

**SETTLEMENT AGREEMENT BETWEEN
WASTE MANAGEMENT INC. OF FLORIDA
AND THE CITY OF COCONUT CREEK**

This Agreement is made and entered into this ____ day of _____, 2015, by and between WASTE MANAGEMENT INC. of FLORIDA, a Florida Corporation (hereinafter referred to as "WMIF"), and the CITY of COCONUT CREEK, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as the "City").

WHEREAS, WMIF owns and operates a Solid Waste Management Facility including a Class I landfill located in unincorporated Broward County, Florida (the "County") with an address of 2700 Wiles Rd., Pompano Beach, Florida 33073. The approximately 500 acre Facility is known as the Central Disposal Sanitary Landfill or Monarch Hill Landfill (hereinafter "Landfill"); and

WHEREAS, immediately to the north of the Landfill is a Waste-to-Energy Plant owned by WM North Broward, Inc. (hereinafter "North Plant") that WMIF intends to convert a portion thereof to a transfer station (hereinafter "North Plant Transfer Station"); and

WHEREAS, the City's boundaries are adjacent to the Florida Turnpike just west of the property owned by WMIF containing the Landfill and the North Plant; and

WHEREAS, the County has regulatory authority over the use of the Landfill and zoning and land use authority over the North Plant; and

WHEREAS, starting in January 2009, the County and City were involved in joint conflict resolution procedures set forth in the Florida Governmental Conflict Resolution Act, pursuant to Chapter 164 of Florida Statutes, regarding permitted operations of the Landfill by WMIF; and

WHEREAS, in 2010, the County and the City reached an understanding wherein the City would attempt to resolve the issues raised directly with WMIF; and

WHEREAS, the City and WMIF reached a settlement agreement dated September 13, 2010, which was amended on December 14, 2011 (collectively hereinafter the "Settlement Agreement"); and

WHEREAS, in a letter dated November 18, 2014, the City provided WMIF with a pre-suit notice of alleged violations of the Settlement Agreement as required under the Settlement Agreement; and

WHEREAS, in a letter dated January 16, 2015, WMIF responded to the City's November 18, 2014 letter and denied the allegations of the City's November 18, 2014 letter; and

WHEREAS, the City and WMIF engaged in pre-suit mediation regarding the alleged violations of the Settlement Agreement in an attempt to settle their differences; and

WHEREAS, as a result of the pre-suit mediation, the City and WMIF have agreed upon the following terms and conditions; and

WHEREAS, WMIF and the City desire to enter into this Agreement (hereinafter the "Agreement") to provide for certain specific limitations on the disposal of solid waste at the Landfill as set forth in Sections 2.1 and 2.3 below; and

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

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, WMIF and the City do hereby agree as follows:

ARTICLE 1. DEFINITIONS AND IDENTIFICATIONS

1.1 "Agreement", as referred to herein includes Articles 1 through 5, and the exhibits and documents that are expressly incorporated herein by reference. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.

1.2 "Agricultural wastes", as defined in 62-701.200(2), F.A.C., for purposes of this Agreement shall mean the solid wastes resulting from normal farming operations, the raising and slaughtering of animals, and the processing of animal products, orchard, and field crops, which are stored, transported, or disposed of as an unwanted waste material.

1.3 "Ash residue", as defined in 62-701.200(7) F.A.C., means all the solid residue and any entrained liquids resulting from the combustion of solid waste in a solid waste combustor, including bottom ash, fly ash and combined bottom and fly ash, but excluding recovered metals, glass, and other recovered materials separated from the ash residue.

1.4 "Auditor" shall mean, for purposes of this Agreement, an independent Certified Public Accounting Firm, Engineering Firm, or other qualified person or entity capable of measuring and verifying the amount of and types of Solid Waste, Sludge, and Grit and Screenings deposited into the Landfill and the amount of waste being transferred through the North Plant Transfer Station (as described in Sections 2.1, 2.2 and 2.3 below) in accordance with Section 2.4 below.

1.5 "Biological waste", as defined in 62-701.200(9), F.A.C., means solid waste that causes or has the capability of causing disease or infection and includes biomedical waste, animals that died from disease, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under Chapter 470, Florida Statutes 2015.

1.6 "Biosolid Sludge" means sludge containing nutrient-rich organic materials resulting from the treatment of sewage sludge (the name for the solid, semisolid, or liquid untreated residue generated during the treatment of domestic sewage in a treatment facility), that meets the EPA

pollutant and pathogen requirements for land application and surface disposal, as defined by the United States Environmental Protection Agency per <http://www.epa.gov/polwaste/wastewater/treatment/biosolids/index.cfm> attached hereto as Exhibit A.

1.7 “Bottom ash”, as defined in 62-701.200(7)(a), F.A.C., means the solid material remaining after combustion of solid waste, which is discharged from the grates or stoker of a solid waste combustor.

1.8 “Class I waste”, defined 62-701.200(13), F.A.C., means solid waste that is not hazardous waste, and that is not prohibited from disposal in a lined landfill under Rule 62-701.300, F.A.C.

1.9 “Class III waste”, as defined in 62-701.200(14), F.A.C., for purposes of this Agreement shall mean yard trash, construction and demolition debris, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the State of Florida Department, that are not expected to produce leachate that poses a threat to public health or the environment.

1.10 “Commercial solid waste”, as defined in 62-701.200(22), F.A.C., means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial solid waste.

1.11 “Construction and demolition debris”, as defined in 62-701.200(24), F.A.C., means discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition project site. The term includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project; clean cardboard, paper, plastic, wood, and metal scraps from a construction project; except as provided in Section 403.707(9)(j), F.S., yard trash and unpainted, non-treated wood scraps from sources other than construction or demolition projects; scrap from manufacturing facilities that is the type of material generally used in construction projects and that would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project, including debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities and de minimis amounts of other non-hazardous wastes that are generated at construction or demolition projects, provided such amounts are consistent with best management practices of the construction and demolition industries. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris,

1.12 “Contaminated Soils” as defined in 62-713.200(3), F.A.C., and referenced in 62-701.200(25), F.A.C., means soil that has become contaminated with concentrations of chemical constituents that: (a) Are in excess of the Residential Direct Exposure soil cleanup target levels

in Table II of Chapter 62-777, F.A.C.; (b) Are in excess of the soil cleanup target levels calculated in accordance with paragraph 62-713.520(2)(c), F.A.C.; or (c) Are expected to result in exceedances of the Department's ground water or surface water standards or criteria as evaluated in paragraph 62-713.510(6)(d), F.A.C.

1.13 "De Minimis" shall mean for purposes of this Agreement, no more than ten percent (10%) of Class I Waste by volume or weight remaining in a commercial collection container in accordance with industry standards (the parties are using by reference the industry standards applicable to recoverable materials as set forth in Section 403.703(36), F.S.)

1.14 "Department", as referred to herein, means the Florida Department of Environmental Protection, its designee, or any successor agency performing a like function.

1.15 "F.A.C." means the Florida Administrative Code as of February 15, 2015.

1.16 "Fly ash", as defined in 62-701.200(7)(b), F.A.C., means the residue from the combustion of solid waste, which is entrained in the gas stream of a solid waste combustor. Fly ash includes particulates, cinders, soot, and solid waste from air pollution control equipment.

1.17 "Grit and Screenings" are defined as follows: "Grit" means sand, gravel, cinder, or heavy solid materials that are heavier (higher specific gravity) than the organic biodegradable solids in the wastewater. Grit also includes eggshells, bone chips, seeds, coffee grounds, and large organic particles, such as food waste. "Screenings" means objects such as rags, paper, plastics, and metals that are removed by screening operations at wastewater treatment plants to prevent damage and clogging of downstream equipment. *See* United States Environmental Protection Agency Wastewater Technology Fact Sheet Screening and Grit Removal attached hereto as Exhibit B.

1.18 "Household waste", as defined in 62-701.200(49), F.A.C., means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

1.19 "Industrial solid waste", as defined in 62-701.200(52), F.A.C., means solid waste generated by manufacturing or industrial processes that is not a hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products or byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

1.20 "Interlocal Agreement" or "ILA" shall mean the agreement between the County, and Participating Communities for Solid Waste Disposal Support Services dated September 1, 2012, attached hereto as Exhibit C.

1.21 “ILA Cities” shall mean those Participating Communities that have entered into the ILA as defined above in Section 1.20.

1.22 “Leachate”, as defined in 62-701.200(59), F.A.C., means liquid that has passed through or emerged from solid waste and may contain soluble, suspended, or miscible materials.

1.23 “Limited Waste” shall mean, for the purposes of this Agreement, the types of waste that are more specifically described in Section 2.3 below.

1.24 “Operational Life of the Landfill” for purposes of this Agreement shall mean all of the time that the Landfill is permitted by the Department to accept waste.

1.25 “Recyclable material” as defined in 62-701.200(98), F.A.C., means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

1.26 “Recycling”, as defined in 62-701.200(99), F.A.C., means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

1.27 “Residue and Non-recyclable Material” for purposes of this Agreement shall mean those materials which are not capable of being recycled at a recycling facility but are limited to the Class III waste that remains after recyclable materials have been removed from the waste stream and processed, except for a de minimis amount of Class I Waste that may remain after processing.

1.28 “Settlement Agreement” shall refer to the Settlement Agreement between WMIF and the City of Coconut Creek dated September 13, 2010 and adopted by City of Coconut Creek Resolution No. 2010-83 and the First Amendment thereto dated December 14, 2011 adopted by City of Coconut Creek Resolution No. 2011-140.

1.29 “Sludge”, as defined in 62-701.200(106), F.A.C., means a solid waste pollution control residual which is generated by any industrial or domestic wastewater treatment plant, water supply treatment plant, air pollution control facility, septic tank, grease trap, portable toilet or related operation, or any other such waste having similar characteristics. Sludge may be a solid, liquid, or semisolid waste but does not include the treated effluent from a wastewater treatment plant.

1.30 “Solid Waste”, as defined in 62-701.200(107), F.A.C., means sludge that is not regulated under the federal Clean Water Act or Clean Air Act, as well as sludge from a waste treatment works, water supply treatment plant, or air pollution control facility; or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Materials not regulated as solid waste pursuant to this chapter [Chapter 62-701, F.A.C.] are: recovered materials; nuclear source by product materials regulated

under Chapter 404 F.S., or under the Federal Atomic Energy Act of 1954 as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows, or other regulated point source discharges; regulated air emissions; and fluids or wastes associated with natural gas or crude oil exploration or production.

1.31 “Solid Waste Agreement” shall mean the agreement between Wheelabrator Environmental Services, Inc. and Broward County for Solid Waste Disposal Services dated June 26, 2012, attached hereto as Exhibit D.

1.32 “Solid waste management facility”, as defined in 62-701.200(112), F.A.C., means any solid waste disposal area, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities which meet the requirements of paragraph 62-701.220(2)(c), F.A.C., except the portion of such facilities, if any, that is used for the management of solid waste.

1.33 “Special wastes”, as defined in 62-701.200(113), F.A.C., means solid wastes that can require special handling and management, including but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, biological wastes, and mercury-containing devices and lamps.

1.34 “Wheelabrator/WMIF/Broward County Global Amendment” means the agreement between Wheelabrator, WMIF and Broward County (that is currently being finalized and anticipated to be presented to and voted on by the County Commission in April 2015) and any amendments thereto.

1.35 “White goods”, as defined in 62-701.200 (133), F.A.C., means inoperative and discarded refrigerators, ranges, washers, water heaters, freezers, and other similar domestic and commercial large appliances.

1.36 “Yard trash”, as defined in 62-701.200(135), F.A.C., means vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, and associated rocks and soils.

1.37 The meaning of any term not defined herein shall be determined by resort to Florida Statutes, the F.A.C., and after those two sources, the plain and ordinary meaning of such terms as defined in the Dictionary.

ARTICLE 2. DISPOSAL OF SOLID WASTE

2.1 Sludge

A. For the period starting on April 1, 2015 and ending on December 31, 2015, WMIF can continue to accept at the Landfill up to fifteen thousand (15,000) tons of Grit and Screenings. Commencing on January 1, 2016 and for each calendar year thereafter,

WMIF can continue to accept at the Landfill up to twenty thousand (20,000) tons/year of Grit and Screenings. Commencing on January 1, 2017, WMIF shall accept Grit and Screenings at the Landfill only from the North Broward Regional Wastewater Treatment Plant and additional locations from the County's integrated wastewater collection system. WMIF will provide the City with an annual report showing the total amount of Grit and Screenings accepted at the Landfill during the previous year.

B. For the period starting on April 1, 2015 and ending on December 31, 2015, WMIF can continue to accept at the Landfill up to three thousand seven hundred and fifty (3,750) tons of municipal Sludge only from the North Broward Regional Wastewater Treatment Plant. Commencing on January 1, 2016 and for each calendar year thereafter, WMIF can continue to accept at the Landfill up to five thousand (5,000) tons/year of municipal Sludge, only from the North Broward Regional Wastewater Treatment Plant. This five thousand (5,000) tons/year is in addition to the twenty thousand (20,000) tons of Grit and Screenings provided for in subsection 2.1 A. above.

C. From the date of the execution of this Agreement, the City agrees not to object or interfere in any manner in the renewal/continuance/extension/modification of the Amended and Restated Leachate and Sludge Disposal Agreement between the County and WMIF dated December 13, 1994, as extended, attached hereto as Exhibit E. (It should be noted that the City is a large user with substantial reserve capacity in the regional wastewater treatment plant and does have regular meetings with the County, so the City's contacts in this regard shall not be misinterpreted as interference.)

D. The County will be advised of the provisions of Section 2.1 of this Agreement.

E. Nothing in this Agreement prevents WMIF from accepting waste that may meet the definition of Sludge when the waste is not derived from a wastewater treatment plant, or is derived from private sources and not primarily derived from a wastewater treatment plant so long as the waste is not Bio-Solid Sludge.

2.2 North Plant

A. From the date of the execution of this Agreement, the City agrees: (1) not to object or cause anyone else to object, to the closure of the North Plant; and (2) not to file a lawsuit; nor join in any lawsuit; nor cause any other person or city to file or join in any lawsuit, with respect to the closure of the North Plant.

B. From the date of the execution of this Agreement, the City agrees not to object, nor cause anyone else to object, to the Wheelabrator/WMIF/Broward County Global Amendment, provided that this Agreement between City and WMIF is executed by WMIF and the City prior to the date the Wheelabrator/WMIF/Broward County Global Amendment is presented to and voted on by the County Commission. Subject to the City's review of the final Wheelabrator/WMIF/Broward County Global Amendment, the City will consent, or not unreasonably withhold its consent, to the Wheelabrator/WMIF/Broward County Global Amendment. If the City is unable to

consent, it will advise WMIF of the reason(s) and the parties will meet within ten (10) days thereafter in an effort to resolve the City's concern(s). In the event WMIF provides any financial inducement to any city in order to gain its consent to the Wheelabrator/WMIF/Broward County Global Amendment, WMIF shall also provide to the City, as part of its consent, the financial inducement WMIF provided to any single city based on the same pro rata formula as used to provide inducement for any other city.

C. From the date of the execution of this Agreement, the City agrees not to object, or cause anyone else to object, to the operation of the North Transfer Station subject to the limitations set forth in subsections 2.2 D. through 2.2 I. below.

D. The North Plant Transfer Station shall be operated only for purposes of transferring waste delivered to the North Plant by the ILA Cities; the County; and the City of Sunrise under contract with Wheelabrator, to the South Waste-to-Energy Facility owned and operated by Wheelabrator or its affiliates, successors, subsidiaries and assigns (hereinafter "South Plant").

E. The North Plant Transfer Station shall be limited to accepting no more than three hundred thousand (300,000) tons/year of waste from the ILA cities, the County, and the city of Sunrise under contract with Wheelabrator.

F. WMIF has withdrawn its application for a permit to the County to operate the North Plant Transfer Station. That was the only permit application WMIF has made to operate a Transfer Station at the North Plant. When the North Plant Transfer Station permit application is resubmitted to either the County or the Department, it will be revised to reflect the limitation of three hundred thousand (300,000) tons of waste/year. WMIF's application will also reflect the operational term provided in subsection 2.2 G. below.

G. The North Plant Transfer Station will close at the earlier of July 2, 2023 or when all ILA cities; the County; and the City of Sunrise under contract with Wheelabrator have consented to their waste being delivered directly to the South Plant.

H. There will be no additional cost to the ILA Cities; the County, or the city of Sunrise to have their waste transported to the South Plant.

I. Nothing in the Wheelabrator/WMIF/Broward County Global Amendment or any amendments thereto shall conflict with any provision of this Agreement.

2.3. Limited Waste and Exclusions and Limitations on Tonnage types and amounts of Limited Waste to be deposited in the Landfill

A. Limited Waste consists of the following types of waste as defined in this Agreement:

1. Household waste; and
2. Commercial solid waste.

- B. Limited Waste does not include the following types of waste as defined in this Agreement to the extent that they are permitted to be disposed of in the Landfill by the County and the Department:
1. Yard trash;
 2. Construction and Demolition Debris;
 3. Industrial Solid Waste;
 4. Ash Residue;
 5. Bottom Ash;
 6. Fly Ash;
 7. Agricultural Waste;
 8. Biological Waste;
 9. White Goods;
 10. Special waste;
 11. Contaminated soils;
 12. Class III waste; and
 13. Residue and Non-recyclable Material.
- C. WMIF will request the County to modify the reporting protocol and format as necessary to reflect the Household waste and Commercial solid waste categories that comprise the Limited Waste definition in this Agreement and as consistent with state law. In the alternative, if the County does not agree to permit WMIF to modify the reporting protocol and format, WMIF shall provide a report to the City that is consistent with the definitions of Limited Waste contained in this Agreement on a monthly basis showing the total amounts and types of Limited Waste deposited in the Landfill by month. Any report given to the Department on a quarterly basis must be reconciled with the report given to the City on Limited Waste for compliance with this Agreement.
- D. Limited Waste shall be limited to no more than one hundred fifty thousand (150,000) tons of Limited Waste deposited in the Landfill for the period starting on April 1, 2015 and ending on December 31, 2015.
- E. Limited Waste shall be limited to no more than one hundred eighty seven thousand and five hundred (187,500) tons/year of Limited Waste deposited in the Landfill starting on January 1, 2016 and ending on December 31, 2016.
- F. Limited Waste shall be limited to no more than one hundred and seventy five thousand (175,000) tons/year of Limited Waste deposited in the Landfill starting on January 1, 2017 and continuing for each subsequent calendar year thereafter during the Operational Life of the Landfill.
- G. As it relates to the use of the Landfill, should the South Plant temporarily be rendered incapable, for any reason, except for the intentional actions by WMIF, to accept waste, then the waste limitations applicable to Limited Waste will temporarily be suspended. This Agreement shall be subject to the provisions of Sections 5.2 - 5.3 of

the Solid Waste Agreement, and any written amendments thereto that may eliminate the use of the Landfill as the “other facility” or the “alternate disposal facility.” But, in no event shall the Landfill be used as an alternate disposal facility for the South Plant after July 2, 2023. WMIF agrees not to object to the City’s request to the County to remove the Landfill as the “other facility” or “alternate disposal facility” from the Solid Waste Agreement.

- H. In the event the North Plant is operational at any time after January 1, 2017, and accepting and incinerating Limited Waste, the tonnage limitations set forth in subsection 2.3 F. shall decrease to the limitation threshold of one hundred thousand (100,000) tons/year for Limited Waste deposited in the Landfill. During any time that the North Plant no longer accepts and incinerates Limited Waste, the tonnage limitation shall revert back to one hundred and seventy five thousand (175,000) tons/year per subsection 2.3 F.
- I. The waste limitations applicable to Limited Waste will temporarily be suspended in the event there exists a declared state of emergency in South Florida pursuant to a Federal, State of Florida, or County declaration solely for the amount of time that the emergency declaration is in effect, plus an additional thirty (30) days thereafter to complete the cleanup. WMIF shall notify the City within three (3) days of the emergency declaration.

2.4. Auditing of Limited Waste Tonnage Limitations

- A. For as long as this Agreement is in effect, WMIF shall pay to the City the sum of ten cents (\$.10) per ton of Limited Waste deposited in the Landfill payable to the City quarterly for purposes of City hiring an Auditor, solely for purposes of verifying the monthly amount of Limited Waste, Sludge, and Grit and Screenings accepted at the Landfill and the monthly tonnage amounts accepted at the North Plant Transfer Station on a quarterly basis. WMIF shall be required to provide the Auditor with access to records and data necessary to verify the types and amounts of all tonnage of all waste types. The Auditor shall not be allowed to copy, clone or otherwise maintain or keep any of WMIF’s records that are not publicly available and which do not constitute public records. The Auditor shall not be allowed to report to the City or any other party pricing, customer, or other confidential or proprietary information of WMIF. The Auditor’s report shall be limited to reporting to the City the categories and tonnage amounts of the specific categories set forth in Sections 2.1 and 2.3 being deposited in the Landfill and the tonnage amounts accepted at the North Plant Transfer Station during the appropriate time frames. The Auditor shall be allowed to conduct spot inspections of the Landfill and North Plant Transfer Station without prior notice, no more often than twice per month. WMIF will provide to City’s Auditor an annual report by Wastewater Treatment Plant by March 31st of each year showing the total tonnage of Grit and Screenings accepted at the Landfill during the previous year.

2.5. Default of this Agreement and Remedies for Breach

- A. Default of this Agreement shall be defined as a breach of any of the covenants, terms and conditions hereof, or default by any party in observing or carrying into effect any of said covenants, terms and conditions of this Agreement.
- B. Upon Default of this Agreement by WMIF, the City shall serve written notice to WMIF identifying the term or condition the City contends has been materially breached and providing WMIF with sixty (60) days from the date of receipt of the notice to cure the breach.
- C. Pre-Suit Mediation. In the event any dispute arises out or relating to this Agreement, the parties agree to conduct pre-suit mediation in the attempt to resolve the dispute before any lawsuit or legal proceeding is commenced. The pre-suit mediation shall be conducted within sixty (60) days after the expiration of the sixty (60) days notice provided by subsection 2.5 B.
- D. A curable default will exist in the event that WMIF violates the tonnage limitations applicable to Limited Waste, Sludge or Grit and Screenings if the violation is one thousand (1,000) tons or less; and in the following calendar year, a corresponding reduction to the tonnage limitation is met.
- E. The non-breaching party may seek all available remedies, including damages, equitable relief and/or declaratory relief. In the event of litigation arising out of a claim for breach, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs, through all trial and appellate levels and post-judgment proceedings.
- F. Failure of the City or WMIF to insist upon strict performance of this Agreement, or to exercise any and all remedies and rights contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition, or right; but the same shall remain in full force and effect. None of the conditions shall be waived or modified except by the parties hereto in writing.

2.6. General

- A. Year is defined as a calendar year.
- B. Day is defined as a calendar day.

C. Everything contained herein unless otherwise noted is applicable effective April 1, 2015.

D. This Agreement shall supersede and replace in its entirety the Settlement Agreement which shall be null and void and of no further force or effect.

E. WMIF and the City agree to release each other with respect to all claims for alleged breaches of the Settlement Agreement between WMIF and the City; and with regard to any claims for breaches of zoning or regarding the validity or issuance of permits regarding the Landfill that existed as of April 1, 2015. WMIF has no knowledge as to any current breach of the zoning or regarding the validity or issuance of permits regarding the Landfill, thus no disclosure of such is required to be identified. The City is not releasing any claim pertaining to any permit regarding the Landfill that affects public health and/or safety, nor is the City releasing any future claim that may result from any permit extensions or modifications subsequent to April 1, 2015.

F. WMIF agrees not to object to the City's request to the County to change the Solid Waste Element of the County's Comprehensive Plan in order to make it consistent with the terms of this Agreement.

G. Except as specifically listed in this Agreement, there shall be no other exceptions in any other agreement to the Limited Waste and tonnage limitations set forth in Sections 2.1 and 2.3 of this Agreement. The parties recognize that the Solid Waste Agreement provides for the use of Landfill as an alternate disposal facility; however, WMIF agrees not to object to the City's request to the County to remove the Landfill from the Solid Waste Agreement consistent with subsection 2.3 G. of this Agreement.

H. WMIF agrees to act in good faith to support and assist the City's request that the County pass a resolution acknowledging this Agreement concurrently with the Wheelabrator/WMIF/Broward County Global Amendment. However, the City's request for this resolution shall not delay the consideration by the County Commission of the Wheelabrator/WMIF/Broward County Global Amendment. The County Commission's lack of acknowledgement of this Agreement shall not affect the validity of the terms contained herein.

ARTICLE 3. TERM OF AGREEMENT

3.1. This Agreement shall take effect upon signing of the Agreement by all of the persons whose signature is included on a signature page of this Agreement. This Agreement shall continue for the Operational Life of the Landfill.

ARTICLE 4. MISCELLANEOUS TERMS

4.1 Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the

terms of this Agreement shall only be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida or the United States District Court for the Southern District of Florida and the appropriate appellate tribunals.

4.2 Severability. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

4.3 Relationship of the Parties. This Agreement shall not constitute or make the parties a partnership or joint venture.

4.4 Successors and Assigns. The terms and conditions of this Agreement are binding upon any and all successors, subsidiaries, and assigns of WMIF and upon any and all successors of the City. This Agreement may not be assigned, transferred or otherwise encumbered under any circumstances by either party without the prior written consent of the other party to this Agreement.

4.5 Joint Preparation. Each party and its counsel have participated fully in the review of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The intentions of the parties as it relates to this Agreement have been reduced to writing in this Agreement. This Agreement represents the parties' obligations under the contract in total without any additions or omissions.

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

FOR WMIF:

Waste Management Inc. of Florida
2700 Wiles Road
Pompano Beach, FL 33073
Attn: President
With a copy to: General Counsel

FOR THE CITY:

The City of Coconut Creek, Florida
Coconut Creek City Hall
4800 West Copans Road
Coconut Creek, FL 33063
Attn: City Manager
With a copy to: City Attorney

4.7 Third Party Beneficiaries. Except as provided herein, neither the City nor WMIF intend that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement, and the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

4.8 Compliance with Laws. The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement.

4.9 Multiple Originals. This Agreement may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

4.10 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both parties to this Agreement.

4.11 Headings. The section and subsection headings in this Agreement are inserted for convenience only shall not affect in any way the meaning or interpretations of this Agreement.

ARTICLE 5. REPRESENTATIONS

5.1 The City is a Florida municipal corporation, duly organized and validly existing under the constitution and laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and the City is further duly authorized to execute and deliver this Agreement without further approval or authorizations. The City Commission has or will adopt this Agreement by a properly approved resolution.

5.2 WMIF is a Florida corporation duly organized and validly existing under the laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and WMIF is further duly authorized to execute and deliver this Agreement without further approval or authorizations.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

Waste Management Inc. of Florida

BY: _____

(Print)_____

Its: _____

Dated:_____

Witnesses:

(Print)_____

(Print)_____

City of Coconut Creek

By: _____

Rebecca A. Tooley, Mayor

Dated _____

ATTEST:

Leslie Wallace May, City Clerk

Approved as to legal form and sufficiency:

BY _____

Terrill C. Pyburn, City Attorney