U.S. 1, Fort Pierce, Florida, and WASTE MANAGEMENT INC. OF FLORIDA, a Florida corporation, hereinafter referred to as "WASTE MANAGEMENT" with its principal address at 1001 Fannin, Suite 4000, Houston, TX.

**WHEREAS**, the CITY is obligated under Florida law to provide for the solid waste disposal needs of its residents; and

**WHEREAS**, the CITY is seeking assurances that there will be a lawfully permitted and environmentally safe solid waste disposal facilities available to the CITY to properly dispose of solid waste generated within the CITY; and

**WHEREAS**, WASTE MANAGEMENT owns and operates a solid waste disposal facility (Okeechobee Landfill) which has the capacity to provide for the solid waste disposal needs of the residents of the CITY and desires to enter into an Agreement to assure the CITY disposal capacity within its solid waste disposal facility upon the terms and conditions set forth herein; and

**WHEREAS**, WASTE MANAGEMENT will plan, design, permit and build a state-of-the-art Transfer Station with single-stream recycling capability on real property presently in the unincorporated St. Lucie County that will be annexed into the CITY for the receipt of CITY generated waste, such activity being nonexclusive to the CITY; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree, each with the other, as follows:

1. **DEFINITIONS.** Whenever the following words and expressions are used in this Agreement, they shall be interpreted and construed as follows:

(a) **"Acceptable Waste"** means Solid Waste that may be disposed of lawfully in a Class I landfill, provided that the Solid Waste was collected within the CITY. For purposes herein, Acceptable Waste includes municipal solid waste, garbage, construction and demolition debris, curbside Recyclables, vegetative waste, White Goods and Class III waste (although some of these materials will not be disposed in a Class I landfill but will be managed in ways in compliance with Applicable Law.

(b) **"Agreement"** means this "Solid Waste Disposal Capacity

Agreement" between the CITY and WASTE MANAGEMENT.

(c) **"Applicable Law"** means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relate in any manner to the performance of the CITY or Waste Management under this Agreement.

(d) **"Class I landfill"** shall be as defined in Rule 62-701.340(3)(a), F.A.C.

(e) **"Class I waste"** shall be defined in Rule 62-701.200(14), F.A.C.

(f) **"CPI"** means the Consumer Price Index as defined in **Exhibit C** attached.

(g) **"Effective Date"** means the date when this Agreement is signed by the CITY.

(h) **"Hazardous Waste"** means a regulated quantity of any Solid Waste identified by the Florida Department of Environmental Protection or U.S. Environmental Protection Agency as a hazardous waste or hazardous substance pursuant to: Chapter 62-730, F.A.C. Hazardous Waste does not include "household hazardous waste" or Solid Waste generated by "conditionally exempt small quantity generators," as those terms are defined under RCRA and Chapter 62-730, F.A.C., but only if and only for so long as such materials may be disposed of lawfully in a Class I landfill.

(i) **"Force Majeure"** shall be as defined in Section 19 (g) herein.

(j) **"Prohibited Wastes"** are those waste materials that Waste Management prohibits at the Okeechobee Landfill, including but not limited to Hazardous Waste, asbestos, biomedical wastes, biological waste, mercury-containing devices, radioactive waste, sludge and liquid wastes.

(k) **"Recyclable Materials," or "Recyclables"** shall mean those items identified in **Exhibit B** attached.

(l) **"Revenue Share"** shall be as defined in **Exhibit B** attached.

(m) **"Single Stream"** means a recycling process in which all Recyclables are collected mixed together with no sorting required.

(n) **"Solid Waste"** shall be as defined in Rule 62-701.200 (107), F.A.C.

(o) **"Waste Tire"** shall be as defined by Rule 62-701.200 (126), F.A.C.

(p) **"White Goods"** shall be as defined by Rule 62-701.200 (133), F.A.C.

(q) **"Yard Trash"** shall be as defined by Rule 62-701.200 (135) F.A.C.

(r) **"Transfer Station"** shall mean the Transfer Station to be constructed by Waste Management on real property owned by Waste Management currently located in unincorporated St. Lucie County which shall be annexed into the CITY.

(s) **"Municipally Collected Solid Waste"** shall mean Solid Waste that is generated within the boundaries of the City and collected by (a) the City's employees, (b) a person under contract to the City for the collection of such waste, or (c) a person holding a franchise, license, or permit issued by the City for the express purpose of collecting, storing, transporting, and disposing of such Solid Waste. Municipally Collected Solid Waste shall not include Recyclable Materials, as defined herein, disposed of in a Recyclable Materials container.

2. **SOLID WASTE DELIVERIES.** From the Effective Date and for a period of up to 24 months thereafter, the CITY shall endeavor to deliver or cause to be delivered an amount equal to or greater than fifty percent (50%) of its Municipally Collected Solid Waste to WASTE MANAGEMENT's Okeechobee Landfill at CITY expense in self unloading vehicles. At such time as WASTE MANAGEMENT designs, permits and builds a Transfer Station on real property owned by Waste Management currently in unincorporated St. Lucie County which is annexed into the CITY, the CITY shall commence deliveries to the Transfer Station, and shall deliver all its Municipally Collected Solid Waste and Recyclables that are within the CITY's reasonable control to WASTE MANAGEMENT. Curbside Recyclables may be delivered in single stream mode. The parties intend that such Transfer Station will be operational within 24 months of the Effective Date. WASTE MANAGEMENT shall file a petition and all other required documents with the City necessary for the City to commence annexation of the Transfer Station property within sixty (60) days of the Effective Date.

3. **PROHIBITED WASTE.** Under this Agreement, WASTE MANAGEMENT shall not accept, and the CITY shall not deliver: Hazardous Waste; biomedical waste; Prohibited Wastes; Waste Tires, ash, lead-acid batteries, or other types of special waste, except white goods as specified herein; or any type of Solid Waste that cannot be disposed of lawfully in a Class I landfill pursuant to Applicable

Laws.

4. **TITLE TO AND ACCEPTANCE OF SOLID WASTE.** CITY shall tender Municipally Collected Solid Waste to WASTE MANAGEMENT and WASTE MANAGEMENT shall accept Municipally Collected Solid Waste meeting the definition of Acceptable Waste as defined herein, pursuant to the terms of this Agreement. Nonconforming waste may be rejected by WASTE MANAGEMENT prior to unloading. Municipally Collected Solid Waste shall be considered accepted at the time the material is removed from CITY's vehicle at the Okeechobee Landfill or at the Transfer Station, as the case may be. Acceptance of Municipally Collected Solid waste other than Acceptable Waste as defined herein shall not impair, or operate as a waiver of any rights or remedy available to WASTE MANAGEMENT, including revocation of acceptance, in the event that the waste is later discovered to be nonconforming. WASTE MANAGEMENT may inspect, sample, analyze and test any waste; however, exercise or a failure to exercise such right shall not relieve the CITY of its obligations under this Agreement to deliver only Municipally Collected Solid Waste meeting the definition as provided herein.

If CITY delivers to the Okeechobee Landfill or to the Transfer Station any Prohibited Waste, WASTE MANAGEMENT may direct that the CITY arrange for the lawful management, handling, packaging and transportation and disposal of such waste. Prohibited Waste delivered by the CITY must be identified by WASTE MANAGEMENT at the facility to which the CITY delivers such waste. Upon discovery WASTE MANAGEMENT shall immediately segregate the Prohibited Waste and shall notify the City in writing within 24 hours after delivery by the City providing documentation that said waste was delivered by the CITY. The CITY shall promptly arrange for such lawful activities necessary to handle, transport, and dispose of such Prohibited Waste. In the event the CITY fails to do so, WASTE MANAGEMENT, at its option, may make such arrangements and shall charge the CITY for reasonable handling, transport, and disposal costs, and provide documentation of such costs to the CITY.

If at any time the CITY shall learn that waste it delivered or caused to be delivered was Prohibited Waste, it shall promptly notify WASTE MANAGEMENT and provide the basis for its understanding.

WASTE MANAGEMENT possesses additional waste processing and disposal facilities within Florida that are fully permitted by all applicable governmental authorities. WASTE MANAGEMENT may from time to time utilize such facilities for the management of the CITY's Acceptable Waste with prior written approval of the CITY.

5. **RATES AND FEES.**

(a) Provided the CITY is not in default under this AGREEMENT, WASTE MANAGEMENT shall pay to the CITY the amounts, at the times, specified below:

**\$650,000** within 10 days of the Effective Date;

**\$250,000** on or before the first day of the 6<sup>th</sup> year of the term of this Agreement;

and, **\$250,000** on or before the first day of the 11<sup>th</sup> year of the term of this Agreement.

(b) **Base Rate.** CITY shall pay to WASTE MANAGEMENT the per ton base rate for Municipally Collected Solid Waste delivered to the WASTE MANAGEMENT facility in vehicles owned and operated by the CITY. The base rate is inclusive of Okeechobee County host fees, and/or Okeechobee County trust fund fees or other charges imposed by Okeechobee County or other governmental entities with jurisdiction over the disposal of waste at the Okeechobee Landfill that exist on the Effective Date. The base rate for direct deliveries to Okeechobee Landfill and for deliveries to the Transfer Station are set forth in **Exhibit A**.

(c) **Host Fee.** WASTE MANAGEMENT may accept Solid Waste and Recycled Materials at the Transfer Station from outside the city limits of CITY, and Recycled Materials delivered to the Transfer Station other than by the CITY. For each such ton of Solid Waste or Recycled Materials received at the Transfer Station, WASTE MANAGEMENT shall pay to the CITY a host fee of **\$1.50 per ton**. If the CITY delivers less than fifty percent (50%) of its Municipally Collected Solid Waste to the Okeechobee Landfill in the period from the Effective Date to the opening of a Transfer Station, then the host fee shall be **\$1.00 per ton**.

(d) **CPI/Fuel Adjustment.** The base rate and host fee shall be adjusted as set forth in **Exhibit C** attached, and as defined herein.

(e) **Change in Rates.** WASTE MANAGEMENT may petition the CITY to adjust its rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a increase in Okeechobee County host fee, and/or Okeechobee County trust fund fee or other charges imposed by Okeechobee County on disposal activities at Okeechobee Landfill, change in law or regulation. Changes in rates as defined in **Exhibit C** are specifically excluded from the terms of this clause. Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefore. The CITY shall be entitled to audit WASTE MANAGEMENT'S financial

and operational records directly related to the request in order to verify the increase in costs and the reasons therefore. The CITY shall endeavor to approve or deny the request, in whole or in part, within ninety (90) days of receipt of the request and all other additional information required by the CITY. The CITY shall make a reasonable determination in reaching its decision and shall not unreasonably deny relief hereunder.

(f) **Compensation for Recyclables.** WASTE MANAGEMENT will pay the CITY a Revenue Share for Recyclables, delivered to a Waste Management Facility pursuant to **Exhibit B**. Payment to the CITY shall be on a quarterly basis in arrears.

6. **OTHER SERVICES.** Waste Management will provide to the City: (a) four (4) WM Solar powered litter compactors for public places to supplement existing services and reduce collection costs; (b) provide free scheduled e-waste recycling opportunities for CITY residents no less than annually; and (c) provide 1,250 recyclable containers (minimum 64 gallon) within 6 months of Effective Date, and another 1,250, per year, in the second and third years at no cost to the CITY.

7. **BILLING AND PAYMENT.** Each month WASTE MANAGEMENT shall tender CITY a statement of compensation due for processing the CITY's Municipally Collected Solid Waste for the previous month. CITY shall pay the statement, less Liquidated Damages imposed in accordance with the terms of this Agreement, in full within thirty (30) days of date of approved invoice (the "Due Date"). Interest shall run on undisputed unpaid amounts pursuant to Florida statutory interest rate commencing on the thirtieth day after the Due Date.

8. **NON-CITY WASTE.** The Transfer Station may be used by WASTE MANAGEMENT for waste generated by parties other than the CITY.

9. **TERM.** This Agreement shall commence on the Effective Date and shall continue in effect until midnight of the fifteenth (15<sup>th</sup>) anniversary of that date. Thereafter, this Agreement may, at the option of the parties, be renewed or extended for two (2) successive periods of five (5) years each, unless either party provides the other party written notice of intent not to renew this Agreement at least ninety (90) days prior to the end of the initial term or any renewal or extension.

10. **CITY ASSISTANCE REGARDING TRANSFER STATION.** To the extent permitted by law, CITY shall not oppose WASTE MANAGEMENT in its efforts to site the Transfer Station on real property that will be annexed by the CITY from the unincorporated St. Lucie County. CITY shall assist in annexing the site,

establishing proper zoning and environmental permitting (the "Entitlements") in conformance with all applicable laws and ordinances. WASTE MANAGEMENT anticipates that the Transfer Station will be completed and in operation within twelve (12) months after the Entitlements are obtained.

11. **REPORTING.** WASTE MANAGEMENT shall automatically provide the City with monthly report detailing the tons of Municipally Collected Solid Waste and Recyclable Materials delivered by the City, its designated hauler or third parties to WASTE MANAGEMENT. The report shall be submitted to the CITY within fifteen (15) calendar days from the end of the month for which the report is being made. Until such time as the CITY begins delivering Municipal Solid Waste to the Transfer Station, the CITY shall provide WASTE MANAGEMENT with regular reports reflecting the amount of Municipally Collected Solid Waste delivered to facilities not operated by WASTE MANAGEMENT.

12. **IMPLEMENTATION.** CITY and WASTE MANAGEMENT recognize and agree that the successful implementation of this Agreement is dependent upon the good faith performance of their respective obligations. CITY and WASTE MANAGEMENT hereby warrant that each will take all reasonable actions necessary to promptly and efficiently carry out their responsibilities under this Agreement and will cooperate with each other, as necessary, to assure the effective, continuous performance of each party's obligations hereunder.

13. **LAW GOVERNING.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and it shall be binding upon, and inure to the benefits of, the parties, their successors and assigns. WASTE MANAGEMENT shall submit to service of process and the jurisdiction of the State of Florida for any controversy or claim arising out of or relating to the Agreement. Any action to interpret and/or enforce the Agreement shall be brought and maintained in the State of Florida and venue shall be in St. Lucie County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

14. **NO THIRD PARTY BENEFICIARIES.** Neither the CITY nor WASTE MANAGEMENT intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties hereto agree that there are no third party beneficiaries to this Agreement and that no third party shall be able to assert a right or claim against either of them based upon this Agreement.

15. **NOTICE.** Written notices and responses to written notices shall be given

to the parties at the following addresses or such other place or other person as each party shall designate by similar notice:

<p>CITY: City Manager 100 North U.S. 1 Fort Pierce, FL 34950</p> <p>WASTE MANAGEMENT: Timothy Hawkins Vice President Waste Management Inc. of Florida 2700 Wiles Road Pompano Beach, Florida 33073</p>	<p>WITH COPIES TO: City Attorney 100 North U.S. 1 Fort Pierce, FL 34950</p> <p>Legal Department Waste Management Inc. of Florida 2700 Wiles Road Pompano Beach, Florida 33073</p>
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16. **OPERATING PROCEDURES.**

(a) CITY shall comply with the normal safety and operating procedures established at the Okeechobee Landfill and the Transfer Station, including but not limited to weight limits for CITY delivery vehicles pursuant to Applicable Laws. WASTE MANAGEMENT will make all reasonable accommodations for the convenience of CITY in the hours and days of operation of the Okeechobee Landfill and Transfer Station.

(b) **Trucks and Trailers.** WASTE MANAGEMENT shall provide all of the trucks and trailers needed to haul the City's Acceptable Waste to the Okeechobee Landfill. WASTE MANAGEMENT shall make arrangements for, or have access to additional trucks and trailers if necessary, to ensure that there is no interruption in the operation of the Transfer Station. WASTE MANAGEMENT shall replace the trucks and trailers as necessary. All trucks, trailers, and vehicle drivers used to haul Solid Waste from the Transfer Station shall have valid licenses, inspections and permits and be in compliance with applicable laws.

(c) **Loading Vehicles.** WASTE MANAGEMENT shall deliver empty transport trailers to the Transfer Station for filling with Acceptable Waste. WASTE MANAGEMENT either shall drive the trailer inside the Transfer Station for filling or WASTE MANAGEMENT shall park the trailer outside the Transfer Station until it is needed. WASTE MANAGEMENT shall move the trailer out of the Transfer Station after the trailer is filled.

(d) **Waste Removal.** WASTE MANAGEMENT shall endeavor to remove all filled trailers from the site at the end of each operating day but may leave same overnight if reasonably required. WASTE MANAGEMENT shall remove Solid

Waste from the Transfer Station in compliance with its permit, and in no case shall it exceed 48 hours on a first-in, first-out basis. WASTE MANAGEMENT may park filled trailers on-site temporarily. WASTE MANAGEMENT shall not allow more than two (2) trailers filled with Solid Waste to be parked on-site at anytime. If requested by the City, within five (5) hours WASTE MANAGEMENT shall remove any trailer from the Transfer Station that is filled with unusually odorous waste.

(e) **Covering and Inspecting Vehicles.** All trailers shall be securely covered by WASTE MANAGEMENT promptly after they are removed from the Transfer Station. All trailers shall remain securely covered until they are unloaded at the Okeechobee Landfill. WASTE MANAGEMENT's trucks and trailers shall be maintained by WASTE MANAGEMENT in a clean and sanitary condition to prevent odors, vectors, or nuisance conditions. WASTE MANAGEMENT's trucks shall have leakproof seals, which shall be maintained to ensure that any leakage of leachate is minimized. All trucks and trailers shall be inspected by WASTE MANAGEMENT at the Transfer Station before every trip as part of WASTE MANAGEMENT's routine safety and operations program.

(f) **Unloading.** Incoming vehicles will unload the waste at the designated areas on the tipping floor. A front-end loader will load the waste into transportable containers (i.e., trailers, roll-off containers, or equivalents) located in the trailer well.

(g) **Waste Inspection.** WASTE MANAGEMENT shall provide a trained spotter to inspect all incoming waste while it is being unloaded and/or spread at the tipping floor. Drivers will be questioned regarding their load types and a visual examination will be performed. If the visual examination turns up any Prohibited Waste, the truck will be denied access to the site. The driver of the vehicle shall be informed that his load is unacceptable and the reason why. Site personnel will assist him in determining what he should do for proper disposal of the load. If Prohibited Waste is spotted after a truck has unloaded, the spotter will direct the removal of said waste. Prohibited Waste will be placed back on the truck on which it was delivered to the site, if available. If the truck is not available, the Prohibited Waste will be placed in the temporary storage containers for disposal at an appropriate FDEP permitted facility. In the event WASTE MANAGEMENT fails to discover Prohibited Waste at the Transfer Station which is later rejected at the Okeechobee Landfill, disposal of such waste shall be the responsibility of WASTE MANAGEMENT.

(h) **Prohibited Waste Containment.** WASTE MANAGEMENT shall provide covered waste storage bins for temporary storage of prohibited wastes found. The covered storage bin will be approved for hazardous chemicals, and shall meet the Environmental Protection Agency (EPA) requirements (40 CFR

264.175) for secondary spill containment for hazardous materials. If any hazardous waste is identified at the Transfer Station, WASTE MANAGEMENT will promptly notify FDEP before moving / redirecting / rejecting / reloading the waste and follow the instructions from the Department. WASTE MANAGEMENT, whenever possible, shall record the name of the person responsible for shipping the waste to the Transfer Station, the generator of the waste, and particulars of transport vehicle. The area where the waste is unloaded shall immediately be cordoned off from public access. If the generator or hauler cannot be identified, WASTE MANAGEMENT will arrange cleanup, transportation, and disposal of the waste at a permitted hazardous waste management facility. Likewise, any other unauthorized waste unloaded at the Transfer Station will be separated and placed in an appropriate container.

(i) **Prohibited Waste Removal.** WASTE MANAGEMENT shall remove Prohibited Waste from the Transfer Station on an as-needed basis at least weekly. The removal of the containers may be achieved by using a roll-off truck, front-end loader, or heavy equipment able to transport the container.

(j) **Non-Hazardous Materials.** Waste material discovered during the unloading and reloading process that does not qualify as Acceptable Waste and is not a hazardous waste, shall be removed by WASTE MANAGEMENT from the tipping areas. Special wastes such as cans of paint, thermostats and car batteries shall be placed in separate metal containers and removed for proper disposal at least once each month. Other unacceptable material will be collected and loaded into transportable containers (i.e., trailers, roll-off containers, or equivalents) and removed from the site at least once each month.

(k) **Routine Clean-Up and Litter Control.** WASTE MANAGEMENT shall clean at least weekly the areas of the Transfer Station's where waste is stored. The site will be patrolled for loose waste and litter daily. Any loose waste and litter will be picked up immediately and removed for disposal in an FDEP approved landfill.

(l) **Odor Control.** All waste operations will be performed in the partially enclosed Transfer Station. Areas where waste is stored will be cleaned at least weekly. Areas where waste is stored or processed shall be cleaned weekly to prevent odor or vector problems and all drains and leachate conveyance shall be kept clean so that leachate flow is not impeded. In the event non-putrescible waste must be stored on site, the waste will be transferred to covered transportable containers (i.e., trailers, roll-off containers, or equivalents). The placement of the material in covered containers will allow for vector and odor control in accordance with Rule 62-701.710(4)(d) of the FAC.

(m) **Approved Truck Routes.** WASTE MANAGEMENT shall use only

the truck routes designated in Exhibit D which is attached hereto, when transporting Acceptable Waste from the Transfer Station to the Disposal Facility. The approved routes may be changed, if necessary, with the prior approval of WASTE MANAGEMENT and the CITY.

(n) **Spills and Emergencies.** If WASTE MANAGEMENT's activities result in a spill or emergency, or the release of a reportable quantity of any substance, within the CITY, it shall implement its emergency plan. WASTE MANAGEMENT shall promptly notify the Florida Highway Patrol, local sheriff, or FDEP, as required by law. WASTE MANAGEMENT shall promptly initiate and complete clean-up activities, if necessary. WASTE MANAGEMENT shall notify the CITY verbally within twelve (12) hours and shall provide a written report to the City Manager within twenty-four (24) hours concerning the cause of the spill or emergency, the clean-up activities that were implemented, and the current status of the situation.

(o) **Compliance With Laws and Regulations.** WASTE MANAGEMENT shall ensure that the Transfer Station 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. WASTE MANAGEMENT shall obtain and maintain all required permits, licenses, and governmental approvals necessary for the operation of the transfer station.

(p) **Subcontractors.** WASTE MANAGEMENT may utilize subcontractors in the performance of the work required hereunder. WASTE MANAGEMENT shall be responsible to the CITY for the acts and omissions of its subcontractors during the performance of activities relating to the transfer station operations. Nothing herein shall create any contractual relationship between any subcontractor and the CITY or any obligation on the part of the CITY to pay or see to the payment of any monies which may be due to any subcontractor. No subcontract shall relieve WASTE MANAGEMENT of its responsibilities to the CITY.

(q) **Truck Turnaround.** WASTE MANAGEMENT shall endeavor to provide expedited turnaround times for CITY vehicles unloading at the Transfer Station. Unless prevented by weather, Acts of God, traffic, street closures, equipment failure, fuel shortages or other matters beyond the reasonable control of WASTE MANAGEMENT, turnaround time shall be not longer than 30 minutes.

(r) **Prohibited Waste.** WASTE MANAGEMENT shall be prohibited from knowingly accepting at the Transfer Station any Hazardous Waste, Prohibited Wastes, or any type of Solid Waste that cannot be disposed of lawfully in a Class I landfill pursuant to Applicable Laws.

17. **LIQUIDATED DAMAGES.** If WASTE MANAGEMENT does not substantially fulfill its obligations under this Agreement, the CITY shall provide written notice to WASTE MANAGEMENT of specific areas of deficiency. Examples of such deficiencies include, but are not limited to, the following:

- Violation of environmental laws or permits;
- Truck turnaround times greater than 30 minutes for more than 5 percent of City vehicles unloading at the Transfer Station;
- Failure to conduct daily clean-up and litter control in accordance with this Contract;
- Failure to remove Acceptable Waste in accordance with this Contract;
- Failure to securely cover trailers in accordance with this Contract;
- Failure to utilize approved truck routes in accordance with this Contract;
- Disposal of Recyclable Materials without prior approval of the City Manager; and
- Other conditions that could impact public health and safety.

WASTE MANAGEMENT shall initiate reasonable steps to correct these deficiencies within seventy-two (72) hours of written notice. If WASTE MANAGEMENT does not initiate reasonable steps within seventy-two (72) hours, the CITY may, at its discretion, impose liquidated damages of \$250 per Day until deficiencies are satisfactorily corrected, as determined by the CITY.

The CITY shall at the end of each month notify WASTE MANAGEMENT in writing of the liquidated damages assessed and the basis for each assessment. In the event WASTE MANAGEMENT wishes to contest such assessment(s), it must submit a request for determination within five (5) days after receiving such notice. The request shall specify the grounds upon which WASTE MANAGEMENT objects to the assessment of Liquidated Damages by the CITY. The matter shall be referred to the City Manager who shall rule on WASTE MANAGEMENT's request. The City Manager's ruling shall constitute a final determination of the matter on behalf of the CITY.

18. **INDEMNITY AND INSURANCE.**

(a) **Indemnification and Limitation of Liability by WASTE MANAGEMENT.** WASTE MANAGEMENT agrees to defend, indemnify, defend and save harmless the CITY, its present and future officers and employees, from and against any and all losses, liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the

environment, or any violation of governmental laws, regulations, or orders to the extent caused, in whole or in part, by:

- i) WASTE MANAGEMENT's breach of any term or provision of the this Agreement; or
- ii) Any negligent act or omission of WASTE MANAGEMENT, its employees, or subcontractors in the performance of this Agreement.

Neither CITY nor WASTE MANAGEMENT as the case may be shall be liable for consequential, incidental or punitive damages. The indemnification obligations herein shall survive termination of this Agreement.

WASTE MANAGEMENT shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein.

(b) **Proof of Insurance.** WASTE MANAGEMENT shall supply CITY with the insurance coverage required in Section 17 on a form acceptable to CITY.

For the purposes of this Agreement, acceptable proof of insurance shall be a fully completed satisfactory Certificate of Insurance evidencing all coverage required herein, and a copy of the actual additional insured endorsement as issued on the Environmental Impairment Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of WASTE MANAGEMENT and CITY as Additional Insureds in the Environmental Impairment Liability coverage.

Until such time as this insurance is no longer required to be maintained by WASTE MANAGEMENT under this Agreement, WASTE MANAGEMENT shall provide CITY with:

- i) renewal or replacement evidence of the insurance, no less than ten (10) days before the expiration of the insurance for which previous evidence of insurance has been provided.
- ii) Notice of termination or non renewal by insurer within thirty (30) days notice of intent to terminate or non renew by insurer.

Notwithstanding the prior submission of a Certificate of Insurance, if requested by CITY, WASTE MANAGEMENT shall deliver to CITY within thirty (30) days after receipt of a written request from CITY, a certified complete copy of the policy(ies) of insurance providing the coverage required, with each policy to be

certified as a true and correct copy of the original policy by an authorized representative of the insurer(s) that issued the policies. Contractor may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required herein.

(c) **Environmental Impairment Liability.** Such insurance shall cover WASTE MANAGEMENT and CITY for liability resulting from pollution or other environmental impairment arising out of, or in connection with, WASTE MANAGEMENT's operation of solid waste disposal facilities, or which arises out of, or in connection with this Agreement, including coverage for clean-up of pollution conditions and third party bodily injury and property damage claims arising from pollution conditions.

Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Claim	\$3,000,000
Annual Aggregate	\$3,000,000

Any deductible or self-insured retention applicable to the insurance required under Section 17. in excess of \$5,000,000 must be approved in writing by CITY. WASTE MANAGEMENT shall pay on behalf of CITY any deductible or self-insured retention applicable to any insurance required under Section 17 that provides coverage for a claim against or loss incurred by CITY.

All insurance (inclusive of any applicable deductible or self-insured retention) provided by WASTE MANAGEMENT shall apply on a primary basis to, and shall not contribute with, any insurance, or self-insurance, maintained by CITY. Any insurance maintained by CITY shall be excess of, and shall not contribute with, the insurance provided by WASTE MANAGEMENT.

Compliance with these insurance requirements shall not limit the liability of WASTE MANAGEMENT. Any remedy provided to CITY by the insurance provided by WASTE MANAGEMENT shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of WASTE MANAGEMENT) available to CITY under this Agreement or otherwise.

Neither approval nor failure to disapprove insurance furnished by WASTE MANAGEMENT shall relieve WASTE MANAGEMENT from responsibility to provide

insurance as required by this Agreement.

19. **SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be interpreted or construed to mean that the CITY waives its common law sovereign immunity or the limits on liability set forth in Ch. 768.28, Florida Statutes or other Applicable Laws.

20. **MISCELLANEOUS.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein. This Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters. It may not be modified, varied, altered or discharged except by written agreement, signed by the parties hereto.

(b) **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party. An allowed assignment shall not relieve the assignor of liability hereunder. An assignment that is made or attempted without consent of the other party hereto is void and of no effect.

(c) **Successors.** This Agreement shall inure to the benefit of and be binding upon the respective successors and allowed assigns of the parties.

(d) **Waiver.** Failure to enforce any provision hereof shall not constitute a waiver by either party and any such provision shall remain in full force and effect and may be asserted by either party at anytime during the period of this Agreement.

(e) **Severability.** If any clause, provision or part of this Agreement is declared unenforceable or void, it shall not affect the enforceability of the balance of such clause, provision or part thereof, with the Agreement as a whole.

(f) **Captions.** The captions herein are solely for the convenience of the parties and shall not be used to modify, amplify, decrease or otherwise interpret the provisions herein.

(g) **Force Majeure.** If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force

Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the services hereunder.

21. **LEGAL REMEDIES.** Each party to this Agreement shall be entitled to exercise any and all legal or equitable remedies available to such party by Applicable Law, including the right to enforce the obligations or breaches of each party hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their designated representatives, as of the day and year first above written.

CITY OF FORT PIERCE, FLORIDA

ATTEST:

By: Cassandra Steele  
Cassandra Steele, City Clerk

By: Robert J. Benton, III  
Robert J. Benton, III, Mayor

APPROVED AS TO FORM:

By: Robert V. Schwerer  
Robert V. Schwerer, City Attorney

WASTE MANAGEMENT:  
WASTE MANAGEMENT INC. OF FLORIDA

By: Timothy B. Hawkins  
Timothy B. Hawkins, Vice President

Ronald Kaplan  
Witness  
Printed Name: RONALD KAPLAN

Rosalina Vega  
Witness  
Printed Name: ROSALINA Vega





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## **Exhibit A – Rates**

### **Pre-Transfer Station**

Municipally Collected Solid Waste delivered to Okeechobee Landfill or Transfer Station ("Pre-Transfer Station" rates for 24 months or until transfer station is completed, whichever is later.)

- Class I Waste – **\$21.50/ton**
- Construction and Demolition Debris -- **\$18.50/ton**
- Yard Trash (clean loads) -- **\$12.50/ton**
- White Goods – No Charge for gas-free appliances (properly removed)

### **Transfer Station**

Municipally Collected Solid Waste delivered to Transfer Station – (Years 3-5 "Transfer Station" rates beginning either at beginning of year 3, or upon completion of Transfer Station, whichever is later, and continue for a three (3) year period).

- Class I Waste – **\$37.00/ton**
- Construction and Demolition Debris -- **\$27.50/ton**
- Yard Trash (clean loads) -- **\$20.00/ton**
- White Goods – No Charge for gas-free appliances (properly removed)

Municipally Collected Solid Waste delivered to Transfer Station – (After the above referenced rates have been in effect for three (3) years, the rates below shall begin immediately thereafter).

- Class I Waste – **\$38.00/ton**
- Construction and Demolition Debris – **\$30.00/ton**
- Yard Trash (clean loads) -- **\$21.00/ton**
- White Goods – No Charge for gas-free appliances (properly removed)

Commencing the seventh (7<sup>th</sup>) year thereafter, rates are subject to adjustment pursuant to **Exhibit C.**

## Exhibit B – Recycling Compensation to City

**Recyclable Materials Revenue Share.** Each quarter WASTE MANAGEMENT shall pay a Revenue Share to the CITY for residential and commercial single stream Recyclable Materials delivered to Waste Management. The Revenue Share shall never be less than \$0.00 per ton and calculated as follows:

(Tons of Recyclable Materials x (Average Market Value – Transportation and Processing Fee)) x 50%

The Transportation and Processing Fee shall equal \$70 per ton. The Average Market Value (“AMV”) of Recyclable Materials is defined as the sum of commodity prices (average U.S. Dollar per Ton Southeast/Atlanta) effective on the first day of the month in SecondaryMaterialsPricing.com and SecondaryFiberPricing.com multiplied by the composition of Recyclable Materials (see Table 1). For example, if the AMV is equal to \$150 per ton, the calculation would be as follows:

AMV	\$150
<u>Less Transportation and Processing Fee</u>	<u>\$70</u>
Equals Net Revenue	\$80
<u>Times</u>	<u>50%</u>
City Revenue Share	\$40.00

Table 1 – Composition of Recyclable Materials and Market Indexes

Material	Index Commodity	Percentage
Newspaper & Magazines	PSI #8 Baled, F.O.B. seller’s dock	29.0%
Cardboard	PSI #11 Baled, F.O.B. seller’s dock	8.5%
Mixed Paper	PSI #1 Baled, F.O.B. seller’s dock	21.0%
Aluminum	Aluminum Cans Sorted and Baled, Delivered	1.5%
Steel & Tin Cans	Steel Cans Sorted and Densified, Delivered	2.5%
Glass	Glass 3 Mix, Delivered	25.0%
PET Plastics	PET Baled, Picked up	3.5%
HDPE Natural Plastics	Colored HDPE Baled, Picked up	1.5%
HDPE Colored Plastics	Natural HDPE Baled, Picked up	2.0%
#3-7 Plastics	50% of Plastics Commingled, Picked up	1.5%
Residue	n/a	4.0%

**Adjustments to the Composition of Recyclable Materials.** Six (6) months after the Effective Date, and annually thereafter, the CITY and WASTE MANAGEMENT shall measure the composition of Recyclable Materials in order to adjust the percentages in Table 1 utilized to calculate the AMV. The methodology for measuring the composition shall be mutually agreed to by both Parties. The Parties shall share equally in paying for the cost of the study. Once approved, adjustments to the composition of Recyclable Materials shall become effective for the following month and remainder of the Term, or until further adjusted. At this time, WASTE MANAGEMENT may also request consideration of an adjustment to the Transportation and Processing Fee.

**Cardboard Revenue Share.** WASTE MANAGEMENT will pay to the CITY a Revenue Share for cardboard (dedicated loads) delivered by the CITY to the Transfer Station. The Revenue Share shall never be less than \$25.00 per ton and calculated as follows:

$$(\text{Tons of Cardboard} \times (\text{Market Value} - \text{Transportation and Processing Fee})) \times 50\%$$

The Transportation and Processing Fee for cardboard shall equal \$50 per ton. The Market Value of cardboard is defined as the commodity price (average U.S. Dollar per Ton Southeast/Atlanta) effective on the first day of the month in SecondaryFiberPricing.com. For example, if the Market Value of cardboard is equal to \$170 per ton, the calculation would be as follows:

Cardboard Market Value	\$170
<u>Less Transportation And Processing Fee</u>	<u>\$50</u>
Equals Net Revenue	\$120
<u>Times</u>	<u>50%</u>
City Revenue Share	\$60.00

**Payment of Revenue Share.** WASTE MANAGEMENT shall calculate the Revenue Shares for Recyclable Materials and cardboard monthly. WASTE MANAGEMENT shall submit the Revenue Share payments (along with detail of their calculation) to the CITY quarterly within thirty (30) calendar days after the end of the quarter for which the payment is being made.

List of Recyclable Materials.

Metal, Glass and Plastic Recyclables

Steel and Tin Cans: includes steel, tin and aerosol cans, bi-metal containers, and lids composed primarily of whole iron or steel. Paper labels are acceptable. Aerosol cans containing household hazardous waste are not acceptable.

Aluminum: includes aluminum beverage containers, food trays without food residue, sheets and flexible containers.

Glass: Clear (flint), brown (amber) and green food and beverage jars and bottles. Paper labels on glass containers are acceptable. Metal lids should be removed and included.

PET Plastics (SPI code No.1): Examples include but are not limited to: Plastic soft drink, water, sports drink, beer, mouthwash, catsup and salad dressing bottles. Peanut butter, pickle, jelly and jam jars. Ovenable prepared food trays.

HDPE Plastics (SPI code No.2): Examples include but are not limited to: Milk, water, Juice, cosmetic, shampoo, dish and laundry detergent bottles, yogurt and margarine tubs, grocery, trash and retail bags. Motor oil bottles are not acceptable.

PVC Plastics (SPI code No.3): Examples include but are not limited to: PVC products such as clear food and non-food packaging.

LDPE Plastics (SPI code No.4): Examples include but are not limited to: Dry cleaning, bread and frozen food bags, squeezable bottles (e.g., honey, mustard).

PP Plastics (SPI code No.5): Examples include but are not limited to: Catsup bottles, yogurt containers, margarine tubs, and medicine bottles.

PS Plastics (SPI code No.6): Examples include but are not limited to: Compact disc jackets, food service applications, grocery store meat trays, egg cartons, aspirin bottles, cups, plates, and cutlery.

Other Plastics (SPI Code No.7): Examples include but are not limited to: Three and five gallon reusable water bottles, some citrus juice and catsup bottles.

Preparation of plastics, glass and metal recyclables: Remove organics, other contents and plastic caps, but the inclusion of organics, caps, rings, and labels will not be reason for rejection.

#### Paper Recyclables

Newspaper: All loose or bagged newsprint is acceptable, including all paper which is distributed with or as part of general circulation newspapers.

Magazines: Old magazines, including small catalogs and similar printed material with glossy pages.

Cardboard: All loose or bagged old corrugated cardboard containers that are flattened and either cut down or folded to size, no more than 3 feet by 3 feet. Staples and tape with water-soluble glues do not have to be removed. Wax-coated corrugated cardboard is not acceptable.

Mixed Paper: All loose or bagged paper and paperboard is acceptable, including paper bags, product packaging materials (such as cereal boxes, packaged food boxes, shoe

boxes, and small manufactured item packaging), telephone books, shredded paper, junk mail, high-grade paper, white and colored ledger, copier paper, office paper, laser printer paper, computer paper (including continuous-formed perforated white bond or green bar paper), book paper; cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper (no backing), loose leaf fillers, stationery, writing paper, paper envelopes, carbonless (NCR) paper, tabulating cards, facsimile paper, and manila folders.

Preparation of Paper Recyclables: Remove aged, yellowed, or sunburned paper or water saturated paper. Paper with metallic, carbon, ammonia or non-soluble glue is not acceptable.

## Exhibit C – Combined CPI and Fuel Adjustment

**Adjustments to the rate schedule** – Beginning on October 1<sup>st</sup> that occurs during the 7<sup>th</sup> year after the Effective Date, the fees payable to the contractor shall be adjusted upward or downward to reflect changes in the cost of doing business as measured by fluctuations in the Consumer Price Index (**CPI**) and **Diesel Index**. In the event either indicator is discontinued, a new index mutually agreed upon by the Parties may be utilized. In the event that the Transfer Station is not completed and accepting Municipally Collected Solid Waste within twenty-four (24) months after the Effective Date, then the adjustments contemplated by this exhibit shall be implemented one (1) year later for each year, or portion thereof, of such delay.

On October 1<sup>st</sup> of the 7<sup>th</sup> year and every twelve (12) month interval thereafter, eighty-seven and a half percent (87.5%) of the Rates in Exhibit A shall be adjusted based on the percentage change in the CPI for the previous calendar year, and twelve and a half percent (12.5%) of the Rates in **Exhibit A** shall be adjusted based on the percentage change in the Diesel Index for the previous calendar year.

The CPI shall be based on the CPI for the South Urban Region, All Items - All Urban Consumers, published by the United States Department of Labor, Department of Labor Statistics. The Diesel Index shall be based on the Lower Atlantic (PADD 1C) No. 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Sales by All Sellers (Cents per Gallon) as published by the Energy Information Administration of the United States Department of Energy (DOE) for the Lower Atlantic Region.

The net percentage change in the CPI and Diesel Index will be calculated as the percentage change in the CPI for the average of the twelve (12) month period ending May 30th compared to the average of the previous twelve (12) month period.

Example of CPI Calculation (the example below is intended for demonstration purposes only, and should not be interpreted as actual rate adjustments): If the Transfer Station begins accepting waste in June 2012, then the adjustment would begin on October 1st, 2018:

Average CPI value for June 1<sup>st</sup> 2016 through May 30<sup>th</sup> 2017 = 646.15  
Average CPI value for June 1<sup>st</sup> 2017 through May 30<sup>th</sup> 2018 = 657.99  
=657.99 - 646.15 = 11.84  
=11.84 / 646.15 = **1.8%**

Average Diesel Index value for June 1<sup>st</sup> 2016 through May 30<sup>th</sup> 2017 = 254.28  
Average Diesel Index value for June 1<sup>st</sup> 2017 through May 30<sup>th</sup> 2018 = 260.43  
=260.43 - 254.28 = 6.15  
=6.15/254.28 = **2.4%**

Disposal Rate Adjustment Example: (The table below is intended for demonstration purposes only, and should not be interpreted as Actual Disposal Rates)

<b>Disposal Rate Component</b>	<b>Weight</b>	<b>Weight applied to disposal rate</b>	<b>Change in Index</b>	<b>Adjusted rate</b>	<b>Change Effective</b>
CPI Adjustment	87.5%	\$33.25	1.8%	\$33.85	Oct 1st
Diesel Index Adjustment	12.5%	\$4.75	2.4%	\$4.86	Oct 1st
Rate		\$38.00		\$38.71	Oct 1st

**Cap on Adjustments.** The foregoing notwithstanding, the adjustments made as set forth above to the Rates in Exhibit A may not exceed a five-year average of 2.75% per year.