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City ~~9-2-08~~, redline to City ~~8-27-08~~.

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**AMENDED AND RESTATED**  
**LANDFILL OPERATION AND CONSTRUCTION AGREEMENT**  
**BETWEEN THE CITY OF JACKSONVILLE AND**  
**TRAIL RIDGE LANDFILL, INC.**

THIS AMENDED AND RESTATED AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 (“Effective Date”) by and between the City of Jacksonville, a municipal corporation in Duval County, Florida, hereinafter referred to as the CITY, and Trail Ridge Landfill, Inc., a Delaware corporation and subsidiary of Waste Management Inc. of Florida, hereinafter referred to as CONTRACTOR. CITY and CONTRACTOR are hereinafter referred to as the Parties.

RECITALS:

WHEREAS, the CITY owns the Trail Ridge Landfill located at 5110 U.S. Highway 301 South in Baldwin, Florida (the “Trail Ridge Landfill”), on CITY property consisting of approximately 978 acres (as more specifically described hereafter, the “Site”); and

WHEREAS, the parties previously entered into the Landfill Operation Agreement (the “Initial Operation Agreement”) and the Landfill Design and Construction Agreement (the “Initial Construction Agreement”), both dated June 26, 1991, for the Site acquisition, permitting, design, construction and operation of a Landfill facility constructed by CONTRACTOR under the terms of the Initial Construction Agreement, which is located on the Site as depicted on Exhibit A (the

“Existing Cell”); and

WHEREAS, both agreements were modified by Resolution 91-1320-607 and numerous Change Orders; and

WHEREAS, the Existing Cell has a remaining operational life under applicable permits of approximately seven years, and the City has a long-term continuing need for the as yet unbuilt portion of the Trail Ridge Landfill beyond the Existing Cell’s operational life; and

WHEREAS, the Parties disagree as to the remaining term of the Initial Operation Agreement, with CONTRACTOR asserting that such agreement extends to the life of the Site and includes the construction and operation of additional cells, and CITY asserting that such agreement only extends to the remaining useful life of the Existing Cell and does not include any additional cells that may be permitted and constructed in the future on the Site; and

WHEREAS, in compromise of various matters and in exchange for CITY’S agreement to allow CONTRACTOR, among other things, to continue to operate the Facility for the life of the Site subject to the terms and conditions herein, CONTRACTOR has among other things agreed to assume the Closure and Post-Closure obligations pertaining to the Existing Cell and future cells at the Site, and reduce the per ton rate for waste disposal at the Site; and

WHEREAS, the parties therefore desire to enter into this Agreement to (i) clarify the parties’ rights and obligations with respect to the continued operation of the Existing Cell for its remaining operational life under applicable permits, (ii) provide for the permitting, construction, and operation of an expanded Landfill facility (the “Expanded Cell”) that will consist of a separate stand alone Landfill facility located to the north of the Existing Cell and/or may consist of additions to the Existing Cell footprint to increase its present size, as will be determined by the Parties at a later date during the process of designing and permitting the Expanded Cell; and (iii)

provide for the Closure and Post Closure of the Existing Cell and Expanded Cell when they reach their respective permitted capacities; and

WHEREAS, this Agreement supersedes and replaces all previous agreements between the Parties regarding the Existing Cell and the Expanded Cell and the Site other than the Three-Party Contract (defined below);

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1.0 DEFINITIONS

The following words, phrases or terms as used in this document shall have the following meaning unless the context indicates otherwise:

1.1 Accepted Waste means Solid Waste accepted at the Facility and is more specifically defined in Section 5.1.

1.1.1 Accessible Borrow Area is defined in Section 2.6.5.

1.2 Application for Payment means the form which is to be used by the CONTRACTOR in requesting certain payments and which is to include such supporting documentation as the CITY reasonably requests.

1.3 Biohazardous Waste has the meaning described in **Exhibit C** and includes “Biological Waste” as defined in Chapter 62-701.200(9), FAC.

1.4 Bonds mean a performance bond and other instruments of security.

1.5 Borrow Site ~~is~~ defined in Section 2.6.5.

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1.6 Cells means the individually permitted Landfill cells as described in the applicable permits pertaining to the Existing Cell and in the permits to be obtained for the Expanded Cell.

1.7 Change in Law means any change, after the effective date of this Agreement, in the laws or regulations applicable to the Facility, any change in conditions contained in any permit issued to, or governing, the Facility or any part thereof or operation thereon, plus the Accessible Borrow Area (other than as a result of the CONTRACTOR'S negligence or other fault), or any change in the judicial, administrative or agency interpretation of such laws, regulations or permit conditions, that results in a material increase or decrease in the cost of operating the Facility. Such term as used herein shall not include changes in tax laws or workers compensation law. However, in the event that a federal, state or local authority at any time in the future shall impose a fee, charge, cost or tax on Landfills or Landfill operations per se, including in connection with, or as a result of, any Landfill emissions or gas, including from the operation of any flare or other control device at the Facility, any such fee, charge, cost or tax shall then be treated as a Change in Law. The Parties shall work together to determine what constitutes a Change in Law and in the event the parties cannot agree, then any above described change in law or regulation that results in an increase or decrease in operational expenses of more than \$25,000.00 per year shall be considered material and constitute a Change in Law. Notwithstanding the foregoing, the proposed Department changes to F.A.C. Section 62-701 pending as of May 16, 2008, entitled "Chapter 62-701 Solid Waste Management Facilities Pre-ERC Draft 5-16-08", shall not constitute a Change in Law.

1.8 Change in Technology means a change in technology (including without limitation a change in Solid Waste disposal methods, processes or practices) that can materially alter the methods used in the disposal of Solid Waste so as to materially reduce the costs of such disposal, after taking into consideration the capital costs of the technology or method, including implementation costs, amortized over their useful life. The Parties shall work together to

determine what constitutes a Change in Technology and in the event the parties cannot agree then any change in technology or method of Solid Waste disposal that results in an operational savings or expense to CONTRACTOR, or a Solid Waste disposal savings or expense to CITY, of more than \$125,000.00 per year (after considering the capital costs of the technology or method amortized over its useful life), shall be considered material and constitute a Change in Technology.

1.9 Clean debris means any solid waste which is virtually inert, which is not a pollution threat to ground water or surface waters, is not a fire hazard, and is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes brick, glass, ceramics, and uncontaminated concrete including embedded pipe or steel.

1.10 Closing means the time at which a Solid Waste Management Facility ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the facility for any necessary monitoring and maintenance after closing.

1.11 Closure means the preparation for, and implementation of, all design, permitting, construction, monitoring, maintenance and financial responsibility assurance, required by or reasonably associated with the closure and post-closure requirements as set forth at F.A.C. 62-701, et seq. Closure includes, but is not limited to, preparation of final surveys and as-built drawing, installation and vegetation of final cover, leachate collection and disposal, installation and maintenance of an active gas control system as set forth in the requisite closure permits, and such other functions as may be required from time to time by the Department, and specifically includes compliance with all financial obligations which are required by the Department or any regulatory agency; provided however that the foregoing is subject to the Change in Law provisions herein. Closure does not include the maintenance of side slopes that have been

capped prior to the date when a Cell within the Existing Cell or Expanded Cell, as applicable, ceases to receive Solid Waste, except where such Cell has been permanently closed. If the CITY or Department or applicable permit requires CONTRACTOR to pre-cap such side slopes of a Cell within the Existing Cell or Expanded Cell, maintenance thereof shall be considered as part of normal operations until the Existing Cell or Expanded Cell, as applicable, containing such side slopes ceases to receive Solid Waste.

1.12 Closure plan means written reports and engineering plans detailing those actions that will be taken to effectuate proper Closure of the facility.

1.13 Construction and Demolition Debris means materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing 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 or maintenance of a structure. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project. Mixing of construction and demolition debris, with other types of solid waste, including material which is not from the actual construction or destruction of a structure, will cause it to be classified as other than construction and demolition debris.

1.13.1 CPI means the consumer price index as described in Section 5.2.1.

1.14 Department means the State of Florida Department of Environmental Protection or any successor governmental agency regulating Landfills.

1.15 EPA means the United States Environmental Protection Agency.

1.16. Equipment means all mobile equipment and includes without limitation compactors, loaders, excavators, bull dozers, overhead cranes, trucks and passenger vehicles.

1.17 Existing Cell and Expanded Cell are each defined in the “Recitals”.

1.17.1 Expanded Cell Closure Accrual is defined in Section 7.5.1.2.1.

1.18 F.A.C. means the Florida Administrative Code as amended from time to time.

1.19 Facility means the Existing Cell and the Expanded Cell as defined in the “Recitals”.

1.20 Final Cover means the material used to cover the top and sides of a Landfill when fill operations are completed, as required by applicable permits and regulations.

1.21 Garbage means all kitchen and table food waste, animal or vegetative waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.

1.22 Generation or generate means the act or process of producing solid waste or a hazardous substance.

1.23 Ground Water means water beneath the surface of the ground, whether or not it is flowing through known and definite channels.

1.24 Hazardous Substance is defined in Section 6.2.1.

1.25 Implement means to carry out, accomplish, give practical effect to and ensure actual fulfillment by concrete means or by providing instrument, or means of accomplishment.

1.26 Implementation Schedule means a timetable for carrying out a plan.

1.27 Initial Cover means compacted earth, or other suitable material as approved by the Department, used to enclose a volume of solid waste prior to intermediate or final cover, as required by applicable permit and regulatory requirements.

1.28 Intermediate Cover means a layer of compacted earth or other suitable material as approved by the Department, applied to a Solid Waste Disposal Unit, complying with all applicable permit and regulatory requirements.

1.29 Landfill or Sanitary Landfill means any Solid Waste Management Facility which is the final resting place for solid waste, including ash from the process of incinerating solid waste and which is an area of land or an excavation where wastes are or have been placed for disposal, for which a permit, other than a general permits, is required by Section 403.707, Florida Statutes. This term shall not include: (a) a land spreading site; (b) a surface impoundment; (c) an injection well defined under and subject to the provisions of Chapter 62-528, F.A.C. or (d) a construction and demolition debris disposal site regulated by Rule 62-701, F.A.C.

1.30 Leachate means liquid that has passed through or emerged from solid waste and may contain soluble, suspended or miscible materials.

1.31 Local Agency means any special district, authority, county, municipality or any other political subdivision.

1.32 Materials Recovery means any process by which one or more of the various components in solid waste is separated, concentrated and reused.

1.33 Monitoring Wells are wells from which water samples are drawn for quality analysis.

1.34 Expanded Cell is defined in the "Recitals".

1.35 On Site means on the same or geographically contiguous property, which may be divided by a public or private right-of-way.

1.36 Operating Day means any calendar day during which the Landfill is operating and is open for receipt of waste from CITY and contract haulers, private commercial haulers and/or the public. Normal Operating Days shall be six days per week, Sundays excluded. Thanksgiving Day and Christmas Day shall not be Operating Days.

1.37 Operating Hours means from 6:00 A.M. to 7:00 P.M. on each operating day, except for Saturdays from 6:00 A.M. to 1:00 P.M.

1.38 Operating Year means the twelve-month period commencing on the Effective Date of this Agreement, or any subsequent twelve-month period having the same beginning month and day.

1.39. Ordinance Code means the City of Jacksonville Ordinance Code.

1.40 Person means any and all persons, natural or artificial, including any individual, firm, association or corporation.

1.41 Permit means, unless otherwise specified in the context, the Landfill operations and closure permit for the Facility issued by the Department and governing the design, construction, monitoring, maintenance, operations, closure and/or post-closure of the Facility or any portion thereof, in accordance with F.A.C. 62-701, et seq., and other applicable laws.

1.42 Post Closure is encompassed within the defined term "Closure" above and is sometimes used separately herein to denote the long term monitoring and maintenance of any Closed portion of the Facility, as more specifically described in F.A.C. 62.701, et seq., and as provided in the permit.

1.43 Processing means any technique designed to change the physical, chemical or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration

1.44 Project means the operation of the Facility as provided for by this Agreement.

1.45 Recovered Materials means those materials, which have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection or processing.

1.46 Recyclable Material means those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste.

1.47 Recycling 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.

1.48 Residential Waste means a mixture of garbage and trash resulting from the normal housekeeping activities of a residential unit.

1.49 Sanitary Nuisance means the commission of any act, or the keeping, maintaining, propagation, existence or permitting of anything by any person by which the health or life of another may be seriously threatened or impaired, or by or through which, directly or indirectly, disease may be caused.

1.50 Site means the tract of real property owned by the CITY located at 5110 U.S. Highway 301 South, Baldwin, Florida, as a site for the Facility, and whose fenced boundary line is shown generally on the drawing contained in **Exhibit B**, and consisting of approximately 978 acres.

1.51 Solid Waste means garbage, refuse, yard trash, Recyclable Material, clean debris, white goods, special waste, ashes, sludge, tires or other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from domestic, industrial, commercial, agricultural or governmental operations, each to the extent acceptable under the Permits applicable to the Facility. Materials not regulated as Solid Waste include nuclear source or byproduct materials regulated under Chapter 404, Florida Statute, 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 discharge; regulated air emissions; and fluids or wastes associated with natural gas or crude oil exploration or production.

1.52 Solid Waste Disposal Unit means a discrete area of land used for the disposal of solid waste, consisting of one or more cells.

1.53 Solid Waste Management means the process by which solid waste is collected, transported, stored, separated, processed or disposed of according to an orderly purposeful and planned program.

1.54 Solid Waste Management Facility means, any solid waste disposal area, volume reduction plant, transfer station 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 facilities which use or ship recovered materials unless such facilities are managing solid waste.

1.55 Special Waste means any waste described in **Exhibit C** attached hereto and by this reference made a part hereof, the disposal rates for which are described in **Exhibit D**.

1.56 State Program means the portions of the Solid Waste Management Program described Chapter 62-701 F.A.C., and the related provisions in the Florida Statutes that apply to the Facility.

1.57 Subcontractor means an individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of part of the work at the Site.

1.58 Supplier means a manufacturer, fabricator, distributor, materialman or vendor.

1.59 Ton means a short ton, 2,000 pound (.9078 metric tons).

1.60 Three-Party Contract means the Three-Party Contract entered into by and among the CITY, CONTRACTOR and Trail Ridge Energy, LLC on April 1, 2008.

1.61 Trash means combination of yard trash and construction and demolition debris along with other debris such as paper, cardboard, cloth, glass, street sweepings, plastic and other like matter.

1.62 Unacceptable Waste means any waste which cannot legally be disposed of at the Facility under applicable law, regulations, or permit conditions.

1.63 Waste Tire has the meaning given it in Chapter 62-701.200(134), F.A.C.

1.64 Wetlands means wetlands as defined by the F.A.C. or other applicable environmental laws or regulations pertaining to the Site.

1.65 White Goods means inoperative refrigerators, ranges, washers, water heater, freezers and other similar domestic and commercial appliances.

1.66 Working Face means that portion of a sanitary Landfill where waste is discharged, spread and compacted prior to placement of daily cover.

1.67 Yard Trash means vegetative matter resulting from landscaping maintenance and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees, and tree stumps.

To the extent definition of specific terms is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as of the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.

## ARTICLE 2. RESPONSIBILITIES OF CONTRACTOR

2.1 Permits; Procurement of Professional Services. For the Existing Cell and for each new portion of the Expanded Cell (whether as an addition to the Existing Cell or as a separate stand-alone Solid Waste Disposal Unit on the Site), the CONTRACTOR shall apply for and use

diligent and good faith efforts to obtain and provide to the CITY copies of a valid operating permit from the Department and an operating plan approved by the Department. CONTRACTOR shall apply for and use diligent and good faith efforts to obtain a Landfill operations permit or permits for the Expanded Cell for the maximum tonnage amount allowable by the Department for the Site, and the Parties expect such maximum amount to be at least 35 million tons based on the size of the Site. The CONTRACTOR shall provide review copies of its operating plan for CITY review and approval prior to or concurrent with review and approval by the Department. The CONTRACTOR shall have a continuing obligation to maintain and comply with all governmental regulations and permits applicable to the construction and operation of the Facility including without limitation all such permits and regulations pertaining to Landfill operations, maintenance of Wetlands (provided that CITY will obtain Wetlands permits and provide for all necessary Wetlands mitigation), stormwater, groundwater, certificates of public convenience and necessity, and zoning, but not including permits related to the Clean Air Act except as and to the extent provided in the Three-Party Contract. CONTRACTOR shall provide copies of all permits to the CITY upon request. The CONTRACTOR shall provide the CITY with the opportunity to review and approve any and all permit submittals. Initial operating permit applications shall be submitted to the City for review at least sixty (60) days prior to submitting to the Department or other regulatory agency. Minor permit modifications shall be submitted to the City at least fifteen (15) business days prior to submitting to the Department, unless an emergency exists, and in that case CONTRACTOR shall give CITY such prior notice as is reasonably possible under the circumstances. The CITY shall provide such permitting support as may be reasonably requested by CONTRACTOR, including for purposes of obtaining the maximum Solid Waste disposal capacity at the Site. To the extent required and applicable,

CONTRACTOR on behalf of the CITY shall comply with the provisions of Section 287.055, Florida Statutes, or any successor statute, when procuring “professional services” (as defined in Section 287.055(2)(a), Florida Statutes) required in connection with the construction and/or operation of the Facility on and after the Effective Date. CONTRACTOR shall give the CITY at least 15 days prior written notice of its intent to procure any such services governed by Section 287.055, Florida Statutes. Should CONTRACTOR desire that the CITY undertake such provisions, the CITY shall procure such services under its normal procurement procedures. Notwithstanding anything herein, neither the CITY nor CONTRACTOR makes any representation or warranty as to the potential permitted capacity of the Facility, and neither the CITY nor CONTRACTOR shall be responsible for any inability of CONTRACTOR to obtain a permit for the expected tonnage capacity amounts as described herein; provided that the CITY shall use reasonable efforts to cooperate with CONTRACTOR in obtaining the applicable permits and other approvals required for the maximum allowable air space.

2.2 Regulatory Compliance. The CONTRACTOR shall operate the Facility in conformance with the provisions of all statutes, ordinances, regulations and other laws, including without limitation the State Program, and permits that apply to the Existing Cell and/or the Expanded Cell, provided however that CONTRACTOR shall only be responsible for compliance with air permits to the extent required by the Three-Party Contract or as otherwise specifically agreed in writing. CITY shall apply for and use diligent and good faith efforts to obtain, and shall be responsible for, all Clean Air Act, as amended, and related air quality permitting and Prevention of Significant Deterioration permitting. CONTRACTOR shall comply with all conditions of the Facility’s zoning (and apply for any necessary zoning exception for all existing uses and those contemplated in this Agreement), the Certificate of Public Convenience and

Necessity, issued pursuant to Chapter 380, Ordinance Code, and Department consent orders, if any, which may be entered into from time to time. CONTRACTOR shall timely apply for and use diligent efforts to obtain a new Certificate of Public Convenience and Necessity (or any similar certificate by whatever name at the time) for the Expanded Cell at the appropriate time as required by the Ordinance Code or other laws. The CONTRACTOR shall also comply with the provisions of the Ordinance Code of the City of Jacksonville as amended from time to time, all subject to the Change in Law provisions in this Agreement.

2.2.1 The CONTRACTOR shall respond promptly to all citations, notices of violation and emergency orders with respect to the CONTRACTOR'S operations issued by any regulatory agency with jurisdiction, except with respect to Clean Air Act and related air quality permitting and Prevention of Significant Deterioration permitting and any CITY Wetland matters, which are the responsibility of the CITY. The CONTRACTOR shall pay (i) all costs of responding to all such citations, notices of violation and emergency orders, (ii) all costs of correcting deficiencies and achieving compliance with all such citations, notices of violation and emergency orders, and (iii) any fines assessed as a result of non-compliance.

2.3 Superintendence of Operations. The CONTRACTOR shall employ an operator trained and qualified in accordance with Department requirements to be present at all times when the Facility is in operation to oversee and supervise the operations in accordance with all applicable Landfill statutes, regulations, ordinances and other laws, and permits.

2.4 Operation of the Gate. The CONTRACTOR shall be responsible for opening and closing of the gate, located at the entrance to the Site, at the beginning and ending of each Operating Day.

2.5 Financial Responsibility. The CONTRACTOR shall comply with all requirements set forth in Florida Statutes and the F.A.C., and shall provide the CITY with copies of all annual cost adjustment statements submitted pursuant to said requirements. The CONTRACTOR shall comply with all other Federal, State and local laws, rules, regulations and ordinances concerning the financial responsibility for expenses and costs associated with the Closure and Post Closure of the Facility. Provided, however, CONTRACTOR'S financial responsibility shall not alter the obligation of the Parties as set forth in this Agreement.

2.6 Scope of Operating Responsibility. The Facility shall be open for the receipt of Solid Wastes during the Operating Days and Operating Hours set forth herein.

2.6.1 If it appears that the said Operating Hours of the Facility can be reduced without materially affecting the operations of CITY forces or CITY franchised residential solid waste collection contractors or causing an increase in the rate which would otherwise be charged by said CITY franchised residential solid waste collection contractors and, in either event, without materially reducing the volume of waste received by the Facility, the CITY may in its discretion reduce the said Operating Hours by up to two (2) hours per day, either on a seasonal or a permanent basis. The CONTRACTOR may request that the CITY implement such a reduction in Operating Hours at any time and in support thereof may present the CITY with documentation concerning the projected impact of such a reduction in Operating Hours. In either event, there shall be no reduction in the per-ton compensation amount in section 5.1. If the CITY in its discretion later decides to increase the Operating Hours, the CONTRACTOR shall do so without any increased cost to the CITY provided that the hours are not extended beyond their original times as stated herein.

2.6.2 In the event of extreme weather or emergency conditions, including, but not limited to, extreme weather conditions such as windstorm or extraordinary rainfall with resulting flooding, that render it impractical to dispose of the resultant volume of solid waste within the normal Operating Hours of the Facility, the CONTRACTOR shall open the Facility on other days and times as reasonably requested by the CITY without any additional charge to CITY provided that CONTRACTOR is not reasonably required to retain or use additional personnel and/or Equipment or contractor(s). Notwithstanding the foregoing, if such extreme or emergency conditions (including their after effect) (i) last more than three consecutive operating days and result in average Accepted Waste volume at the Facility during such period that is at least ten percent (10%) greater than the average daily volume of Accepted Waste at the Facility during the same days of the week in the prior three months before the occurrence of the extreme conditions (comparing the same days of the week in the prior months in order to account for normal daily variances in Accepted Waste volume during the week), and (ii) cause an increase in CONTRACTOR'S reasonable expenses due to the need for additional personnel and/or Equipment or contractor(s) to handle the increased volume of Accepted Waste, CONTRACTOR shall be entitled to reimbursement of its increased reasonable expenses occurring during the period of the extreme or emergency conditions provided that the increased expenses are reasonable under the circumstances and adequately documented by CONTRACTOR. This section does not apply to seasonal variances in the volume of Accepted Waste and only applies to extreme weather or other emergency conditions. CONTRACTOR shall provide CITY with expense statements, in a form reasonably satisfactory to CITY, pertaining to its normal expenses and its increased expenses incurred during the period of the extreme conditions for purposes of determining the increased reasonable expenses related to such operations. If CONTRACTOR

has met the above conditions for reimbursement of such expenses, then the CITY shall reimburse CONTRACTOR for its increased reasonable expenses during the period of the extreme conditions within 30 days after submission to the CITY of the documentation of the expenses in a form reasonably satisfactory to CITY. In the event CONTRACTOR desires to use outside contractors and/or equipment to support such emergency operations, CONTRACTOR shall first obtain CITY's approval of the total maximum costs of such assistance, and such CITY approval shall constitute CITY'S agreement to pay for such outside contractor expense to the extent approved by CITY and subject to the submission of documentation reasonably satisfactory to CITY supporting expenses within the approved amount.

2.6.3 The CONTRACTOR shall at its expense perform all operations of the Facility including, but not limited to: placement and compaction of Solid Wastes; furnishing borrow soil excavation services, transport and placement of borrow material from the Accessible Borrow Area (as defined in Section 2.6.5), or ash or other special disposal as described in Section 3.11, as daily and intermediate cover; placement of alternative daily cover including furnishing and placement of tarps; cell preparation for Special Wastes; removal of tires from the working face and storage on-site; white goods removal from the working face, removal from site and proper disposal; removal of lead acid batteries including from the working face, storage, removal from site and proper disposal; operation of citizen's Solid Waste drop-off area, including pick-up and drop off of containers and furnishing roll-off containers for Solid Waste, garbage/trash and recyclable materials; leachate collection, temporary storage and conveyance to the referenced point of off-site disposal, which leachate the CITY shall direct JEA to accept and treat at the CITY'S expense during the operational phase of the Facility but not longer than six months after the application for certificate of Closure is submitted for the Facility (unless such

certificate cannot be reasonably obtained during such six month period, in which case such period will be extended to include such time as is reasonably necessary to obtain such certificate provided that CONTRACTOR exercises continuous diligent efforts to obtain such certificate of Closure), at and from which time the CITY or JEA may charge its normal rates at the time for acceptance and treatment of leachate, except that during Post Closure the CITY will be responsible for the cost of the treatment or disposal of landfill gas condensate for so long as the removal of such condensate is required in connection with the delivery or use of Landfill gas under the Three-Party Contract; operation of a Landfill gas control system to the extent necessary to comply with the Three-Party Contract; operation of on-Site erosion control measures and stormwater management facilities; well field balancing consistent with the Three-Party Contract, control of on-Site fires; maintenance of on-Site utilities and incidental operations. Additionally, CONTRACTOR at its expense shall dispose of up to 30,000 tires per year not including segregated loads of tires delivered in bulk ("Bulk Tires"). CONTRACTOR'S annual tire disposal obligation shall be adjusted annually beginning October 1, 2009, based upon the prior year's tonnage volume (from October 1 to September 30) as compared to 843,638 tons. For example, for each one hundred tons the prior year's tonnage volume is increased above or reduced below the foregoing annual tonnage volume, 3.6 tires ( $30,000/843,638 \times 100$ ) shall be added or subtracted from the annual tire disposal obligation. CONTRACTOR shall be entitled to charge \$13.50 per tire for each tire accepted at the Facility in excess of such annual tire disposal obligation, and such per tire amount is subject to the annual CPI adjustment in Section 5.2 beginning October 1, 2009. CONTRACTOR shall use diligent and good faith efforts to obtain and document the identity of each disposer of non-bulk tires and provide such information to CITY on a monthly basis with the report on the number of tires disposed, so that CITY may

pursue such disposal of tires for reimbursement of the disposal costs and/or fines. Notwithstanding the foregoing, CONTRACTOR may charge CITY up to \$85.00 per ton for disposal of Bulk Tires and such per ton amount is subject to the annual CPI adjustment in Section 5.2 beginning October 1, 2009.

2.6.4 Except as provided herein, the CONTRACTOR shall, at its expense, perform Landfill Closure construction and Post Closure care and maintenance activities required by permits and regulatory agencies, including but not limited to all costs of construction and maintenance.

2.6.5 The parties understand that the furnishing of excavating services and transporting and placing of all required borrow material for the rate established in Section 5.1 contemplates CONTRACTOR'S exclusive and continuing (only during the term of this Agreement) use of a portion of a borrow site that the CITY plans to purchase from ICI Villages, LLC, a Delaware limited liability company ("ICI") (the "Borrow Site"), adjacent to the current borrow area property and as described herein. CONTRACTOR will only have use and access to the portion of the Borrow Site consisting of approximately 200 contiguous acres that are contiguous to the Facility, the boundary of which area will be more specifically designated in writing by the CITY to CONTRACTOR upon acquisition and permitting of the Borrow Site, (the "Accessible Borrow Area"). CONTRACTOR shall not have access to any other portion of the Borrow Site without the CITY'S prior written consent. The Accessible Borrow Area shall be fully permitted by the CITY for use as a borrow site, including the necessary water discharge permits, and CONTRACTOR shall cooperate with CITY in obtaining such permits. The CITY'S obligations in this Agreement pertaining to the Borrow Site and Accessible Borrow Area are conditioned upon the CITY'S closing of its contemplated purchase of such site from ICI. CONTRACTOR

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shall only use the soil from the Accessible Borrow Area for Landfill operations at the Site including Closure. At such time as soil is no longer needed from the Accessible Borrow Area for use at the Facility, CONTRACTOR shall no longer have access to the Accessible Borrow Area and CITY shall have exclusive use of and access to the Accessible Borrow Area after such time; provided however that CONTRACTOR shall remain liable to CITY and all applicable permitting agencies for all environmental liabilities relating to the Accessible Borrow Area to the extent arising out of or related to any negligent acts or omissions of, or violations of law by, CONTRACTOR or its employees, agents, representatives or subcontractors. If after the Accessible Borrow Area becomes available to CONTRACTOR, CONTRACTOR is unable to access the Accessible Borrow Area ~~for purposes of removing~~ soil after using diligent and good faith efforts to do so, then CONTRACTOR shall be allowed to use a separate area within the Borrow Site designated by CITY in writing, for purposes of obtaining the necessary soil for use at the Facility; provided however that CONTRACTOR shall not be entitled to access more than a cumulative total of 200 acres within the Borrow Site, including the Accessible Borrow Area, unless otherwise approved in writing by the CITY. CONTRACTOR shall be responsible at its sole cost for supplying any soil necessary for operations, Closure and Post Closure of the Facility that is not available from the Accessible Borrow Area (or Borrow Site where applicable under the conditions described above).

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2.6.6 Except as otherwise provided herein, the CONTRACTOR shall at its expense maintain the Facility in good condition and perform all maintenance for the Facility to the extent required by permit (except with respect to the scale house and maintenance and calibration of the scales) including, but not limited to, maintenance of the following Facility components: leachate collection, storage and transfer system (leachate collection piping, both primary and secondary;

leachate pumps and trolley with control panels, wiring, piping and appurtenances; leachate transfer pumps with piping and truck loading arm; leachate storage tanks with valves and piping; leachate flow meter; containment structure with valves and piping and leachate forcemains); water system (potable well; well supply pump with wiring and piping; aerator; chlorinator; water tank; back flow preventors; associated piping and distribution system and fire hydrants with supply piping); maintenance shop (air conditioner/heater unit with duct work and controls; dosing pump with concrete manhole, electrical controls and piping; drain field; emergency eye wash station; electrical system, lights, switches and wiring; internal plumbing, piping and fixtures and emergency generator with switch gear and controls); administration building (air conditioner/heater unit with duct work and controls; emergency generator with switch gear and controls; electrical system, lights, switches, and wiring; plumbing, piping and fixtures; telephone system with wiring and desk sets; dosing pump with concrete manhole, electrical controls and piping; drain field); drainage system (stormwater ponds; concrete ditch pavement; fabri-form ditch pavement; drainage pumps; fire pump; irrigation system, including wetlands recharge system, and miscellaneous drainage piping and structures); Landfill gas system (collection piping and headers, well heads, blowers, flares, telemetry system, flare and condensate pump station control panels, and Landfill gas flare); exterior electrical/lighting (building security lights, pole mounted cluster lights, on-site electrical wiring); roadways (compactor access road, all-weather Landfill access road, and Facility entrance road shown on **Exhibit B** (maintenance of entrance signs and fencing, and repairing pot holes, all of which shall be performed at CONTRACTOR'S expense, specifically excluding periodic resurfacing of entrance road, which shall be at the CITY'S expense); and incremental Closure items (cover system, downcomers, under drain and terrace system). The CONTRACTOR shall maintain all equipment and facilities in a good,

clean, working condition, and in accordance with all applicable laws, rules, ordinances, regulations and permits, making all necessary repairs and replacements (provided that capital costs other than Equipment capital costs shall be paid by CITY in accordance with Section 3.7 hereof). The CONTRACTOR shall develop and maintain a maintenance schedule and shall maintain on site a record of all maintenance activities. The CONTRACTOR shall provide the CITY a copy of its maintenance schedule annually, and more frequently if the CONTRACTOR implements material changes in such schedule. The CONTRACTOR shall provide the CITY access to inspect all maintenance performance records during regular business hours. Except in the event of any emergency, the CONTRACTOR must obtain the CITY'S prior written approval for any capital replacement of any item costing \$5,000.00 or more (such amount is subject to the annual CPI adjustment in Section 5.2 beginning October 1, 2009) for which CITY is obligated to pay and CONTRACTOR intends to request payment or reimbursement from the CITY. Where greater than \$5,000.00 (as adjusted), the CONTRACTOR shall obtain and provide the City a minimum of three bids (but not more than the number of bids received, provided that CONTRACTOR followed applicable procurement laws or used reasonable efforts to obtain at least three bids), unless waived by the CITY in writing, before purchasing the item or system and the CITY may at its option choose to provide for timely replacement of the item or system in lieu of payment for such capital cost.

2.6.7 The CONTRACTOR shall at its expense provide all superintendence; labor operators, spotters, mechanics and incidental labor (excluding scale operators); and materials, Equipment, tools, supplies and utilities required for operation of the Facility as provided herein. The CONTRACTOR'S staffing and Equipment shall have capacity adequate to operate the

Facility at waste loading up to the maximum allowed by all applicable permits, laws and regulations. Notwithstanding the foregoing:

2.6.7.1 CITY shall pay for certain increased operating costs of CONTRACTOR during extreme conditions, as more specifically described in Section 2.6.2.

2.6.7.2 CONTRACTOR shall not be obligated to handle volumes of Solid Waste (i) in excess of an amount greater than 20% above the prior calendar quarter's daily average, excluding any period of (a) extreme or emergency conditions as described in Section 2.6.2 or (b) seasonal variations in volumes such as after Christmas when Solid Waste volumes are seasonally and predictably higher, and (ii) requiring the retention of additional personnel and/or equipment to handle such increased volumes, absent payment to CONTRACTOR for CONTRACTOR'S increased costs of operations related to such increased volumes, under the procedures described in Section 2.6.2. The foregoing is intended to protect CONTRACTOR against any unexpected spike in Solid Waste volumes that are not in the normal course of Landfill operations and that require CONTRACTOR on a short term basis to hire additional personnel, obtain additional Equipment and/or retain outside contractors, to handle such increased volumes, and it is not intended to place a cap on the volume of Solid Waste subject to the per ton rate described in Section 5.1 or provide for any increased payment to CONTRACTOR during periods of normal Landfill operations or where CONTRACTOR can reasonably anticipate the need for increases in personnel, equipment and/or outside contractors based on predictably increasing Solid Waste volumes at the Facility during normal Landfill operations based on historical volume trends at the Facility not including periods of extreme or emergency conditions.

2.6.7.3 CITY shall pay for certain capital costs as provided for elsewhere in this Agreement.

2.6.8 The CONTRACTOR shall at its expense collect samples from the groundwater monitoring wells. CONTRACTOR shall submit them to the CITY'S designated laboratory for analysis. Numbers and locations of the wells shall be in accordance with construction drawings documenting the construction permit application and as shown in the operating plan and ground water monitoring plan as approved by the Department. Number and frequency of samples, sampling and analytical procedures, parameters analyzed and test reporting requirements shall comply fully with applicable provisions of the approved operating and ground water monitoring plans. The CITY shall pay the laboratory fees of the CITY-designated laboratory for quarterly analysis of groundwater samples. The CONTRACTOR shall pay the additional laboratory fees if more frequent groundwater analysis is required due to the CONTRACTOR'S improper operation of the Facility or if CONTRACTOR uses a laboratory that has not been approved by CITY. Where required to satisfy any permit, rule or other requirement, and where the regularly used CITY-designated laboratory is not available or not capable of timely performing the required analyses, CONTRACTOR may use a third party laboratory pre-approved in writing by CITY, and CITY shall pay for the use of such laboratory.

2.7 Unacceptable and Special Waste. The CITY shall not knowingly allow to be delivered, and the CONTRACTOR shall not knowingly accept, any Unacceptable Waste as herein defined. The CITY and CONTRACTOR shall utilize commercially reasonable efforts to prevent the receipt of Unacceptable Waste at the Facility. In the event, however, that Unacceptable Waste is received at the Facility, the CONTRACTOR shall attempt to have the transporter remove such waste within a reasonable time, not exceeding twenty four (24) hours

after the discovery of such waste. If such waste is not removed during said time period, the CONTRACTOR shall dispose of said waste in the least expensive legal manner available and shall bill the transporter for the actual cost of disposal together with a surcharge of one hundred percent (100%). The CITY shall use reasonable efforts to assist the CONTRACTOR in collecting said bills in any reasonable manner that does not include the expenditure of CITY funds, but shall not guarantee the payment of said bills or the recovery of the cost of disposal.

2.7.1 The CONTRACTOR shall not knowingly accept any Category I and II Special Waste as defined in **Exhibit C** unless the transporter or generator executes a Special Waste Agreement in a form approved by CITY (including all subsequent modifications thereto). Category I and II Special Waste delivered under such form of signed Special Waste Agreement shall be handled by the CONTRACTOR in any lawful manner that the CONTRACTOR elects. The CITY shall be notified of all deliveries received and the action taken in the next monthly report from the CONTRACTOR. The CITY shall pay the CONTRACTOR for handling said Category I and II Special Waste in accordance with the rates set forth in **Exhibit D** and in the manner set forth herein. If the CONTRACTOR knowingly accepts Category I and II Special Waste without securing the above-required Special Waste Agreement, the CONTRACTOR shall handle such Special Waste at its expense.

2.7.2 The CONTRACTOR shall not dispose of any Category III Special Waste as defined in **Exhibit C** unless it has been processed in a manner which would allow lawful disposal. The rate per ton paid to the CONTRACTOR for solid waste disposal, as provided in **Exhibit D** is payment for the CONTRACTOR to handle Category III Special Waste. Any transporter that frequently, regularly or repetitively disposes of Category III Special Waste in the working face may be deemed a "Special Waste Habitual Violator" upon approval of the CITY.

The CONTRACTOR may charge said violator a surcharge of one hundred percent (100%) for future receipt and disposal of Category III Special Waste for a period mutually agreed upon between the CONTRACTOR and the CITY, and the CITY shall support such surcharge at the scalehouse. The CITY shall make reasonable efforts to prevent the deposit of Category III Special Waste in the working face of the Landfill.

2.7.3 The CONTRACTOR shall accept Category IV Special Waste as defined in **Exhibit C** at the Facility at a location mutually agreeable to both the CITY and the CONTRACTOR. Payment to CONTRACTOR for Category IV Special Waste disposal shall be in accordance with **Exhibit D**. The CONTRACTOR shall not knowingly accept Biohazardous Waste at the Facility unless it has been incinerated or processed by an alternative method approved by the Department as required by Section 380.108(o), Ordinance Code.

2.7.4 The CONTRACTOR may require laboratory analysis of a sample of any waste proposed for delivery to the Facility when the CONTRACTOR is in reasonable doubt concerning the nature or composition of said waste. Said analysis shall be performed by a laboratory acceptable to the CONTRACTOR and the CITY at the expense of the transporter. Said waste shall be held on site during performance of the said analysis unless other provisions are agreed to by the CITY and the CONTRACTOR. If the transporter refuses to cooperate with the said procedure, the CONTRACTOR shall not accept the waste in question at the Facility. The CONTRACTOR shall report each unaccepted load to the CITY at the time that it is rejected.

2.7.5. Attached as **Exhibit E**, are additional terms and conditions that apply to the disposal and handling of Special Waste. The provisions of **Exhibit E**, are incorporated herein by reference as if fully set forth herein.

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2.8 Cooperation with CITY and other Contractors. In the performance of its

operating responsibilities, the CONTRACTOR'S operations will necessarily interface with (1) duties of the CITY'S scale operations, (2) operations of CITY-owned and CITY-contracted waste haulers, and/or (3) operations of other third-party contractors that are outside the scope of this Agreement. The CONTRACTOR shall be responsible for devising, implementing and ensuring coordinated methods for accommodating effective and efficient ingress, reasonable on-site movement, temporary storage (as required), tipping and egress of waste haulage vehicles. The CONTRACTOR'S methods and procedures shall be subject to review and approval by the CITY.

2.9 Right of Access. The CONTRACTOR shall provide right of access at any time during routine operations to the CITY'S Director of Public Works and his designees, personnel of public safety agencies (as required), and representatives of CITY or other persons approved by the CITY, together with State and Federal regulatory agencies with jurisdiction. The CONTRACTOR shall also provide means for access for such persons during non-operation hours in the event of emergencies. Emergency access provisions shall be subject to prior review and approval by the CITY. The CITY agrees that it will not allow competitors of CONTRACTOR to have access to the offices of CONTRACTOR located at the Site without CONTRACTOR'S prior written permission, but the CITY may in its discretion allow anyone to have access to the Facility and Site during normal business hours, but not for access to CONTRACTOR'S employees and/or access to, or for review of, CONTRACTOR'S business or confidential information except as and only to the extent provided in the specific sections herein that allow the CITY to review CONTRACTOR'S books and records.

2.10 Safety and Security. The CONTRACTOR shall provide for on-site safety of its personnel, CITY scale operators, operators of waste haulers, CITY and regulatory agency

inspectors, and the public. The CONTRACTOR may require that all persons entering the site comply with reasonable safety rules established by the CONTRACTOR and approved by CITY. The CONTRACTOR shall provide means of controlling access to the Site and of Site security to prevent unauthorized access and clandestine dumping within the Site, the boundary of which is fenced. Safety and security measures shall be detailed in the CONTRACTOR'S approved operations plan, and in any plan modifications as may subsequently be submitted for approval. CONTRACTOR'S implementation of such safety and security measures shall be in conformance with the current approved operating plan at all times. Any individual found to be a habitual violator of health or safety provisions may be banned from the Facility.

2.11 Records and Reports. The CONTRACTOR shall maintain on-site, readily retrievable for reference and in clean and usable condition, at least one copy each of Department approved construction drawings, specifications, reports, construction permit and operating plan, and the prior 24 month's operations reports and correspondence with the CITY and regulatory agencies, regarding Facility operations, and CONTRACTOR shall provide copies to CITY upon request.

2.11.1 The CONTRACTOR shall submit monthly operations reports to the CITY on the following:

- (a) Days (dates) of operations; hours actually operated each date.
- (b) Numbers of truckloads and tonnage of waste received each date.
- (c) Numbers of truckloads and gallonage of leachate hauled each date.
- (d) Number of bulk tires and separately the number of non-bulk tires received each date.
- (e) The identity of each disposer of the non-bulk tires described in the preceding

paragraph (d) where known by CONTRACTOR provided that CONTRACTOR shall use diligent efforts to learn such identities and report them to CITY.

- (f) A description, keyed to designations on agreed upon drawings, of the Landfill cell(s) and borrow areas where operations have been conducted during the month.
- (g) Dates of any regulatory agency inspections with name of agency and inspector. A copy of any concurrent or subsequently written inspection report, notice of violation, or citation shall be supplied to the CITY upon receipt. A copy of any report submitted by CONTRACTOR to any regulatory agency, whether in response to such notices of violation and/or citations or not, shall be supplied to the CITY upon submission.
- (h) The last monthly report for each Operating Year shall be expanded at the CONTRACTOR'S expense to include an aerial survey and volume computations to determine the volume of Landfill airspace utilized in the prior year's operations and the remaining volume of constructed airspace available. The survey and computations shall be performed, signed and sealed by a land surveyor or professional engineer licensed in the State of Florida.

2.11.2 CONTRACTOR shall annually provide to CITY the following reports on or before November 1 of each year after the Effective Date:

- (a) The annual amount accrued or escrowed for the Expanded Cell Closure Accrual and the cumulative total Expanded Cell Closure Accrual, together with the annual third party engineer's report of the updated Closure and Post-Closure costs as described in Section 7.5.1.3.
- (b) The annual and cumulative total of all amounts expended by CONTRACTOR for

Closure and/or Post-Closure costs pertaining to the Existing Cell and separately for the Expanded Cell, in such reasonable detail as may be requested by the CITY including the date, amount and brief description of each such expenditure during the previous year and the total cumulative amount of expenditures since the Effective Date.

2.11.3 CONTRACTOR shall provide within a reasonable time period such other reports or records as the CITY may from time to time reasonably request for regulatory compliance or other legal purposes including without limitation in connection with the annual audit required by CITY ordinance for purposes of verifying CONTRACTOR'S compliance with the terms and conditions of this Agreement, provided that such reports or records do not constitute a "trade secret" as defined in section 812.081, Florida Statutes, unless CONTRACTOR is seeking reimbursement for expenses that are documented in such reports or records in which case CITY shall be entitled to review such reports or records to verify such expenses. Reports provided by the CONTRACTOR may be delivered in a mutually agreed upon electronic format. For any such additional report requested by CITY not listed above and that is not reasonably similar to a report that CONTRACTOR is required to provide to any other government entity in connection with the operation of any other landfills by CONTRACTOR, and where CONTRACTOR is required to expend material costs or personnel time to prepare such reports, CITY shall reimburse CONTRACTOR for such additional reporting costs within 30 days after receipt of the reports.

2.12 Payment of Operating Expenses. Except as otherwise specifically provided for herein, the CONTRACTOR shall be solely responsible for and shall pay all maintenance and

operating costs and expenses required for the performance of its operating responsibilities under this Agreement.

2.13 Capital for Permitting and Construction. The CONTRACTOR shall recommend to the CITY what capital for permitting and construction may be required for the remaining period of operation of the Existing Cell and for the construction and operation of the Expanded Cell and, subject to the terms and conditions of this Agreement, the CITY shall have final authority to approve or deny the recommendation in writing, and such authority includes without limitation the authority to approve all preliminary and final design documents. CONTRACTOR shall be responsible for managing the construction of the Expanded Cell under the terms of this Agreement. Subject to CITY'S (i) compliance with its funding obligations hereunder for construction costs, (ii) timely approvals as required herein and (iii) timely processing of any requested procurement matters that CITY is required or requested by CONTRACTOR to process hereunder, CONTRACTOR shall be responsible for the completion of such construction in a timely fashion so that the Facility remains open and operational without any gaps in Operating Days other than Sundays and holidays during the term of this Agreement despite any Closure of any portion of the Facility. To the extent required and applicable, CONTRACTOR on behalf of the CITY shall comply with the provisions of Section 287.055, Florida Statutes, or any successor statute, when procuring "professional services" (as defined in Section 287.055(2)(a), Florida Statutes) required in connection with the construction and/or operation of the Facility on and after the Effective Date. CONTRACTOR shall give the CITY at least 15 days prior written notice of its intent to procure any such services governed by Section 287.055, Florida Statutes. Should CONTRACTOR desire that the CITY undertake such provisions, the CITY shall procure such services under its normal procurement procedures. The construction of the Expanded Cell,

and any remaining construction projects that pertain to the Existing Cell and that require competitive bidding under the provisions of Section 255.20 and/or 180.24, Florida Statutes, shall be subject to the CITY'S normal procurement processes under the CITY'S procurement code in Chapter 126, Jacksonville Ordinance Code. All contracts for such construction projects shall be in a form approved by the CITY, including without limitation the inclusion of CITY bonding and insurance requirements at the time (the costs of which shall be included in the contract bids), and shall include standard Solid Waste industry provisions. For the procurement of professional services and construction services that are not governed by Sections 287.055 or 255.20 or 180.24, Florida Statutes (collectively the "Exempt Services"), the CONTRACTOR shall provide the CITY a minimum of three itemized proposals (but not more than the number of proposals received after using reasonable efforts to obtain bids), including price, for all such projects or services, including without limitation for permitting and design work. When making a recommendation for additional material capital for permitting or construction that constitutes an Exempt Service (amounts less than the amounts that trigger the applicability of either Section 287.055, Florida Statutes, with respect to professional services, or Section 255.20 or 180.24, Florida Statutes, with respect to construction services), and for all other material construction, the CONTRACTOR shall provide to the City appropriate design documents, including plans at 30%, 60% and 90% design completion for review and final approval of the City. Detailed cost estimates shall also be provided in conjunction with the design documents. The CITY shall have a minimum of thirty (30) days to review design documents and estimates, but no more than sixty (60) days after all reasonably required documents are provided to CITY, and no construction of any kind shall be authorized or commenced until the CITY issues a written authorization to proceed, which shall include a maximum cost consistent with all such submitted material that has

been approved by CITY, and the form of the construction contract is subject to CITY approval including without limitation the inclusion of CITY bonding and insurance requirements at the time (the costs of which shall be included in the contract bids), and shall include standard Solid Waste industry provisions. When capital items for permitting or construction are approved by the CITY, the CONTRACTOR shall not proceed with any improvements or construction until receiving final written approval from the CITY of the methodology and cost of the capital improvement. For the procurement of Exempt Services, the CONTRACTOR may, as an alternative to the above submission of bids and plans to the CITY, implement the proposal and bidding procedures set forth in the CITY'S Purchasing Code. The minimum acceptable standard for each capital project shall be the more stringent of (a) the requirements of federal, state and local laws, rules and regulations at the time the work is to be performed, or (b) the requirements of the then current permits for the Facility. In the event the CONTRACTOR is to perform any Exempt Services, the price proposed shall be presented in an itemized estimate, and shall include all costs. Under no circumstances shall CONTRACTOR'S aggregate profit for any Exempt Services exceed fifteen percent (15%) of the actual costs exclusive of profit. Pyramiding or multiplication of profit margins shall not be allowed, i.e., CONTRACTOR shall not be entitled to "mark up" or add any profit margin to the profit margin of any third-party contractor, subcontractor, or sub-subcontractor, etc. Only one profit margin per item of work performed shall be allowed no matter who performs the work in the chain of workers. Additionally, for any professional services work such as surveying, design or engineering work, no profit margin shall be added by anyone to such work except for the party actually performing the work. For example, if a surveyor prepares a survey, or an engineer performs certain engineering or design work, the cost of the survey and the engineering work shall be passed on directly to the CITY

without mark up by the CONTRACTOR or any subcontractor not performing the work. The Parties agree to work together to insure that such pyramiding or multiplication of profits does not occur, and CITY may in its discretion assume responsibility for future construction and/or engineering work if CONTRACTOR violates the profit pyramiding prohibition. CITY shall be entitled to inspect the specific project records of CONTRACTOR, general contractors, engineers, and sub-contractors, etc., during normal business hours to monitor compliance with the profit pyramiding prohibition for the particular project at issue and for all other construction projects at the Site. The provisions of Sections 287.055, 255.20 and 180.24, Florida Statutes, where applicable, shall supersede and control over any conflicting provisions in this Agreement. The CITY'S obligation to fund all capital costs hereunder is subject to the lawful appropriation of funds.

2.14 Closure of the Facility. Except as specifically set forth in this Agreement, the CONTRACTOR shall be completely responsible for all activities and costs, including but not limited to compliance with all permits, regulatory requirements and applicable laws, related to Closure and Post Closure of the Existing Cell and Expanded Cell, including the existing Cells and all future Cells for all Accepted Waste received by CONTRACTOR at the Facility. The CITY shall have no responsibility or cost relating to Closure or Post Closure of any portion of the Facility, except that the CITY shall: (i) allow CONTRACTOR to obtain soil from the Accessible Borrow Area as may be required for Closure (and from the Borrow Site when permissible under the terms and conditions described in Section 2.6.5); and (ii) pay any necessary capital costs associated with the raising of existing gas wells or gas headers, or with the permit-required alteration of capital projects that CITY is otherwise required to fund hereunder, but only to the extent required for Closure and/or Post Closure. CONTRACTOR

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shall provide the financial assurance required by Section 6.6 to secure its Closure and Post Closure obligations hereunder.

2.14.1 Release of CITY Closure Escrow Funds to City. Under the Initial Operation Agreement, the CITY is obligated to pay for all Closure expenses pertaining to the Existing Cell, and this Agreement now requires the CONTRACTOR to pay for all such Closure expenses. The CITY is currently required by the Permit to hold certain funds in escrow with the Department to cover certain Closure costs pertaining to the Existing Cell (the "CITY Closure Escrow Funds"). Part of the consideration to the CITY in entering into this Agreement is the release of the CITY Closure Escrow Funds to the CITY in light of the CONTRACTOR'S obligation hereunder to assume all Closure costs pertaining to the Facility. Accordingly, CONTRACTOR shall within

30 days after the Effective Date ~~file an application with the Department (the "CONTRACTOR'S Application") for the release of the CITY Closure Escrow Funds to the CITY. CONTRACTOR shall promptly~~ comply with all financial assurance requirements under the Permit ~~and/or by the~~

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Department in connection with the Closure of the Facility including without limitation by establishing an escrow account with the Department ~~or posting such other funds and/or bonds as may be required by the Permit or the Department for the release of the City Closure Escrow~~

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~~Funds to the CITY (the "CONTRACTOR'S Closure Escrow Funds"). CONTRACTOR shall provide the CONTRACTOR'S Closure Escrow Funds to the Department with the CONTRACTOR'S Application, or if the required amount of such funds is not known by the above due date of such application, then as soon as reasonably possible thereafter and no later than 10 days after CONTRACTOR learns of such amount.~~ CONTRACTOR shall additionally

~~use diligent efforts to~~ cooperate with the CITY and undertake all actions required by the Permit or the Department to secure the release of the CITY Closure Escrow Funds to the CITY ~~as soon~~

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as reasonably possible after the Effective Date. Such escrow release is a condition to the effectiveness of this Agreement and if CONTRACTOR fails to comply with its foregoing obligations in this Section 2.14.1 in a timely manner, then the CITY may in its discretion terminate this Agreement by written notice to CONTRACTOR. In the event of any such termination by the CITY, the Initial Operation Agreement shall be automatically reinvoled as if this Agreement had not been entered into, and neither party shall have any rights or remedies against the other related to this Agreement. In such case the CITY shall reimburse CONTRACTOR for any difference between any tonnage payment made under Section 5.1 of this Agreement and the payment that would have been owed to CONTRACTOR under the Initial Operation Agreement for such tonnage amount.

**Deleted:** the CITY does not receive the City Closure Escrow Funds within 30 days after the Effective Date of this Agreement

2.15 Maintenance of Conservation Easement. As a result of environmental permitting, 8.874 acres of the Site has been delivered to the CITY subject to a Conservation Easement granted to the Florida Department of Environmental Protection. During the term of this Agreement, the CONTRACTOR shall be solely responsible for complying with all obligations of the Grantor under such easement.

2.16 Nothing in this Agreement shall prevent CONTRACTOR from recouping any and all costs or expenses incurred under this Agreement from any responsible third party, but in no event shall this Section relieve CITY or CONTRACTOR of any obligations hereunder.

2.17 If the CITY does not accept CONTRACTOR'S reasonable written recommendation regarding any capital project required by law or applicable permits or CITY does not fund or adequately fund any capital project or capital replacement that CITY is obligated to fund hereunder or that is required by applicable law or the Permit, pursuant to a written request from CONTRACTOR, CONTRACTOR shall not be responsible for any: (i)

increased operational costs related to such matter or (ii) other liability resulting from any non-existence or failure of such capital project caused by such non-funding or under-funding. CITY shall provide funding for such increased costs or other liability. CONTRACTOR shall have the burden of proving that any such non-existence or failure of a capital project resulted from such non-funding or underfunding. If CITY requests the implementation of a particular capital project or new technology or method for landfilling, then CONTRACTOR shall implement such project or technology or method provided that CITY pays for the capital costs, subject to the provisions of Section 5.3.

2.18 CONTRACTOR Processing Operation. Subject to the conditions set forth in this Section, CONTRACTOR may establish a Solid Waste, Recovered Materials and/or Recyclable Materials Processing operation at the Site to recover materials that may be beneficially used. In the event CONTRACTOR does establish such an operation, it may locate the same on real property at the Site, provided that it does not in any way interfere with any Landfill operations or any obligations of CONTRACTOR hereunder. CITY and CONTRACTOR shall first enter into a written agreement containing the terms and conditions for the CONTRACTOR'S operation of such Facility, and such agreement must be pre-approved by the Jacksonville City Council.

2.19 The disposal rates for the Facility are set by ordinance from time to time by the Jacksonville City Council and such rates are presently contained in Section 380.303 of the Jacksonville Ordinance Code.

### ARTICLE 3. RESPONSIBILITIES OF CITY

3.1 Waste Haulage. The CITY shall with its own forces and equipment, or under separate contract, deliver Solid Waste to the Facility. With the exception of Construction and Demolition Debris, Special Waste, and Yard Trash (which may be delivered anywhere the CITY

chooses), the CITY shall use reasonable efforts to deliver all acceptable Solid Waste, Garbage and Residential Waste and all other acceptable solid waste generated within the CITY and/or within the CITY'S control, to the Facility. To the extent allowed by applicable law, the CITY shall control the flow of such solid waste to the Facility through the use of contracts and flow-control laws. CONTRACTOR shall not accept any Solid Waste from outside the CITY at the Facility unless the CITY initiates such waste flow through an agreement with another governmental entity, or the CITY and CONTRACTOR otherwise agree in writing. The CONTRACTOR may with the CITY'S prior written approval solicit and accept acceptable Solid Waste that is generated outside of the City of Jacksonville. CONTRACTOR'S haulers shall be entitled to the same out-of-town waste rate as is provided to third party haulers.

3.2 On Site Personnel. The CITY shall provide scale operators who shall accurately weigh and record the tonnage of solid waste delivered to the Facility, including through timely and required certification of accuracy of the scales. The CITY scale operators shall retain the original weight records. The CITY shall provide a copy of weight records to the CONTRACTOR daily. CONTRACTOR shall be allowed at its sole expense to install cameras and other monitoring, weighing and/or security systems at the scale area, including, at the option and expense of CONTRACTOR, computerized truck weighing and other reliable industry developments.

3.2.1 The CITY may at its option and at its expense assign one or more inspectors to observe the CONTRACTOR'S operations. The CONTRACTOR shall reasonably cooperate with said inspectors in the performance of their duties, and the inspectors shall not interfere with CONTRACTOR'S operations.

3.3 Leachate Disposal. The CITY does not own a waste water or leachate treatment facility but CITY shall direct JEA to accept leachate generated at the Facility from the CONTRACTOR at such JEA wastewater treatment facility or facilities as the CITY may from time to time designate. CITY shall direct JEA to accept and treat leachate from the Facility at the CITY'S expense during the period that the Facility is operational and accepting waste. As soon as the Facility stops accepting waste as described in Section 2.6.3, the CITY or JEA may charge its normal processing rates at the time for leachate, provided however that the CITY will direct JEA to treat and dispose of Landfill gas condensate at the CITY'S expense during Post Closure, as described in Section 2.6.3. The CITY shall direct JEA to accept such leachate and condensate at the Buckman waste treatment facility as long as such facility continues to accept leachate and condensate for treatment, or where feasible, any other CITY or JEA waste treatment facility that is closest to the Facility and accepts leachate and condensate at the time.

3.4 Maintenance and Calibration of the Scales. The CITY shall perform all required maintenance and calibration of the scales including replacement, or shall arrange for such services to be performed by an independent contractor at the CITY'S expense. The scales shall be calibrated at least annually, and as required where an indication or inaccuracy is presented to the CITY. The CITY shall provide the CONTRACTOR with copies of all relevant documents verifying calibration of the scales.

3.5 Prompt Review and Comment and Funding. Where either Party's discharge of its responsibilities is dependent, in whole or in part, on prior review, comment and/or approval of the other Party, the responding Party shall respond promptly in writing to the requesting Party's written submittals of information and requests for review and no requested approval shall be unreasonably delayed or denied after all reasonably required documents and reasonably

requested information have been provided to the responding party. CITY responses may be either

- (a) Unqualified approval or concurrence; or
- (b) Enumeration of specific items or issues which are unacceptable or non-approvable to the CITY and the grounds for the determination of non-acceptability.
- (c) In the event of non-approval, the CITY Response shall either (1) establish a reasonable date for CONTRACTOR'S resubmittal, or (2) instruct the CONTRACTOR to modify its plan to incorporate CITY review comments consistent with the provisions of this Agreement and waive the requirements for formal resubmittal and review.

Where obligated to do so, CITY and CONTRACTOR shall timely fund the activities required by this Agreement subject to the terms and conditions of this Agreement.

3.6 Notification of Operating Deficiencies. The CITY shall notify the CONTRACTOR in writing when aspects of its operations are observed by the CITY to be in violation of terms of this Agreement or of applicable provisions of governing law or regulations. However, the CITY'S failure to notify the CONTRACTOR of any specific item of non-performance or violation shall not serve to relieve the CONTRACTOR of its responsibility to operate the Facility in accordance with this Agreement and in compliance with governing laws, ordinances, regulations and permits. CONTRACTOR shall likewise notify the CITY in writing when and if CONTRACTOR learns that CITY is in violation of the terms of this Agreement or of applicable provisions of governing law or regulations, but CONTRACTOR'S failure to notify the CITY of any specific item of non-performance or violation shall not serve to relieve the

CITY of its responsibility to comply with this Agreement and any applicable governing law or regulations or permits.

3.7 Permitting and Capital Improvements. The CITY shall be responsible for the costs and reasonable expenses associated with all of the permitting arising out of, or in connection with, CONTRACTOR'S operation of the Facility, including, but not limited to the permitting costs for all borrow areas for soil removal, meeting all permitting and other requirements for Wetlands (including necessary mitigation), and Clean Air Act and related air quality requirements. The CITY shall also pay for all costs of CITY-approved construction at and of the Facility including those capital costs necessary for accomplishing capital improvements of the Facility to reach the anticipated capacity of 42 million tons, but CONTRACTOR shall be responsible for the capital and operational cost of all Equipment, Closure construction (except as specifically provided in this Agreement), and Post-Closure care and maintenance of the Facility as provided in this Agreement. CITY'S payments to CONTRACTOR shall also include the costs of replacement of Facility components other than Equipment when CONTRACTOR'S properly executed maintenance does not sustain a Facility component's function, where such component's expected service life has been reached or it has failed and requires replacement: provided, however, that CITY shall not be responsible for payment for any component failure occurring as a result CONTRACTOR'S improper maintenance or use of such component and further provided that CONTRACTOR shall be responsible for the costs of the replacement of all Equipment.

3.7.1 Notwithstanding the foregoing as part of the CONTRACTOR consideration for this Agreement, the CITY shall not be obligated to pay CONTRACTOR the sum of approximately \$1,100,000 incurred by CONTRACTOR ~~(and disputed by CITY)~~ in connection

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with a certain Landfill gas field project prior to the date of this Agreement and the CITY is hereby unconditionally and irrevocably released from such payment obligation. CITY shall use diligent and good faith efforts to cause the dismissal with prejudice of any noise complaint lawsuits filed by CITY and currently pending as of the Effective Date in Jacksonville, Florida against CONTRACTOR or any affiliated company as of the Effective Date; provided however that such CITY obligation shall not apply to any noise complaint matters or suits filed or instituted after the Effective Date.

3.8 Ownership and Use of Site. Until termination of the Facility's Landfill operations, the CITY shall not sell or otherwise convey or transfer the Facility to any entity, including to another public body, without the CONTRACTOR'S written consent thereto, unless the purchasing entity is another public body (including a corporation that is a public body) and it has the financial capacity to perform all of, and it assumes all of, the CITY's obligations hereunder. Provided such entity has assumed all of CITY'S obligations under this Agreement accruing on and after the transfer date, and CITY has fully performed all of its obligations under this Agreement as of the date of transfer, the CITY shall be released from all obligations hereunder accruing after the date of the transfer other than with respect to latent environmental contamination or environmental liability caused by CITY, if any. Such release and transfer shall not limit or otherwise affect CONTRACTOR'S rights or obligations hereunder including without limitation its indemnity obligations; provided that the CITY'S transferee shall be substituted in the place of CITY hereunder as of such transfer date and further provided that CONTRACTOR'S indemnity obligations hereunder shall continue to apply to CITY and such transferee on and after the transfer date. Neither CONTRACTOR nor CITY shall use any portion of the Facility for other than solid waste management activities or restrict the other

Party's operations or services to be performed under this Agreement except as provided herein. CONTRACTOR shall have exclusive right to operate the Facility under the terms and conditions of this Agreement, except as the parties may otherwise agree to in writing.

3.9 CITY Wetland Permitting. CITY shall initiate all required Wetland permitting work for the construction of the Expanded Cell within one hundred eighty (180) days of the Effective Date of this Agreement, provided however, that any permitting work applicable to the land the CITY proposes to purchase from ICI as described in Section 2.6.5 shall be contingent upon the closing of such purchase and shall be initiated within 90 days after such closing.

3.10 Fuel. CITY shall supply fuel to the CONTRACTOR for the services to be performed under this Agreement. The amount of fuel to be supplied to the CONTRACTOR for normal Landfill operations is capped at 275,581 gallons per year based upon an incoming Landfill volume of 843,638 tons. The annual fuel allotment shall be adjusted annually beginning October 1, 2009, based upon the previous year's (October 1 to September 30) tonnage increase above or decrease below 843,638 tons; e.g., for each one hundred tons the volume is increased above or reduced below 843,638, 32.7 gallons ( $275,581/843,638 \times 100$ ) shall be added to or subtracted from the annual fuel allotment. In the event of emergency or extreme conditions as described in Section 2.6.2, then the Parties will provide for an increase in the foregoing fuel allotment based on the actual increased reasonable fuel usage by CONTRACTOR during such emergency period.

3.11 Ash and Other Special Disposal. In the event the CITY desires to dispose of ash or other contaminated solids in large quantities, the CITY shall either deliver such waste in volumes equivalent to that needed for daily cover or the CITY shall at its sole cost create a permitted storage area at an agreed upon location on the Site and away from any Landfill cell

and shall provide required controls for the sound placement, storage, handling and disposal of such waste. CONTRACTOR shall use all such waste for daily or intermediate cover at the request of CITY and as allowed by applicable permits or regulations. CITY shall reimburse CONTRACTOR for its reasonable costs of maintaining the ash stockpile on the Site upon notice to CITY and receipt by CITY of documents reasonably satisfactory to CITY verifying such costs; provided however that CONTRACTOR shall be solely responsible for the costs of spreading the ash as cover or otherwise using the ash at the Site for Landfill operations.

3.12 Soil. Until such time as the Accessible Borrow Area is fully permitted and available to CONTRACTOR for the excavation of soil, CITY shall supply all soil required for Facility operations (and/or Closure of the Facility) or reimburse CONTRACTOR for soil that CITY has not provided and that is required for the operation of the Facility (or Closure of the Facility), all subject to the provisions of Section 2.6.5.

3.13 Compliance with Agreement. The Parties and their respective employees, agents and contractors shall comply with all CITY-approved Facility safety and security plans, rules and/or measures.

#### ARTICLE 4. TERM OF AGREEMENT

4.1 Effective Date. This Agreement shall become effective after it has been duly executed and approved by the CITY and CONTRACTOR.

4.2 ~~Tonnage Payment~~, CONTRACTOR shall be entitled to the tonnage payment under Section 5.1 hereunder until such time as a cumulative total of 42 million tons of Accepted Waste have been delivered to the Facility beginning from the Effective Date of this Agreement, or such lesser or greater tonnage amount that is permitted at the Expanded Cell with the maximum airspace that is obtainable under the permit, subject to the terms and conditions herein

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including without limitation the termination provisions of Article 7. The Facility's expected capacity of 42 million tons has been determined by CONTRACTOR. Neither Party makes any representation or warranty as to whether or not the Facility will actually accommodate such tonnage amount, and neither Party shall have any liability to the other if the Facility can only be permitted to accept a lesser tonnage amount. The CITY agrees to cooperate in obtaining the maximum allowable airspace within the Site under the existing permit or such other permits that may be required; provided however, that CONTRACTOR is responsible for obtaining all such permits (provided however that the foregoing does not limit or reduce the CITY'S obligation to support such permitting or to obtain the permits that the CITY is specifically obligated to obtain hereunder). This Agreement does not allow CONTRACTOR to operate or construct any Landfill beyond the boundaries of the Site. The CONTRACTOR'S operation and construction of any Landfill cells beyond the boundaries of the Site are outside of the scope of this Agreement and shall be subject to procurement in accordance with the CITY's procurement laws, the Jacksonville Ordinance Code pertaining to Landfills, and Florida law. CONTRACTOR shall be responsible for all Closure and Post-Closure costs and obligations with respect to the Facility as provided in Section 2.14.

**Deleted:** The term of this Agreement shall extend until all of CONTRACTOR'S Closure and Post Closure obligations hereunder have been fulfilled.

4.3 Closure. Sixty (60) months prior to the projected date of attainment of full permitted capacity of the Existing Cell and the Expanded Cell, the CONTRACTOR in each case shall notify the CITY in writing of such projected date. Except as otherwise specifically provided in this Agreement, Closure shall be provided for pursuant to Section 2.14 of the Agreement. If requested by the CITY, the CONTRACTOR shall provide all records data, drawings, maps, test reports and similar such information as may reasonably be requested by the

CITY in support of required Closure procedures for each of the Existing Cell and the Expanded Cell.

#### ARTICLE 5. PAYMENTS TO CONTRACTOR

5.1 Rate and Determination of Payment. The CONTRACTOR's payment for receipt of waste shall be determined on the basis of the tonnage of Solid Waste received and accepted at the Facility as recorded by the CITY scale operators' daily records ("Accepted Waste"). The rate to be applied to all acceptable Solid Waste, excluding Special Waste, is ten dollars and twenty-one cents (\$10.21) per ton, and the rates applicable to Special Waste are set forth in **Exhibit D**. All Solid and Special Waste rates are subject to annual adjustment as set forth below.

5.2 Annual Adjustment of Rate. On each October 1<sup>st</sup> beginning October 1, 2009, the then current rate shall be adjusted by a factor which shall be the product of one (unity) and a decimal fraction equal to 0.70 times the preceding twelve-month change in the Consumer Price Index (CPI), said change being expressed as a decimal fraction. The CPI utilized shall be for the most current twelve-month period immediately preceding each annual adjustment date for which published final figures are available. The adjusted rate shall be the product of the then current rate and the modifier and shall be expressed correct to the nearest whole cent (\$0.01).

5.2.1 The Consumer Price Index used herein shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers, South Region All Items, published by the Bureau of Labor Statistics, U.S. Department of Labor, 1982-84 = 100. In the event that the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the said index, the parties shall substitute another equally authoritative measure of change in the purchasing power of the U. S. dollar as may be then available so as to carry out the intent of this Section.

5.3 Changes in Law and Technology. In the event of any Change in Law (as herein defined) or a Change in Technology (as herein defined) which directly and materially increases the CONTRACTOR's then current costs of operating all or a portion of the Facility, upon agreement of the Parties or pursuant to binding arbitration, the CITY shall pay CONTRACTOR for such increased costs to reflect the actual amount of additional costs as a result of any such change. For any such increased costs of landfilling, CONTRACTOR shall be entitled to a profit margin of 15% of such increased costs (a stipulated profit amount for purposes of this subsection only); provided, however, that pyramiding or multiplication of profit margins shall not be allowed.

5.3.1. In the event of any Change in Law or a Change in Technology that would materially decrease the CONTRACTOR's then current costs of operating all or a portion of the Facility, upon agreement of the Parties or pursuant to binding arbitration, and provided that the CITY has first funded all necessary capital costs to cause the full implementation of any such Change in Law or Change in Technology and such implementation has been fully accomplished by CONTRACTOR (which CONTRACTOR shall do in a timely and reasonable manner), the CITY may reduce the per ton payment to CONTRACTOR in Section 5.1. to reflect the actual or agreed upon amount of reduced costs as a result of any such change (or the arbitrated amount of such reduced costs if the Parties cannot agree on the amount). The Parties agree to work together in good faith to determine the amount of such cost savings or cost increase, and to adjust the per ton amount described in Section 5.1 to account for such cost savings or increase.

5.3.2 The Parties shall also work together to reduce the Operating Hours of the Facility notwithstanding anything herein, if it is no longer necessary to keep the Facility open during such hours due to a substantial reduction in Accepted Waste volume. CONTRACTOR shall have the exclusive right to operate any such new technology requested by the CITY and for which the CITY shall provide the capital required to acquire and implement such technology, provided that CONTRACTOR secures the lawful rights to do so. In the event that a Change in Technology or Change in Law results in any substantial reduction in Accepted Waste volume, i.e., a decline below 600,000 tons of Accepted Waste volume in any year excluding therefrom volumes generated during periods of extreme or emergency conditions and their after effects), the Parties shall also work together to address CONTRACTOR'S increased costs per ton if any resulting from such volume decrease, and, if CONTRACTOR requests such relief, then CONTRACTOR shall make its books and records available to CITY for purposes of verifying CONTRACTOR'S normal operating costs and any increased costs resulting from such volume decrease. It is possible that during the lengthy term of this Agreement, a Change in Technology or Change in Law could occur that could make the Facility obsolete or no longer feasible to CITY, or result in a substantial reduction in the amount of waste delivered to the Facility, based on state-of-the-art solid waste processing procedures, methods or technology at the time. In that event, the early termination provisions of Section 7.5 will apply.

5.3.3 If such increased costs consist, in whole or in part, of payments to a subcontractor, all such payments to a subcontractor used in calculating the amount of the adjustment shall be stated as if all costs had been incurred directly by the

CONTRACTOR, provided however that no pyramiding or multiplication of profit margins shall be included in any adjustment of payment provided for in this section.

5.3.4. Either party may notify the other in writing of any Change in Law or Change in Technology which either party believes will require a positive or negative adjustment in the then current per ton payment. If requested to do so by the CITY, the CONTRACTOR shall consider in good faith, but shall not be obligated to ever file, a challenge to any Change in Law at its expense before requesting relief pursuant to this Section. Should CONTRACTOR file such a challenge, upon request of CONTRACTOR, the CITY shall join in such a challenge at its expense. The CONTRACTOR may request a Change in Law increase under this Section while a challenge, if any, is pending. The CITY shall retain the right to file its own challenge to any such Change in Law in addition to or in lieu of any CONTRACTOR's challenge. Except where arbitration of a dispute is undertaken, the CITY has the right to approve all proposed cost increases and the CONTRACTOR shall have the right to approve all cost savings, respectively, for Changes in Law or Changes in Technology. The CITY may at its option retain a consultant to review all Change in Law and Change in Technology requests and, based upon the advice of the consultant, the CITY may grant or deny the request; provided, that if the CITY denies the request, the CITY shall provide a written explanation for the denial to CONTRACTOR, and CONTRACTOR may thereafter request mediation by a mediator mutually agreeable to the parties and under a mutually agreeable mediation procedure. The party proposing the increase or decrease shall submit its justification to the other party. In the event the Parties are unable to agree by the earlier of the date the mediator declares an impasse in the mediation or 120 days from

the date of justification submission, the proposing party may submit the matter to final, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, which rules are incorporated herein by reference, provided, however, that only one arbitrator shall be used unless the Parties agree otherwise and all persons nominated to act as arbitrators of such claim or controversy shall be attorneys licensed by the Florida Bar. All mediations and arbitrations shall be held in CITY offices in Jacksonville, Florida (or such other location as the Parties may mutually agree upon, so long as the CITY is not charged for the use of the facility), and the Parties shall be responsible for the fees and costs of their own attorneys, expert witnesses and consultants. The Parties shall share equally in all other third-party mediation and arbitration costs.

5.3.5. Each Party shall present its formal request for an adjustment pursuant to this Section within a reasonable time. The formal request shall cite the specific Change in Law or Technology upon which the requesting Party relies and shall include full documentation establishing the resulting material increase or decrease in the operating cost(s) for which relief is sought. CONTRACTOR shall provide with each such request cost statements of CONTRACTOR in a form reasonably satisfactory to CITY, showing CONTRACTOR'S costs of Facility operations and costs related to such Change in Law or Change in Technology, in order to demonstrate the requested cost increase. The CITY shall be entitled to audit CONTRACTOR'S cost and operational records necessary to verify the impact of the Change in Law or Change in Technology on CONTRACTOR's operating cost(s) for which relief is sought. If the request and the above information reasonably requested by the CITY is provided in a timely manner, any resulting adjustment shall be retroactive to the date when the CONTRACTOR first requested the

materially increased operating cost(s) after incurring such costs, as a result of the Change in Law or Change in Technology, or when the CITY first requested the cost reduction as a result of any such change that has already impacted the Facility's costs.

5.3.6. In the event that any Change in Law which results in an adjustment of the then current payment pursuant to this Section is subsequently over-ruled, reversed or withdrawn, the CITY shall eliminate or modify the previous adjustment to reflect said subsequent event, effective when the cost(s) may first be eliminated. The CONTRACTOR shall be entitled to retain all sums received as a result of the original adjustment for the period during which the Change in Law or Change in Technology was in force and the CONTRACTOR sustained the documented material increases in operating cost(s) as a result thereof.

5.4 Monthly Payments. For each month of operations, the CITY shall pay the CONTRACTOR for the actual amount of Solid Waste and Special Waste delivered to the Facility during the previous month.

5.4.1 Monthly payments as provided for by this Section shall be delivered or mailed to the CONTRACTOR within fifteen (15) calendar days after the completion of each month of operations unless a scale or computer malfunction occurs and prevents timely payment, in which case such fifteen (15) day period will be automatically extended to twenty-one (21) calendar days. Each monthly payment shall be accompanied by a copy of the CITY's reasonably adequate calculations by which the amount of that payment was determined.

5.5 Airspace Consumption Guarantee. The CONTRACTOR shall guarantee the rate of airspace consumption during the term of this Agreement. For each 1,000 tons of incoming waste, the CONTRACTOR shall guarantee the volume of airspace that will be consumed.

Airspace consumption will include all in place daily, intermediate, and alternative cover material plus solid waste. CONTRACTOR guarantees a maximum of 1481 cubic yards of airspace consumed per 1,000 tons of incoming solid waste. The airspace guarantee will be calculated, compliance determined, and liquidated damages assessed, if any, at the end of each Operating Year, all subject to the following.

5.5.1 The CONTRACTOR shall measure the amount of airspace consumed each Operating Year, using aerial topography, to determine consumption. The CONTRACTOR shall submit written documentation to the CITY, prior to performance of the aerial survey, identifying all stockpiles and temporary roads and other relevant circumstances such as stored intermediate cover within the footprint of the Facility. These materials, if properly documented, will not be counted as airspace consumed. In addition to the annual measurements, prior to the acceptance and placement of solid waste in any new disposal area, the CONTRACTOR shall document elevations of the new disposal area using aerial topography. During any Operating Year in which solid waste is placed as an initial layer in the bottom of a new cell, the quantity of waste placed and airspace consumed shall be removed from the calculation of air space consumed for purpose of measuring liquidated damages. During the next Operating Year, both the quantity of waste removed and air space consumed from the prior calculation will be added back to the air space consumed calculation for the purpose of determining liquidated damages. The calculation of air space consumed for compliance with the air space guarantee shall be made annually.

5.5.2 The CONTRACTOR shall provide at its expense aerial topography measurements to the CITY at the end of each Operating Year, with survey and computations performed, signed and sealed by a land surveyor or professional engineer licensed in the State of Florida in a form reasonably satisfactory to CITY. Where CONTRACTOR is not averaging 1481 or less cubic

yards of airspace per 1,000 tons of incoming waste over the life of the Facility's operation, then the CONTRACTOR has consumed more airspace than guaranteed, and CONTRACTOR shall pay liquidated damages as provided herein. The liquidated damages shall be calculated by determining the cubic yards of air space that were consumed in excess of the guarantee, multiplied times \$1.00 per cubic yard, which amount shall be subject to the annual CPI adjustment after the Effective Date as described in Section 5.2. Where the CITY's right to liquidated damages has been established, CONTRACTOR shall have one (1) year to return to an average of 1481 or less cubic yards of airspace per 1,000 tons of incoming waste over the life of the Facility's operation and, where the same is accomplished, no liquidated damages shall be due and owing. The amount of liquidated damages, if any, shall be deducted from payments due to CONTRACTOR under this Agreement.

5.6 All funds to be paid by CITY to CONTRACTOR under this Agreement will be appropriated in ordinances separate from the ordinance specifically approving this Agreement, and the notwithstanding anything herein, CITY'S payment obligations hereunder are subject to the lawful appropriation of funds. This Agreement contemplates a significant expenditure of a presently unknown amount on the permitting and construction of the Expanded Cell. Such permitting and construction will be competitively bid as described in Section 2.1 and 2.13 at such time as is appropriate for completing construction of the Expanded Cell before the Closing of the Existing Cell. The funds for the construction costs of the Expanded Cell will be appropriated in a separate ordinance after such costs are determined and the CITY'S obligation to fund such construction costs are subject to the lawful appropriation of funds.

#### ARTICLE 6. INDEMNIFICATION, INSURANCE AND AGREEMENT SECURITY

6.1 General Indemnification. The CONTRACTOR shall hold harmless, indemnify

and defend the CITY, its officers, employees, representatives and agents, from and against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, including any and all costs resulting from environmental contamination, arising out of any negligent act or omission of the CONTRACTOR in the operation of the Facility or breach of its obligations under this Agreement, except for occurrences caused by or arising out of the negligent acts or omissions or willful misconduct of CITY, its officers, employees or agents. In the event of joint negligence on the part of the CITY and the CONTRACTOR, any loss shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act. Nothing herein shall be interpreted as waiving, limiting or abrogating the CITY'S right of sovereign immunity under Section 768.28, Florida Statutes, or any successor sovereign immunity statute or laws.

6.2 Environmental Indemnification. Additionally, CONTRACTOR shall indemnify, defend and hold harmless the CITY and its officers, directors, employees and agents from and against any liability, claims, actions, judgments, injuries, losses, damages, costs and expenses (including, but not limited to, attorneys' fees and court costs) charged, claimed or threatened by any third party or governmental agency arising from, related to, or based upon, an actual or threatened release, dispersal, discharge, disposal, escape or saturation of any hazardous substance into the environment, whether sudden, gradual or otherwise, resulting from or relating to any negligent act or omission of CONTRACTOR or its breach of its obligations under this Agreement; and also arising from the operation of or violation of any applicable environmental law, as it relates to operation of the Facility or otherwise to CONTRACTOR's responsibilities

and performance under this Agreement. In the event of joint negligence on the part of the CITY and the CONTRACTOR, any loss shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act. Nothing herein shall be interpreted as waiving, limiting or abrogating the CITY'S right of sovereign immunity under Section 768.28, Florida Statutes, or any successor sovereign immunity statute or laws.

6.2.1 For purposes of this Agreement, "hazardous substance" means those substances, elements, materials or compounds that are included in any list of hazardous or restricted substances adopted by the United States Environmental Protection Agency (the "EPA") and also means any other substances, element, material or compound defined or restricted as a hazardous, toxic, radioactive or dangerous substances, material or waste by the EPA or by any other ordinance, statute, law, code, or regulation of any federal, state or local governmental entity or agency, whether now or later enacted, issued or promulgated; and also means those materials and substances regulated under any environmental laws, including all current and future federal, state and local laws, rule and regulations, and all amendments thereto, regulating, in any manner, the generation, handling and/or disposal of any hazardous substance including, but not limited to: (1) Comprehensive Environmental Response, Compensation, and Liability Act 1980, as amended by the Superfund Amendments and Reauthorization of 1986, 42 U.S.C. §9601 *et seq.*; (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 *et seq.*; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. §1251 *et seq.*; (4) Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §2601 *et seq.*; (5) Emergency Planning and Community Right-to-Know Act

of 1986, 42 U.S.C. §1101 *et seq.*; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §7401 *et seq.*; (7) Endangered Species Act of 1973, as amended, 16U.S.C. §1531 *et seq.*; (8) Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §651 *et seq.*; (9) Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) *et seq.* Chapter 376, Florida Statutes; Chapter 403, Florida Statutes; Section 62, Florida Administrative Code; Rules 2, 3 and 7, Jacksonville Environmental Protection Board Rules.

6.3 Patent and Copyright Indemnity. The CONTRACTOR shall obtain any licenses or other authorizations that may be necessary to lawfully use any process, materials or services that are subject to patent, copyright, trademark, trade secret, or other intellectual property restriction or laws. The CONTRACTOR shall indemnify and defend the CITY, its officers, employees, representatives and agents, from and against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind of nature (including, but not by way of limitation, attorney's fees and court costs) arising out of infringement of any patent, copyrighted or uncopyrighted work, secret process, trade secret, unpatented invention, article, appliance, or otherwise.

6.4 At its option, the CITY shall have the right to actively participate in the defense of any action in which damages are sought from the CITY but in such event CITY shall bear its defense costs, including attorneys' fees, pertaining to such participation, it being understood that CONTRACTOR shall still be responsible for all other defense costs. The CONTRACTOR shall indemnify the CITY for any reasonable costs incurred that are in excess of all of the CITY'S costs per ton hereunder, including but not limited to, CITY capital cost obligations, additional transportation costs and the fees for disposal provided for herein (as adjusted from time to time) incurred by the CITY in providing alternative means of Solid Waste disposal in the event that

any negligent act or omission of the CONTRACTOR is the cause of an administrative order, court order or injunction requiring permanent cessation or temporary interruption of use of available disposal capacity at the Facility. CITY agrees to support CONTRACTOR (at no out of pocket cost to CITY) in opposing any requested administrative order, court order or injunction that may require permanent cessation or temporary interruption of use of available disposal capacity at the Facility. The CONTRACTOR'S said obligation to indemnify the CITY for the excess cost of alternative means of Solid Waste disposal shall not exceed the then available constructed disposal capacity at the Facility that could not be used based upon such interruption of use. The CONTRACTOR shall have the right at its option to make other arrangements for the legal disposal at a site other than the Site of the amounts of solid waste provided for herein in lieu of making the payments otherwise required by this Paragraph, and the CITY shall cooperate with CONTRACTOR to minimize the costs of such alternative arrangements. The indemnities provided in this Agreement pertain to the Facility and shall survive the termination of this Agreement.

6.5 Insurance. Without limiting the liability under this Agreement, the CONTRACTOR shall procure and maintain at its sole expense during the life of the Agreement, Insurance of the types and in the minimum amounts stated below:

SCHEDULE	LIMITS
Workers Compensation	Florida Statutory Coverage
Employer's Liability	\$100,000 Each Accident
(including appropriate Federal Acts)	\$500,000 Disease Policy Limit
	\$100,000 Each Employee/Disease
Commercial General Liability	\$2,000,000 General Aggregate

(including premises operations,	\$2,000,000 Products/Comp.OpsAgg.
and blanket contractual liability)	\$1,000,000 Personal/Advertising Injury
	\$1,000,000 Each Occurrence
	\$50,000 Fire Damage

(The City of Jacksonville shall be named as an additional insured under all of the above Commercial General Liability coverage)

Automobile Liability	\$1,000,000 Combined Single Limit
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(all automobiles-owned, hired or non-owned)

Pollution Liability	\$20,000,000 Per Incident and
	\$20,000,000 Aggregate Limit

(Pollution Liability policy must include prior acts with a retroactive date equal to at least the first date of the original agreement dated June 26, 1991 and be kept in full force and effect until the termination of this agreement. A minimum extended reporting period of not less than four (4) years may be met through continuous renewals of coverage. The City of Jacksonville shall be named as an additional insured under the pollution liability coverage. Said insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the CITY. Such Insurance shall be written by an insurer with an A.M. Best Rating of A X or better. Certificates of Insurance approved by the CITY's Division of Insurance & Risk Management demonstrating the maintenance of said insurance shall be furnished to the CITY. The certificates shall provide that no material alteration or cancellation, including expiration and non-renewal shall be effective until thirty (30) days after receipt of written

notice by the CITY. Anything to the contrary notwithstanding, the liabilities of the CONTRACTOR under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement. The foregoing insurance amounts shall be subject to adjustment on each tenth (10<sup>th</sup>) year anniversary of this Agreement's Effective Date based upon the CPI adjustment described in Section 5.2 unless the parties agree otherwise in writing.

6.6 Agreement Security - The CONTRACTOR shall obtain and maintain throughout the term of this Agreement at its expense for the term of this Agreement both a Performance Bond and a Payment Bond as described below. Each Bond shall be written by a surety licensed in the State of Florida and acceptable to the CITY. The form of each Bond shall be subject to approval by the CITY and shall be reasonably acceptable to CITY based upon other CITY contracts for similar sized projects. Unless otherwise agreed by CITY, the surety shall be chosen from a list of sureties approved by the federal government for federal government projects (pursuant to the Department of Treasury's most recent edition of its "Circular 570", or any subsequent list of approved sureties for federal projects as published by the Department of Treasury or other applicable federal agency), and the form of the bond may in the CITY'S discretion be in a federally-approved form. The amount of the bonds shall be as follows:

6.6.1 Performance Bond - One hundred percent (100%) of the projected annual payment to the CONTRACTOR under this Agreement, computed based on the total actual tons of Accepted Waste received at the Facility during the previous calendar year and tonnage fees then currently in effect as updated annually.

6.6.2 Closure and Post Closure Performance Bond and Financial Assurance – One hundred percent (100%) of the estimated Closure and Post-Closure costs for the Facility as determined by the annual third-party engineer’s estimate of Closure and Post Closure costs as described in Section 7.5.1.3 or as otherwise agreed by the Parties. The amount of each Bond shall be adjusted annually to reflect the changes in such costs as shown in the latest annual third-party engineer’s estimate, and such adjustment shall occur within 30 days after the date of the engineer’s estimate.

6.6.3 Payment Bond – Twenty-five percent (25%) of the amount of the projected annual payment to the CONTRACTOR under this Agreement for any construction services to be provided by or managed by CONTRACTOR under the terms of Section 2.1 and 2.13 above, unless such payment bond is provided by each contractor actually performing the construction work and the CITY is named as an insured beneficiary/obligee of each such bond, and as otherwise required by Florida law.

6.6.4. CONTRACTOR or its contractors shall also comply with any additional bonding requirements under applicable permits and/or Florida law that pertain to the construction of public facilities or operation of the Facility provided that the cost of the construction bonds will be included in the construction bids.

ARTICLE 7. DEFAULT; TERMINATION; CONTINUED OPERATION DURING DISPUTES; RELEASE OF CERTAIN PRIOR OBLIGATIONS

7.1 Default and Termination for Cause. Except as otherwise provided herein, if either party breaches this agreement or defaults in the performance of any of the covenants or conditions contained herein and such default or breach continues for thirty (30) days after the other party has given the party breaching or defaulting written notice of such breach or default,

the other party may; (a) terminate this Agreement after the expiration of any applicable cure period; (b) cure the breach or default at the expense of the breaching or defaulting party; and/or (c) have recourse to any other right or remedy to which it may be entitled by law or equity; provided however that notwithstanding anything herein, in the event of any default by CITY that is not cured within the applicable cure periods herein, CONTRACTOR'S damages shall not under any circumstances exceed (but may be less than) the CONTRACTOR'S damages as determined in accordance with the termination provisions of Section 7.5. A material default by CONTRACTOR under any other agreement with CITY that remains uncured after the expiration of any applicable cure period shall also constitute a default under this Agreement unless such default cannot reasonably be cured within such time period and CONTRACTOR exercises continuous diligent efforts to cure such default. If CITY fails to lawfully appropriate the sums that the CITY is obligated to pay to CONTRACTOR hereunder, such failure shall constitute a default by CITY hereunder, provided however that CITY'S obligation to pay any damages hereunder is subject to the lawful appropriation of funds.

7.1.1 In the event that in the exercise of due diligence during the aforesaid thirty (30) day period a cure cannot reasonably be effected, such thirty (30) day period shall be extended to include such additional time as is reasonably necessary to effect cure provided the defaulting party exercises continuous diligent efforts to cure such default during such extended cure period.

7.1.2 In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

7.2 Repeated Defaults. In the event that the CONTRACTOR'S record of performance shows that the CONTRACTOR has frequently, regularly or repetitively defaulted in

the performance of any of the material covenants and conditions required herein to be kept and performed by the CONTRACTOR and regardless of whether CONTRACTOR has timely corrected each individual condition of default, the CONTRACTOR may be deemed a “habitual violator” and all of said defaults may be considered collectively to constitute a condition of default. The CITY may thereupon issue the CONTRACTOR a final warning citing the circumstances therefor, and any single material default by the CONTRACTOR within one year after said warning shall be grounds for termination of the Agreement. In the event of any such single subsequent default within one year, the CITY may terminate this Agreement upon the giving of written final notice to the CONTRACTOR.

7.3 Interim Operations after Termination; Continued Operations during Disputes. In the event that this Agreement is terminated pursuant to either Section 7.1, 7.2, 7.5 or 7.6, the CONTRACTOR shall continue operations for an interim period of up to one hundred twenty (120) calendar days if requested to do so by the CITY in order to allow the CITY to obtain the services of a successor contractor or to otherwise make arrangements to undertake operation of the Facility. The CONTRACTOR shall be paid for its services during said interim period at the rates and factors set forth in the last payment schedule in effect prior to issuance of written final notice of termination. Any termination of this Agreement shall not affect CONTRACTOR’S Closure and Post Closure responsibilities hereunder accrued as of the termination date, except as provided in Section 7.5. Additionally, CONTRACTOR agrees to continue all work and operations hereunder during any disputes or disagreements with CITY subject to timely and complete payment of amounts owed by CITY hereunder. No work or operations shall be delayed or postponed pending resolution of any disputes or disagreements, except as the CONTRACTOR and CITY may otherwise agree in writing.

7.4 Assignment of Permits and Provision of Records. If the CITY has terminated this Agreement consistent with the terms hereof, the CONTRACTOR shall assign all permits to the CITY and/or shall cooperate with the CITY in having such permits reissued in the CITY's name if requested to do so by the CITY, and CONTRACTOR shall thereafter be released from any and all obligations of complying with such permits provided that CONTRACTOR will not be released from any liabilities related to the negligent acts or omissions of CONTRACTOR, its employees, agents, representatives and subcontractors. Additionally and notwithstanding the foregoing, if such termination with or without cause by CITY occurs after the date that CONTRACTOR has received a cumulative total of 37 million tons of Accepted Waste at the Facility since the Effective Date, then CONTRACTOR shall continue to hold all permits related to Closure and Post Closure of the Facility and shall continue to remain responsible for all such Closure and Post Closure of the Facility, under the terms and conditions more specifically described in Section 7.5.1.5, as if such termination had not occurred, but only with respect to all Solid Waste received by CONTRACTOR at the Facility. Said permits shall include the Certificate of Public Convenience and Necessity issued pursuant to Chapter 380, Jacksonville Ordinance Code, and all other permits applicable to the Facility and/or Site. Upon such request, the CONTRACTOR shall also promptly turn over to the CITY a copy of all of CONTRACTOR's records and documents, including electronic records and documents, relating to disposal services performed under this Agreement and relating to maintenance of the Landfill and repairs, improvements and other construction at the Facility, and relating to all permitting and other licenses and documents required to operate the Facility. This requirement does not include business confidential or other proprietary documents of CONTRACTOR that do not pertain to the operation or construction or permitting of the Facility, including but not limited to,

financial information and other documents that do not pertain to the operation or construction or permitting of the Facility. All permitting, design, and construction documents paid for by the CITY are the property of the CITY, and CONTRACTOR shall, upon request by the CITY at any time during or after the term of this Agreement, promptly provide to the CITY a single copy in electronic and hard copy of all such documents.

7.5 Early Termination.

7.5.1 Liquidated Damages upon Early Termination without Cause. CONTRACTOR has agreed to enter into this Agreement in consideration for the right to operate the Facility for the “life of the Site” and the expected delivery of approximately 42 million tons of Accepted Waste at the Facility after the Effective Date according to CONTRACTOR’S estimates (and without any representation or warranty by either Party as to such tonnage capacity amount). By entering into this Agreement, CONTRACTOR has agreed to reduce its per ton charge for Accepted Waste under the Initial Operation Agreement by an average of \$2.00 per ton for the life of the Existing Cell. With remaining tonnage capacity at the Existing Cell of approximately 7.6 million tons, CONTRACTOR therefore asserts that it is giving up the right to receive approximately \$15.2 million in revenues that it would have received under the Initial Operation Agreement. The actual or agreed upon amount of such lost revenues pertaining to the Existing Cell and the Initial Operation Agreement shall be based on the actual number of tons of Accepted Waste received after the Effective Date in the Existing Cell by CONTRACTOR up to 8.5 million tons, multiplied by \$2.00 per ton, and shall not in any event exceed \$17,000,000 (the “Existing Cell Lost Revenues”). CONTRACTOR’S asserted right to the Existing Cell Lost Revenues upon termination by the CITY assumes

that the CITY must continue to direct the flow of all Solid Waste to the Facility, which CITY asserts that it is not obligated to do under the Initial Operation Agreement after the payoff of the excess land costs (as described in Section 7.7. and in the Initial Operation Agreement), which will occur in approximately two years after the Effective Date, a position which is disputed by CONTRACTOR. CONTRACTOR has also agreed herein to assume all of the costs of Closure and Post Closure for the Existing Cell under applicable permits and laws, beginning on or after the Effective Date (“Existing Cell Closure Costs”) for which it was not responsible under the Initial Operation Agreement, and CONTRACTOR has also agreed to assume all of the costs of Closure and Post Closure of the Expanded Cell under applicable permits and laws (“Expanded Cell Closure Costs”). The specific amount of the Existing Cell Closure Costs and Expanded Cell Closure Costs are undetermined at this time. While the CITY disagrees with the CONTRACTOR’S asserted right to the Existing Cell Lost Revenues, in consideration for mutual promises herein, the Parties agree that in the event of any termination of this Agreement without cause by CITY prior to the delivery of 42 million tons to the Facility, CONTRACTOR shall be entitled to receive as liquidated damages in lieu of all other damages, the following:

7.5.1.1 If such termination occurs before the date that (i) the Existing Cell is full, i.e., it no longer has any capacity to accept Solid Waste under applicable permits, or (ii) 8.5 million tons of Accepted Waste have been received by CONTRACTOR for the Existing Cell from and after the Effective Date, whichever date is earlier, then CONTRACTOR shall be entitled to the agreed upon relief described in this Section 7.5.1.1. Such relief shall consist of the

following damages: (a) liquidated damages in the amount of the Existing Cell Lost Revenues, adjusted by the CPI as described in Section 5.2 but using the full CPI (not .70 of CPI as described in Section 5.2) subject to a simple interest cap of 6% per annum, (b) reimbursement of all Closure and Post-Closure costs incurred by CONTRACTOR in connection with the Existing Cell, and (c) a release from any and all obligations related to Closure or Post Closure and other liabilities and indemnification obligations, except that CONTRACTOR will not be released from any liabilities related to the negligent acts or omissions of CONTRACTOR, its employees, agents, representatives and subcontractors. CONTRACTOR shall be entitled to retain any accrued Closure or Post Closure funds for the Existing Cell.

7.5.1.2 If such termination occurs after the earlier of the dates described in above Section 7.5.1.1, then CONTRACTOR shall be entitled to liquidated damages in lieu of all other damages as follows, subject to certain CITY offsets against such damages as described below:

7.5.1.2.1 CONTRACTOR shall be entitled to liquidated damages for the total amount expended by CONTRACTOR for the Existing Cell Closure Costs from and after the Effective Date to the termination date, prorated based on the number of tons actually received from and after the Effective Date to the date of termination, as compared to 37 million tons. Such costs will be adjusted by the annual CPI adjustment as described in Section 5.2 retroactively beginning from the first year CONTRACTOR expends such costs after the Effective Date until the date of termination.

Thus the prorated amount of the Existing Cell Closure Costs will be based on the formula:

$$[(A-B)/A] \times C$$

where A = 37 million, B = the actual tonnage received since the Effective Date, and C = the actual amount of the Existing Cell Closure Costs (to be determined after such costs are incurred up to the termination date). For example, if CONTRACTOR receives 20 million tons of Accepted Waste from and after the Effective Date, and assuming that the amount of the Existing Cell Closure Costs is \$35,000,000, then the prorated amount of the Existing Cell Closure Costs would be  $(37-20)/37 \times 35,000,000 = \$16,081,079$ . As an additional example, if the CONTRACTOR has received 37 million tons of Accepted Waste at the Facility, then the damages under this Section 7.5.1.2.1 would be zero.

7.5.1.2.2 CONTRACTOR shall also be entitled to liquidated damages for the amount expended by CONTRACTOR for the Expanded Cell Closure Costs from and after the Effective Date to the termination date, adjusted by the annual CPI adjustment as described in Section 5.2 retroactively beginning from the first year when CONTRACTOR expends such costs after the Effective Date until the date of termination, prorated based on the number of tons actually received from and after the Effective Date to the date of termination, as compared to 37 million tons. The prorated amount of the Expanded Cell Closure Costs will be calculated pursuant to the same formula set forth above in Section 7.5.1.2.1, except

that “C” in the formula represents the Expanded Cell Closure Costs. CITY shall be entitled to receive and review copies of CONTRACTOR’S books and records pertaining to such Expanded Cell Closure and Post-Closure costs expended by CONTRACTOR for purposes of verifying such expenditures. CONTRACTOR shall transfer to CITY the Closure and Post Closure costs accrual amount that has been reasonably accrued or escrowed by CONTRACTOR to cover the then remaining costs of Closure and Post Closure of the Expanded Cell, which cost amount will be updated at least annually by a third party engineer and shall be reported to the CITY annually (as more specifically described below, the “Expanded Cell Closure Accrual”). CONTRACTOR shall transfer the amount of the Expanded Cell Closure Accrual in immediately available funds to the CITY after termination and within 30 days of the transfer of the Closure and Post Closure permits to the CITY and CITY’S posting of adequate financial assurance as may be required by the Department at the time to cover the future Closure and Post-Closure costs for the Expanded Cell that the CITY is assuming, and CONTRACTOR shall be released from such Closure and Post-Closure liability as more specifically provided in this Section 7.5.

7.5.1.2.3 CONTRACTOR shall also be entitled to liquidated damages for a prorated amount of the Existing Cell Lost Revenues, which shall be based on the number of tons of Accepted Waste received by CONTRACTOR from the Effective Date until the date that

CONTRACTOR stops receiving Accepted Waste at the Facility, as compared to 42 million tons of Accepted Waste. Thus, the prorated amount of the Existing Cell Lost Revenues is based on the following formula:

$$[(A-B)/A] \times C$$

where A = 42 million, B = the actual tonnage received, and C = the Existing Cell Lost Revenues. For example, if CONTRACTOR receives 20 million tons of Accepted Waste from and after the Effective Date, and assuming that the amount of the Existing Cell Lost Revenues is \$15,200,000 based on the actual delivery of 7.6 million tons to the Existing Facility after the Effective Date, then the prorated amount of the Existing Cell Lost Revenues would be  $(42-20)/42 \times 15,200,000 = \$7,961,904$ . Additionally, CONTRACTOR shall be entitled to the annual CPI adjustment described in Section 7.5.1.1 on the Existing Cell Lost Revenues, calculated retroactively on an annual basis from and after the Effective Date until the termination date based on the actual tonnage received at the Existing Facility each year. As an additional example, if the CONTRACTOR has received 42 million tons of Accepted Waste at the Facility, then the damages under this Section 7.5.1.2.3 would be zero.

7.5.1.3 The Expanded Cell Closure Accrual shall be based on CONTRACTOR'S reasonable amount accrued or escrowed for the costs of Closure and Post Closure of the Expanded Cell for purposes of fully covering the payment of such costs as they become payable in the future, using Generally

Accepted Accounting Principals (“GAAP”) for the accrual of future payment obligations, and based on a third-party landfill engineer’s estimate of such costs, which estimate will be updated and reported to the CITY annually as provided in Section 2.11, based on the actual tonnage of Accepted Waste received in the Expanded Cell as of the date of the annual estimate of the engineer. CONTRACTOR shall upon request provide a copy to CITY of CONTRACTOR’S other estimates for such Closure and Post Closure costs and such other Closure and Post-Closure documents as may be reasonably requested by CITY from time to time for purposes of verifying such costs and the reasonableness of the amounts being accrued or escrowed. If the Parties cannot agree on a reasonable amount for the Expanded Cell Closure Accrual, then either Party may submit the matter to mediation first and then to arbitration if the matter cannot be resolved in mediation within a reasonable time period.

7.5.1.4 In the event of any such early termination by CITY, then CONTRACTOR shall have no further obligation for Closure or Post-Closure costs in connection with the Facility except for the disbursement of the cumulative Expanded Cell Closure Accrual amount to CITY in immediately available funds as described above and except as otherwise provided herein (including without limitation continuing indemnity obligations described below), and upon such payment CITY shall release CONTRACTOR from any and all obligations related to Closure or Post Closure, except that CONTRACTOR will not be released from any liabilities related to the negligent acts or omissions of CONTRACTOR, its employees, agents, representatives and subcontractors.

7.5.1.5 Notwithstanding the foregoing, inasmuch as CONTRACTOR will be deemed to have recouped all of its Existing Cell Closure Costs and Expanded Cell Closure Costs upon the receipt of 37 million tons of Accepted Waste at the Facility after the Effective Date, if the CITY terminates anytime after the date that such tonnage is received by CONTRACTOR, then (i) CONTRACTOR shall continue to remain responsible for all Closure and Post Closure of the Existing Cell and Expanded Cell in the same manner as if the CITY had not terminated this Agreement, but only with respect to Solid Waste received by CONTRACTOR at the Facility and provided that there is no continuing operation by CITY or another party of the specific portion of the Facility operated by CONTRACTOR at that time; and (ii) CITY shall have no liability to CONTRACTOR for the reimbursement of any Closure or Post-Closure costs pertaining to the Facility and CITY shall not be entitled to receive the Expanded Cell Closure Accrual amount. Notwithstanding the foregoing, the CITY in such event shall be entitled to operate any portion of the Facility that it chooses, but in so doing the CITY shall assume all future Closure and Post Closure liability with respect to the portion of the Facility that the CITY chooses to operate (either by itself or through a third party).

7.5.2 Notwithstanding the foregoing, each Party's liability hereunder for environmental matters related to any of its negligent acts or omissions (or those of its officers, employees, agents, representatives or subcontractors) and all of each Party's indemnity obligations hereunder shall survive any termination of this Agreement.

7.5.3 In the event of any termination by CITY without cause, CONTRACTOR shall have the purchase option described on Exhibit F in lieu of all other rights or remedies pertaining to termination under this Agreement. Additionally, prior to any termination under this Section 7.5 after which the CITY intends to continue to operate the Facility (either with its own employees or a third party), CITY shall first negotiate with CONTRACTOR to resolve any differences between the Parties including without limitation with respect to the amount of the per ton rate described in Article 5. If the Parties cannot agree within 60 days after notice by the CITY of its intent to terminate without cause, then CITY shall be entitled to terminate subject to the termination provisions herein.

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7.6 Notwithstanding the foregoing, CONTRACTOR shall immediately and automatically be in default, and the CITY shall not be required to give CONTRACTOR any notice or opportunity to cure such default (and thus the CITY shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

7.6.1 The entry of a decree or order by a court having jurisdiction in the premises adjudging the CONTRACTOR or any guarantor (“Guarantor”) of CONTRACTOR’s financial or performance obligations hereunder or under any related documents executed in connection herewith, a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the CONTRACTOR or Guarantor under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the CONTRACTOR or Guarantor or of any substantial part of its property, or

ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; and

7.6.2 The institution by CONTRACTOR or Guarantor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the CONTRACTOR or Guarantor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

7.7 Excess Land Costs and Other Obligations. Upon execution of this Agreement, any claim or right of CONTRACTOR to any and all excess land costs reflected in any of the prior agreements between the Parties are irrevocably and permanently released and forgiven. Likewise, any existing claim of the CITY as of the Effective Date in connection with CONTRACTOR'S (or any affiliate of CONTRACTOR'S) residential collection services performed for the CITY are unconditionally released.

#### ARTICLE 8. GENERAL CONDITIONS

8.1 Notices. Notices of conditions or situations affecting the work to be performed under this Agreement shall be given in writing between designated operating personnel of the CONTRACTOR and the CITY. All other notices shall be given in writing, via certified mail return receipt requested, to the parties at their respective addresses as set forth below, and shall be effective upon receipt:

If to CONTRACTOR, at:

Trail Ridge Landfill, Inc.  
c/o Waste Management  
2700 N.W. 48<sup>th</sup> Street  
Pompano Beach, Florida 33063

With copy to:

Group General Counsel  
1000 Parkwood Cr., Ste 700  
Atlanta, GA 30339

If to CITY, at:

Director of Public Works  
Ed Ball Building  
214 North Hogan  
Jacksonville, Florida 32202

With copy to:

General Counsel  
Office of General Counsel  
City Hall, St. James Building  
117 West Duval Street, Suite 480  
Jacksonville, FL 32202

8.2 Force Majeure. Neither party shall be liable for its failure to perform hereunder if its performance is rendered impossible by any act, event or condition beyond its reasonable control which by the exercise of due diligence it shall be unable to overcome. Such act, events or conditions shall include, but not be limited to, the following:

- (a) strike, work stoppage or slowdown;
- (b) acts of God (except normal weather conditions for the Jacksonville, Florida area), hurricane, tornado, lightning, or earthquake;
- (c) acts of war, civil insurrection or terrorism;
- (d) fire or flood not caused by the party unable to perform; or

(e) failure to issue or to renew any permit or to obtain other regulatory approval essential to the operation of the facility if said failure to issue or renew is not due to improper or dilatory conduct or to any negligent act or omission or willful misconduct on the part of the party unable to perform.

8.3 Assignment. This Agreement is assignable only upon the written consent of the other party and subject to such consent, shall be binding upon, and inure to the benefit of, the assignor's successors and assigns.

8.4 Amendment. This Agreement may be amended only by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

8.5 Governing Law and Venue. This Agreement shall be interpreted and enforced pursuant to Florida law. Any action to interpret and/or enforce this Agreement shall be brought and maintained in either the Circuit Court, Fourth Judicial Circuit in and for Duval County, Florida, or the United States District Court, Middle District of Florida, Jacksonville Division.

8.6 Order of Precedence. In the event of any conflict between the provisions of this Agreement and those of the Exhibits attached hereto, the provisions of this Agreement shall govern. Notwithstanding the foregoing, the order of precedence of documents shall be this Agreement, including Exhibits attached, the adopting ordinance for this Agreement, and all authorized, properly approved change orders.

8.7 Construction. Both parties acknowledge that they have had meaningful input into the terms and conditions contained in the Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

8.8 Savings Clause. In the event that one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not, absent a material adverse impact on a party hereto, affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. In the event that one or more of the provisions contained in this Agreement are found to be unenforceable and that determination has an adverse material impact on a party hereto, the Parties shall meet and attempt to effectuate a remedy in response so that the Parties appropriately share the benefits/burdens of such determination.

8.9 Authority. The CITY represents and warrants that it has the power and authority to enter into this Agreement, that all necessary ordinances, resolutions and other approvals have been duly enacted or obtained, and that upon execution hereof by the CITY and approval by the City Council, this Agreement shall become a valid and binding obligation of the CITY. The CONTRACTOR represents and warrants that the individual executing this Agreement on behalf of CONTRACTOR has the lawful power and authority to do so, that all necessary corporate action and other approvals have been duly obtained to authorize such execution, and that upon execution hereof by such individual on behalf of the CONTRACTOR, this Agreement shall become a valid and binding obligation of the CONTRACTOR enforceable in accordance with its terms.

8.10 Performance Guarantee. In the event the Trail Ridge Landfill, Inc. fails to fulfill any of the responsibilities of the CONTRACTOR set forth herein within the time limits specified or, if no time limit is specified, within a reasonable time or upon written request of CITY, then CONTRACTOR'S affiliate Waste Management Inc. of Florida shall without any notice from

CITY fulfill said responsibilities and thereafter shall be treated as the “CONTRACTOR” hereunder for all purposes and shall be obligated in the same manner as CONTRACTOR for all of CONTRACTOR’S obligations hereunder, as more specifically set forth in the form of Guarantee of Waste Management Inc. of Florida attached as part of composite Exhibit G.

8.11 Financial Guarantee. In the event Waste Management Inc. of Florida fails to fulfill the obligations of CONTRACTOR under this Agreement, within the time limits specified or, if no time limit is specified, within a reasonable time or upon written request by CITY, Waste Management, Inc. shall provide the financial support and financial resources necessary to allow Trial Ridge Landfill, Inc. and/or Waste Management Inc. of Florida to fulfill their respective responsibilities and/or to pay to CITY the damages the CITY may be entitled to as a result of their failure to perform their responsibilities as set forth in this Agreement, all pursuant to and consistent with the terms of the Guarantee of Waste Management Inc. in the form attached as Exhibit G, which is being executed simultaneously herewith. Upon any default by CONTRACTOR under this Agreement, CITY will not be required to exercise any of its rights under Sections 8.10 or 8.11 before pursuing any of its available rights and remedies under the terms and conditions of Article 7, including without limitation termination of the Agreement.

8.12 No third party beneficiaries. This Agreement is solely for the benefit of and shall be binding upon the CITY and the CONTRACTOR, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party.

8.13 Timely Performance. Where either party has been requested to take action or provide consent pursuant to this Agreement, such party shall act in timely and consider such request in good faith and shall not unreasonably deny any request.

- Deleted: . CITY shall be required to exercise its rights under this Section 8.10 and under Section 8.11 before pursuing any performance or payment bond provided for in this Agreement, provided that Waste Management Inc. of Florida or Waste Management, Inc., as applicable, timely responds to a written request from CITY for either or both of them to perform the obligations of CONTRACTOR hereunder, as more specifically set forth in the performance guaranty attached as part of composite Exhibit H, and further provided that Waste Management Inc. of Florida and Waste Management, Inc. shall be responsible for any costs or damages of CITY incurred as a result of the foregoing obligation of CITY to request such entities to perform CONTRACTOR’S obligations hereunder in lieu of first pursuing the payment or performance bonds described herein.
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8.14 Attorneys' Fees and Costs. In the event any arbitration proceeding or legal action is undertaken by a party hereto, each party shall be responsible for its own attorneys' fees and costs.

8.15 Non-Liability of CITY. No member, official or employee of CITY shall be personally liable to CONTRACTOR or to any person with whom CONTRACTOR shall have entered into any contract, or to any other person in the event of any default or breach of CITY, or for any amount which may become due to CONTRACTOR or any other person under the terms of this Agreement.

8.16 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

8.17 Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.18 Independent Contractor. In the performance of this Agreement, CONTRACTOR will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of CITY. CONTRACTOR and its employees or agents or contractors shall be solely responsible for the means method, technique, sequences and procedures utilized by CONTRACTOR in the performance of this Agreement except as

otherwise provided herein.

8.19 Exemption of CITY. Neither this Agreement nor the obligations imposed upon CITY hereunder shall be or constitute an indebtedness of CITY within the meaning of any constitutional, statutory or charter provisions requiring CITY to levy ad valorem taxes nor a lien upon any properties of CITY. Notwithstanding anything herein, the CITY shall not be obligated to pay any sums due hereunder from the compelled levy of ad valorem or other taxes except from legally available funds appropriated for such purpose.

8.20 Contract Administration. The CITY'S Director of Public Works and Chief of Solid Waste, or their respective designees, shall act as the designated representatives of CITY to coordinate communications between CITY and CONTRACTOR regarding the administration of this Agreement and to otherwise coordinate and facilitate the performance of the obligations of CITY under this Agreement.

8.21 Civil Rights. CONTRACTOR agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of Jacksonville Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin

8.22 Further Assurances. Each Party will, on request of the other Party, (a) promptly correct any defect, error or omission in this Agreement or any related documents; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts reasonably deemed necessary, desirable or proper by the requesting Party to carry out the purposes of this Agreement and related documents; and (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts reasonably deemed

necessary, desirable or proper by the requesting Party to carry out the purposes of this Agreement.

8.23 Retention of Records; Audit. CONTRACTOR and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred in connection with this Agreement (including without limitation all books and records pertaining to any and all funds received from the CITY hereunder), and shall make such materials available to the extent required hereunder at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment under this Agreement for inspection, copying, and/or audit by the CITY at no charge to CITY. CITY Charter, Related Laws, Article 10 Section 9, requires an annual independent audit of the CITY'S Solid Waste disposal and resource recovery systems including the Facility. CONTRACTOR agrees to cooperate with such annual audits and make all of its books and records applicable to the Facility's costs (including all costs of operations and construction) available to the CITY and its designated auditor for review and copying at no charge in connection with such audits. CONTRACTOR shall also provide all such books, records and documents in electronic form to CITY upon request if they are available in electronic form.

8.24 Jacksonville Small and Emerging Businesses (JSEB) Program. CONTRACTOR, in further recognition of and consideration for the public funds provided pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services ("Opportunity"). Therefore, CONTRACTOR hereby agrees as follows:

(a) CONTRACTOR shall obtain from CITY'S Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall exercise good faith,

where CONTRACTOR manages the procurement activities if at all, in accordance with Municipal Ordinance Code ("Code") Sections 126.601 et seq., to enter into contracts with CITY certified JSEBs to provide materials or services, in an aggregate amount of \_\_\_\_\_% of the total cost of the construction of capital improvements managed by CONTRACTOR and paid for by CITY under this Agreement, as determined in accordance with Code Section 126.611.

(b) CONTRACTOR shall submit JSEB report(s) regarding CONTRACTOR'S actual use of CITY certified JSEBs on such capital improvements. The JSEB report(s) shall be submitted on a quarterly basis in a form approved by CITY to the CITY'S Chief of Solid Waste until the goal established in above subsection (a) is reached.

8.25 Citations. All citations herein to ordinances, statutes, rules, and regulations, shall refer also to any applicable successor ordinances, statutes, rules and regulations; provided however that this section will not adversely affect either Party's rights or obligations with respect to the Change in Law provisions in this Agreement.

8.26 Lawful Appropriation of Funds. Notwithstanding anything herein, all payment obligations of CITY hereunder (including without limitation for capital costs, the per ton payment in Section 5.1, and any damages obligations under Article 7 or otherwise) are subject to the lawful appropriation of funds. No funds were appropriated in Ordinance 2008-538-E, which approved this Agreement, because all payment obligations of the CITY hereunder other than the per ton payment obligation under Section 5.1 are presently unknown and will not be known or incurred until a future date, primarily when the Expanded Cell is constructed several or more years after the Effective Date, and because certain payment obligations of CITY hereunder are included in the CITY'S fiscal year 2008-2009 budget ordinance. The CITY receives revenues from the Landfill operations and uses those revenues to offset certain of the payment obligations

hereunder, but other obligations the amounts of which are presently unknown (including without limitation capital costs) will require separate appropriation of funds in separate ordinances as such capital costs or other payment obligations become known and become payable in the future.

**IN WITNESS WHEREOF**, this Agreement is executed the day and year above written.

ATTEST:

**CITY OF JACKSONVILLE**

By \_\_\_\_\_  
Neill W. McArthur, Jr.  
Corporation Secretary

By \_\_\_\_\_  
John Peyton  
Mayor

FORM APPROVED:

\_\_\_\_\_  
Office of the General Counsel

IN COMPLIANCE WITH the Charter of City of Jacksonville, I do certify that there is or will be an unexpended, unencumbered and unimpounded balance in the CITY'S 2008-2009 budget sufficient to cover the CITY'S obligations under the foregoing Agreement during the CITY'S fiscal year 2008-2009 in accordance with the terms and conditions thereof and that provision has been made for the payment of the monies provided therein to be paid. Future CITY obligations beyond fiscal year 2008-2009 will require separate appropriation of funds in future Ordinances as described in above Section 8.26, and such future CITY obligations are subject to the lawful appropriation of funds at a future date when the obligations become known and become payable by the CITY.

\_\_\_\_\_  
Director of Administration and Finance

**WITNESS:**

**TRAIL RIDGE LANDFILL, INC.,** a  
Delaware corporation and subsidiary of  
Waste Management Inc. of Florida

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\_\_\_\_\_  
Print Name:

By \_\_\_\_\_  
Name:

Title:

The following entities are executing this Agreement for purposes of consenting to the financial and performance guarantee provisions of Sections 8.10 and 8.11:

**Waste Management Inc. of Florida,**  
a Florida corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its:

**Waste Management, Inc.,**  
a Delaware corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its:

List of Exhibits and Titles:

- Exhibit A Existing Cell Area
- Exhibit B Site Boundary Sketch
- Exhibit C Special Waste Definitions
- Exhibit D Special Waste Rates

Exhibit ~~E~~ Special Waste Additional Terms and Conditions

Exhibit ~~F~~ Purchase Option

Exhibit ~~G~~ Guarantee of Waste Management Inc. of Florida and Guarantee of Waste Management, Inc.

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**Exhibit A**  
**Existing Cell Area**

**Exhibit B**  
**Site Boundary Sketch**

## **Exhibit C**

### **Special Waste**

Biohazardous waste means any solid waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to nonliquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; used disposal sharps; human blood, and human blood products and body fluids; and other materials which, in the opinion of the Department of Health, represent a significant risk of infection to persons outside the generating facility.

Category I Special Wastes are wastes that are light, difficult to handle, subject to airborne dust and as such create potentially unsafe or unhealthy conditions for employees and which require pre-acceptance site preparation and special handling procedures during disposal (i.e., asbestos, fly ash, powdery chemicals, etc.).

Category II Special Wastes are wastes requiring special acceptance procedures and monitoring pursuant to **CONTRACTOR's** Special Waste management policies, but which require no special site preparation for disposal on the Landfill working area.

Category III Special Wastes are wastes prohibited by law or regulation from landfill disposal (i.e., whole tires, white goods, lead acid batteries) but which nevertheless are deposited at the landfill working area and are removed from the working area by the **CONTRACTOR** for on-site storage and further handling by the **CONTRACTOR**.

Category IV Special Wastes are wastes prohibited by law from landfill disposal (i.e., whole tires, white goods, lead acid batteries and used motor oil) which are deposited by the transporter at the on-site storage area and held for further handling by the **CONTRACTOR**.

**Exhibit D**

**Special Waste Rates**

**Category I**

Asbestos per ton: \$276.81  
Site Preparation: \$173.04

**Category II**

Special Waste per ton: \$23.22

**Category III**

No charge for white goods pulled from the working face.  
No charge for lead acid batteries pulled from the working face.

0-30,000 tires pulled from the working face – no charge.

In excess of 30,000 tires: \$13.50 per tire

**Category IV**

Declared at scale:

Passenger tires: \$1.39 per tire  
Truck tires: \$6.94 per tire  
Other tires: \$13.50 per tire  
Bulk tires: \$85.00 per ton  
White Goods: \$20.74 per white good  
Batteries: \$13.82 per battery

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## Exhibit E

### Special Waste Additional Terms and Conditions

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Exhibit F¶

#### 1.1 DEFINITIONS

- 1.1.1 Unless otherwise indicated herein, capitalized terms shall have the meaning set forth in the Agreement.
- 1.1.2 “Environmentally Sensitive Wastes” shall mean those wastes which contain constituents listed in current groundwater monitoring parameters or initial groundwater monitoring parameters (see Appendix VIII of 40CFR261), or polychlorinated biphenyls (PCB’s).

#### 2.1 SUSPENSION OR TERMINATION OF DISPOSAL PRIVILEGES

- 2.1.1 The CITY and the CONTRACTOR shall each have the right to suspend or terminate disposal privileges of those persons who deliver or attempt to deliver to the Facility unacceptable wastes or environmentally sensitive wastes without prior written approval. Disposal privileges may be suspended or terminated for either total or specific waste streams. Termination or suspension action shall be exercised uniformly for all disposers.
- 2.1.2 Upon determination by either the CITY or the CONTRACTOR that disposal privileges have been terminated, the Party responsible for the determination shall notify in writing the other Party of such determination. Notification shall include the following:
- Name, address and phone number of individual whose disposal privileges are being terminated.
  - Nature of action (suspension or termination)
  - Effective date of action
  - Reason for action
- 2.1.3 Reinstatement of disposal privileges shall be effective only upon the written consent of both the CITY and the CONTRACTOR. Any request for reinstatement of disposal privileges must contain the information required in above paragraph 2.1.2 and the justification for reinstatement of disposal privileges.

#### 3.1 SPECIAL WASTE

- 3.1.1 Special Wastes shall not be accepted for disposal outside of the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday, nor will they be accepted on Saturday, Sundays or legal holidays as observed by the CITY, except for asbestos, which

will be accepted one (1) day per week, such day to be mutually agreed upon by the CITY and CONTRACTOR.

3.1.2 Special Wastes shall not be accepted for disposal unless accompanied by a properly issued manifest in a form approved by the CITY, except as provided herein.

3.2 **TIRES**

3.2.1 Any person who deposits tires in the working face of the landfill shall be given a reasonable opportunity to remove the tires from the working face and deliver the tires to the designated area for acceptance at the lesser charge.

4.1 **ENVIRONMENTALLY SENSITIVE WASTE**

4.1.1 The CITY, after consultation with the CONTRACTOR, may make and revise such policies and procedures as it deems necessary to document or restrict the disposal of Environmentally Sensitive Wastes.

4.1.2 The CITY and the CONTRACTOR shall each have the right to suspend or terminate disposal privileges of any person disposing of Environmentally Sensitive Wastes as provided for in above paragraph 2.1.

4.1.3 The CONTRACTOR and the CITY shall utilize the “decision tree” presented in attached **Exhibit E-1** for determining the acceptability of Environmentally Sensitive Wastes at the Facility.

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4.1.4 The CITY will develop and provide to the CONTRACTOR a listing of those Environmentally Sensitive Wastes which do not require additional CITY review prior to acceptance for disposal. The CITY may at any time modify this listing provided that if materials or substances are removed from the listing, neither the CITY nor the CONTRACTOR shall be responsible for the removal and disposal of any such materials or substances that have been previously disposed of at the Facility.

**Exhibit E**  
**Purchase Option**

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(a) In the event of any termination by CITY without cause, CONTRACTOR shall have the option ("Option") to purchase the Site subject to the terms and conditions set forth herein. CONTRACTOR must provide written notice ("Notice") of its exercise of the Option to CITY within thirty (30) days following any such termination, and the Option is conditioned upon the Parties entering into a purchase and sale agreement mutually satisfactory to the Parties within thirty (30) days after the Purchase Price (as defined below) is determined.

(b) The parties shall attempt to agree upon the fair market value purchase price for the Site ("Purchase Price") within twenty (20) business days of delivery of the Notice ("Negotiation Period"). If CITY and CONTRACTOR cannot agree upon a Purchase Price within such time period, then the fair market value shall be determined by a reputable MAI appraiser with at least ten years experience in valuing like properties who is not directly or indirectly affiliated with CITY or CONTRACTOR. If CITY or CONTRACTOR cannot agree upon such appraiser within ten (10) business days after expiration of the Negotiation Period, or either CITY or CONTRACTOR disagree with such appraiser's valuation, then each party shall select an unaffiliated reputable MAI appraiser with at least the same qualifications as the initial appraiser who shall each make a determination of the fair market value of the Site. If the two valuations are within ten percent (10%) of each other, the Purchase Price shall be the average of the two appraisals. If the two valuations differ by more than ten percent (10%), the two appraisers shall select a third unaffiliated appraiser with at least the same qualifications as the initial appraiser and such third appraiser shall make a determination of the fair market value of the Site. If the third appraiser's valuation is higher than the highest prior appraisal or lower than the lowest prior appraisal, then the Purchase Price shall be the fair market valuation of the prior appraisal that is closest in value to the third appraiser's valuation. If the third appraiser's valuation is between the first and second appraiser's valuation, then the third appraiser's valuation shall be the Purchase Price. If either CITY or CONTRACTOR fails to select an appraiser, or if the first two appraisers cannot agree upon a third appraiser, upon petition of either CITY or CONTRACTOR, such appraiser(s) shall be selected by the American Arbitration Association. All fees for the foregoing appraisers and the American Arbitration Association shall be borne equally by CITY and CONTRACTOR and paid promptly when due. All appraisers shall issue their appraisal of the fair market value of the Site within forty-five (45) days of selection.

(c) The closing of the sale of the Site shall within the thirty (30) days after the execution of the purchase and sale agreement mutually satisfactory to the Parties, provided that the Purchase Price has been finally determined and the conditions to closing have been met as described in this Exhibit. Attorneys' fees incurred in connection with the sale of the Site shall be borne by the party incurring same. The CITY shall pay for the title commitment and title policy, and all other closing costs shall be paid by CONTRACTOR. At closing, CITY shall pay all liens and encumbrances affecting the Site incurred by CITY, and CONTRACTOR shall pay all liens and encumbrances affecting the Site incurred by CONTRACTOR. Real estate ad valorem taxes shall be prorated as of the day of closing based upon the most recent tax assessment available using the November discount. All other assessments shall be prorated between the parties as of the day of closing. Title to the Site shall be conveyed by Special Warranty Deed at closing and shall be good and marketable and permit the continued operation of the Site as contemplated by the Agreement; provided however that CITY shall not be required to incur any costs to satisfy or clear any liens or encumbrances or other title matters not caused by CITY. At closing, CONTRACTOR shall pay the Purchase Price in immediately available funds subject to prorations, adjustments and allocations as set forth herein. Closing shall be held at the offices of CITY or by mail. At closing each party will execute and deliver such other documents and affidavits as are customary in similar transactions. The closing shall be conditioned on the Parties' mutual agreement on, among other

things, the specific deed restrictions to be included in the deed to the Site to insure the continued use of the Site for landfill operations accessible to the CITY with such terms and conditions including without limitation operating hours, host fees and other matters as are mutually agreeable to the Parties.

**Exhibit G**

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**Form of Guarantee of Waste Management Inc. of Florida and  
Guarantee of Waste Management Inc.**

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Financial Guarantee

**The above Guarantees are described in Sections 8.10 and 8.11 and will be attached prior to  
execution of the Agreement.**

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