

AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES

THIS AGREEMENT is made and entered into in duplicate this 23rd day of August, 2002, by and between **MARTIN COUNTY**, a political subdivision of the State of Florida (the "County"), and **OKEECHOBEE LANDFILL, INC.**, a Florida corporation (the "Contractor").

W I T N E S S E T H :

WHEREAS, the County has the responsibility for the safe, environmentally sound disposal of Solid Waste; and

WHEREAS, the Contractor submitted a proposal to provide Solid Waste management and disposal services for the County; and

WHEREAS, the County wishes to enter into an agreement with the Contractor for certain services; and

WHEREAS, the County and Contractor have negotiated the terms of this Agreement, which constitutes the entire agreement of the parties.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the Contractor and the County agree that they shall comply with and be bound by all of the terms of this Agreement.

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ARTICLE 1. DEFINITIONS

Whenever the following words and expressions (or pronouns used in their stead) appear in this Agreement, they shall be construed as follows:

1. "Acceptable Waste" is that portion of the Solid Waste that may be disposed of lawfully in a Class I Landfill.

2. "Agreement" shall mean this Agreement For Solid Waste Management Services between the County and the Contractor.

3. "Applicable Law" means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, Permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the Term of this Agreement, and relate in any manner to the performance of the County or Contractor under this Agreement.

4. "Base Rate" shall mean the component of the Service Fee that compensates the Contractor for all of its basic services under this Agreement, including but not limited to the transport and disposal of the County's Acceptable Waste.

5. "Board of County Commissioners" or "Board" shall mean the Board of County Commissioners of Martin County, Florida.

6. "Certificate of Insurance" shall mean a certificate evidencing the existence and current validity of the insurance policies required to be obtained by the Contractor under this Agreement.

7. "Change in Law" means (i) the adoption, promulgation, or modification of any Applicable Law after the Effective Date or (ii) the imposition of any condition in connection with the issuance, renewal, or modification of any Permit after the Effective Date, which in the case of either (i) or (ii) establishes requirements which directly and substantially affect the Contractor's or County's performance under this Agreement. A change in any federal, state, county, or other tax law, or workers compensation law, shall not be a Change of Law. A change in the amount of fuel taxes shall not be treated as a Change in Law. A Change in Law also does not include any increase in the amount of any Host Fee or similar fee paid by the Contractor to the community where the Disposal Facility is located.

8. "Citation" shall mean any warning letter, notice of violation, emergency order, cease and desist order, or other governmental enforcement action based on a failure to comply with Applicable Law.

9. "Class I Landfill" shall be as defined in Rule 62-701.340(3)(a), F.A.C.
10. "Commencement Date" means the date when the Contractor must commence operations at the Transfer Station, as stated in the County's Notice to Proceed.
11. "Consequential Damages" shall mean all direct and indirect damages resulting from an act or omission.
12. "Construction and Demolition Debris" is as defined by Rule 62-701.200 (27), F.A.C.
13. "Contractor" shall mean Okeechobee Landfill, Inc.
14. "County" shall mean Martin County, a political subdivision of the State of Florida.
15. "County Administrator" means the chief executive officer of the County or his or her designee.
16. "County Finance Director" shall mean the chief financial officer of the County or his or her designee.
17. "Department" shall mean the Martin County Utilities & Solid Waste Department.
18. "Director" shall mean the Director of the Department or his or her designee.
19. "Disposal Facility" shall mean a solid waste disposal facility, which has received all of the necessary Permits from the appropriate environmental regulatory agencies, and which lawfully may receive and dispose of the County's Acceptable Waste. For the purposes of this Agreement, the Disposal Facility is the Contractor's Okeechobee Landfill, unless the use of a different facility is approved pursuant to Section 5.6 herein.
20. "Effective Date" means the date when this Agreement is signed by the County.
21. "EPA" means the United States Environmental Protection Agency.
22. "F.A.C." means the Florida Administrative Code.
23. "FDEP" means the Florida Department of Environmental Protection.
24. "Force Majeure" shall mean:

(a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, terrorism, blockade or insurrection, riot, or civil disturbance;

(b) The order or judgment of any federal, state, or local court, administrative agency or governmental body, excepting decisions of federal courts interpreting federal tax laws and decisions of state courts interpreting state tax laws, if it is not also the result of the misconduct or negligent action or inaction of the party relying thereon or of a Person for whom the party relying thereon is responsible; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

(c) The failure to issue, suspension, termination, interruption, denial, or failure of renewal of any Permit or approval essential to the operation of the Transfer Station or Disposal Facility; provided that such act or event shall not be the result of the misconduct or negligent action or inaction of the party relying thereon or of a Person for whom the party relying thereon is responsible; and provided further that neither the contesting in good faith of any such action nor the failure to so contest shall constitute or be construed as a measure of willful or negligent action or inaction of such party;

(d) A Change in Law;

(e) The failure of any appropriate federal, state, or local public agency or private utility having operational jurisdiction in the area in which the Transfer Station or Disposal Facility is located, other than the County, to provide and maintain utilities, services, water and sewer lines, and power transmission lines which are required for and essential to the operation of the Transfer Station or Disposal Facility;

(f) Any unforeseen condition (including the presence of Hazardous Waste) which shall prevent, or require redesign or change in, the construction or operation of the Transfer Station or Disposal Facility, provided that the condition was actually and constructively unknown to the party claiming a Force Majeure Event, and could have not been discovered with reasonable diligence by the party on or before the date of this Agreement; or

(g) The condemnation, taking, seizure, involuntary conversion, or requisition of title to or use of the Site or any material portion or part thereof taken by the action of any federal, state or local governmental agency or authorities, other than the County;

(h) Any act, event, or condition which is determined by mutual agreement of the County and Contractor to be of the same general type, and subject to the

same conditions, as those set forth in subparagraphs (a) through (g) above.

"Force Majeure" shall not be deemed to include any act, event, or condition not described in subparagraphs (a) through (h) above, or any act, event, or condition over which a party relying thereon (including any Person for whose performance such party is responsible) reasonably has any influence or control or any act, event, or condition arising out of labor difficulties, labor shortages, or changing economic conditions. Force Majeure also does not include normal weather conditions for Martin County or the county where the Disposal Facility is located.

25. "Hazardous Waste" means a Solid Waste identified by the FDEP or EPA as a hazardous waste pursuant to Chapter 62-730, F.A.C.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601, et. seq.; or other Applicable Law. Hazardous Waste does not include "household hazardous waste" or Solid Waste generated by "conditionally exempt small quantity generators," as those terms are defined under RCRA and Chapter 62-730, F.A.C., but only if and only for so long as such materials may be disposed of lawfully in a Class I Landfill.

26. "Host Fee" shall mean a fee paid by the Contractor to the community where the Disposal Facility is located, which is intended to help compensate the community for the Contractor's right to dispose of Solid Waste at the Disposal Facility.

27. "Leachate" is as defined by Rule 62-701.200(66), F.A.C.

28. "Notice" shall mean a written notice delivered by certified or registered mail, return receipt requested, or by hand delivery, or by overnight delivery service.

29. "Notice to Proceed" shall mean the Notice given by the County to the Contractor establishing the Commencement Date.

30. "Objectionable Odor" is as defined by Rule 62-210.200(181), F.A.C.

31. "Okeechobee Landfill" shall mean the Contractor's Disposal Facility at 10800 N.E. 129th Avenue in Okeechobee County, Florida. The Okeechobee Landfill includes the Contractor's existing Class I Landfill, which is also known as the Berman Road Landfill, and the Contractor's proposed Class I Landfill, which is known as the Clay Farms Landfill.

32. "On-site" means on the land described in Exhibit "A."

33. "Operating Day" means any day the Transfer Station is open for the receipt of Solid Waste.

34. "Operating Manual" shall mean the manual that describes the operation of the Transfer Station and all of the associated Solid Waste management activities.

35. "Operating Month" means, with respect to the initial Operating Month, the period beginning on the Commencement Date and ending on the last day of the calendar month. Thereafter, an Operating Month shall be the same as a calendar month.

36. "Operating Year" means, with respect to the initial Operating Year, the period beginning on the Commencement Date and ending on the following September 30th. Thereafter, an Operating Year shall be the twelve month period commencing October 1 and ending the following September 30.

37. "Performance and Payment Bonds" shall mean the surety to be provided by the Contractor as required by this Agreement.

38. "Permit" shall mean any local, state or federal permit, license, authorization or approval required for the performance of the County's and Contractor's obligations under this Agreement.

39. "Pollution" is as defined in Section 403.031(7), Florida Statutes.

40. "Person" means any and all persons, natural or artificial, including any individual, firm, association, joint venture, partnership or other entity, however organized, and any combination of the foregoing; any public or private corporation; any county; and any governmental agency or branch of local, state or federal government.

41. "Prohibited Wastes" are those waste materials that the County will prohibit at the Transfer Station, including Hazardous Waste, asbestos, biomedical wastes, biological waste, mercury-containing devices, radioactive waste, sludge and liquid wastes.

42. "RCRA" shall mean the Resource Conservation and Recovery Act, including but not limited to the 1984 Hazardous and Solid Waste Amendments and 40 CFR parts 257 and 258.

43. "Recovered Materials" is as defined by Rule 62-701.200 (102), F.A.C.

44. "Recyclable Material" is as defined by Rule 62-701.200(104), F.A.C.

45. "Recycling" is as defined by Rule 62-701.200(105), F.A.C.

46. "Service Fee" shall mean the County's monthly payment to compensate Contractor for all of Contractor's duties, obligations and responsibilities under this Agreement. The Service Fee is comprised of the Base Rate, plus Host Fees.

47. "Site" means the real property that is located in Section 7, Township 38S, Range 40E, in Martin County, Florida, and described more specifically in Exhibit "A", which is attached hereto and incorporated herein by reference. The Site includes the Martin County Transfer Station and any other structures on or improvements to the real property.

48. "Solid Waste" is as defined by Rule 62-701.200(113), F.A.C.

49. "Special Waste" is as defined in Rule 62-701.200(119), F.A.C.

50. "Subcontractor" shall mean any Person (other than an employee of the Contractor) who contracts with the Contractor to furnish or actually furnishes labor, materials, or equipment for the performance of this Agreement.

51. "Surety" shall mean one or more insurance companies, duly licensed or authorized to transact business in the State of Florida, which execute and issue the Performance and Payment Bonds required by this Agreement.

52. "Term" shall mean the duration of this Agreement, as described in Article 8 herein.

53. "Transaction Summary Report" means the report produced by the County's computer systems for each Operating Month, which summarizes the daily transactions at the scale house for the County's Transfer Station.

54. "Transfer Station" means the Solid Waste transfer, processing and transportation facility that will be located at the Site.

55. "Ton" shall mean 2,000 pounds.

56. "Unacceptable Waste" means any Solid Waste that cannot legally be disposed at a Class I Landfill under Applicable Law. Unacceptable Waste includes Hazardous Waste.

57. "Waste Tire" is as defined by Rule 62-701.200(134), F.A.C.

58. "White Goods" is as defined by Rule 62-701.200 (141), F.A.C

59. "Yard Trash" is as defined by Rule 62-701.200 (143), F.A.C.

For ease of reference, FDEP Chapter 62-701 (effective May 27, 2001), F.A.C., is attached hereto as Exhibit "F".

ARTICLE 2. SCOPE OF CONTRACTOR'S SERVICES

This Agreement establishes the terms and conditions under which the Contractor shall perform the services required herein for the proper management and disposal of the County's Solid Waste. In accordance with the requirements in this Agreement, the Contractor shall: (a) transport Acceptable Waste from the Transfer Station; and (b) dispose of that Acceptable Waste at the Disposal Facility. Except as otherwise provided herein, the Contractor shall at its expense provide all labor, services, supervision, materials, and equipment necessary to accomplish these tasks throughout the Term. It is the sole responsibility of the Contractor to perform the necessary activities under this Agreement in accordance with the requirements of this Agreement, the Permits, and Applicable Law.

ARTICLE 3. GENERAL TERMS AND CONDITIONS CONCERNING CONTRACTOR'S RESPONSIBILITIES

3.1 Commencement of Operations

The County shall deliver a Notice to Proceed to the Contractor at least ninety (90) calendar days before the Commencement Date. The County's Notice to Proceed shall identify and establish the Commencement Date. On the Commencement Date and each Operating Day thereafter throughout the Term of this Agreement, the Contractor shall transfer all of the County's Acceptable Waste from the Transfer Station and shall dispose of such material at the Disposal Facility.

Prior to the Commencement Date, the Contractor shall have reasonable access to the Transfer Station to prepare for the commencement of operations.

At least fifteen (15) days prior to the Commencement Date, a joint meeting shall be held with representatives of the Contractor, the County, and other parties or government agencies which may be affected by or have jurisdiction over the Transfer Station or the Contractor's activities under this Agreement. The purpose of this meeting is to introduce the key personnel from each organization and provide an opportunity for discussions concerning the start of operations and other pertinent issues associated with the Transfer Station and this Agreement.

The County may limit its operations at the Transfer Station for the first 14 days following the Commencement Date. The County shall use this 14 day period of time to test the equipment at the Transfer Station and optimize the County's operations. The County shall coordinate with the Contractor to ensure that both parties have appropriate staffing and equipment available during this initial start-up period.

3.2 Minimum Standards

This Agreement contains performance standards and other requirements that shall govern the Contractor's activities under this Agreement. These requirements establish the minimum levels of performance that will be deemed acceptable by the County. It is the objective of this Agreement that every aspect of the Contractor's work under this Agreement shall be performed safely and in accordance with the highest professional standards and best management practices for the solid waste industry.

3.3 Representations of the County and Contractor

The County and Contractor recognize that the successful implementation of this Agreement and the efficient operation of the Transfer Station is dependent upon the good faith performance of their respective obligations. The County and Contractor hereby warrant that they will take all reasonable actions necessary to promptly and efficiently carry-out their responsibilities under this Agreement and they will cooperate with each other, as necessary, to ensure the effective, continuous performance of their respective obligations hereunder.

3.4 Prohibitions

Except as provided in Section 9.3.1 of this Agreement for Force Majeure events, Contractor's activities under this Agreement shall not cause: (a) Pollution; (b) Objectionable Odors at the boundary of the Site; or (c) nuisance conditions.

3.5 Regulatory Compliance

The Contractor shall transport and dispose of the County's Acceptable Waste in strict conformance with all of the provisions of each Permit, Applicable Law and this Agreement.

The Contractor shall respond promptly to all Citations concerning or related to the Contractor's activities under this Agreement. The Contractor shall provide Notice and a copy of each Citation to the County no later than the next Operating Day after the Citation is received by the Contractor. Thereafter, the Contractor shall keep the County informed about the on-going status of the Contractor's efforts to address the Citation, and shall provide Notice to the County when the Citation has been satisfactorily resolved. The Contractor shall pay all costs of investigating and responding to Citations, and shall pay all costs of correcting deficiencies and achieving compliance with Applicable Law, and shall pay any fines assessed as a result of Contractor's non-compliance.

3.6 Customer and Community Relations

All customer and public complaints and inquiries (collectively "complaints") about the Contractor's operations under this Agreement shall be the sole responsibility of the Contractor. The Contractor shall respond to all complaints as soon as possible, but no later than the end of the next Operating Day following receipt of the complaint.

The Contractor shall use a standard form to record the hour, date and nature of any complaint. A copy of the form shall be submitted to the Director no later than the next Operating Day after the complaint is received by the Contractor. Copies of written complaints shall be attached to the standard form. The form shall be updated, and resubmitted to the Director, to show how and when the Contractor responded to the Complaint. The Contractor shall keep copies of all complaints and forms in the Transfer Station at all times.

The Contractor's standard form shall be submitted to the Director for review and approval at least five (5) days before the Commencement Date.

3.7 Contractor's Personnel and Equipment

The Contractor shall provide all equipment and personnel necessary to perform Contractor's duties under this Agreement in a safe, timely and efficient manner. All of the Contractor's employees shall be competent and appropriately trained for the tasks assigned to them. All of the equipment used by the Contractor shall be appropriately designed, maintained and operated. The Contractor shall make arrangements for or have access to additional equipment and workers, as necessary, to ensure that the operation of the Transfer Station is not interrupted or halted.

At all times when Contractor's employees are On-site, the Contractor's employees shall wear a standard shirt or uniform with the Contractor's logo.

At least five (5) days before the Commencement Date, the Contractor shall provide the Director with a list of all key personnel assigned to the Contractor's work under this Agreement. The Contractor shall provide the Director with an updated list whenever there are any changes in key personnel.

The Director reserves the right to direct the Contractor to dismiss, or relocate away from the Transfer Station, any employee of the Contractor or a Subcontractor who materially or repeatedly violates any term of this Agreement or who is wanton, negligent, or discourteous in the performance of his duties. The Director shall coordinate with the Contractor before exercising this right.

Notwithstanding the foregoing, the County shall not take any action and the Contractor shall not be required to take any action with regard to the Contractor's personnel that would violate the Contractor's written personnel policies or any Applicable Law.

3.8 Subcontractors

The Contractor may utilize Subcontractors in the performance of the work required hereunder. The Contractor shall secure from each Subcontractor an indemnification agreement in favor of the County that is equivalent to the indemnification required of the Contractor by this Agreement. The Contractor shall be responsible to the County for the acts and omissions of its Subcontractors and for any Person that is directly or indirectly employed by the Subcontractors.

The Contractor agrees to employ only those Subcontractors that have been approved by the Director. Such approval shall not be unreasonably withheld and shall be based on the Director's reasonable determination that the Subcontractor has the experience, equipment, personnel and financial resources to satisfactorily perform the work required by this Agreement.

Nothing in this Agreement shall create any contractual relationship between any Subcontractor and the County or any obligation on the part of the County to pay or see to the payment of any monies which may be due to any Subcontractor. No subcontract shall relieve the Contractor of its responsibilities under this Agreement.

3.9 Operating Manual And Supplemental
Operating Requirements

The Operating Manual supplements this Agreement and establishes additional requirements for the Contractor's performance under this Agreement. The Operating Manual may be modified or amended by mutual written agreement of the County and Contractor. The Director is authorized to approve changes to the Operating Manual on behalf of the County. However, if there is any conflict or inconsistency between the requirements of this Agreement and the Operating Manual, the provisions of this Agreement shall govern the parties' conduct.

The Operating Manual shall include the Contractor's Safety Plan, which shall describe the Contractor's plans and procedures for ensuring that all aspects of the Contractor's work under this Agreement shall be performed in a safe and responsible manner. The Contractor's Operating Manual and Safety Plan shall be submitted for the Director's review and approval at least thirty (30) days before the Commencement Date.

The Contractor's Safety Plan shall describe the safety training programs that will be provided for Contractor's employees. The Contractor shall provide safety and loss control

training for all of the Contractor's employees that will be providing services for the County under this Agreement. All such employees shall receive appropriate training before they commence work under this Agreement and they shall receive updated, refresher training on a routine basis throughout the Term of this Agreement.

3.10 Payment of Expenses

Except as otherwise specifically provided for herein, the Contractor shall be solely responsible for and shall pay all costs and expenses incurred in the performance of its duties under this Agreement.

3.11 Permits and Licenses

Except as otherwise provided in Section 6.16, the Contractor shall secure, renew, modify if necessary, and pay for all Permits, licenses, inspections, and other governmental charges that are necessary for the Contractor's activities under this Agreement, including environmental permits, building permits, utility permits, and truck registrations.

3.12 Taxes, Charges and Levies

The Contractor shall pay all sales, consumer, use, and other taxes and fees required by Applicable Law for the Contractor's activities under this Agreement. However, the Contractor shall have no liability under this Agreement for the payment of any ad valorem taxes on the Transfer Station or the payment of any taxes, charges, levies or fees of any kind that are imposed by the County in a discriminatory manner on the Contractor's activities under this Agreement.

3.13 Maintenance of Records

The Contractor shall develop and implement an organized system for keeping records concerning the Contractor's activities under this Agreement. At a minimum, the Contractor's records shall include copies of: (a) all Permits required for the Contractor's activities under this Agreement; (b) all complaints and forms, as described in Section 3.6; (c) all Citations, as described in Section 3.5; (d) all correspondence to and from FDEP and other regulatory agencies directly or indirectly concerning the Contractor's activities under this Agreement; and (e) any other documents necessary to confirm that Contractor has performed in accordance with this Agreement.

The Contractor's records and documents concerning this Agreement shall be retained by the Contractor for a minimum of five (5) years after the termination of this Agreement. The County and its authorized agents shall have the right to audit, inspect, and copy all such records and documents as often as the County deems necessary during the Term and for five (5) years after the termination of this Agreement. The right to audit,

inspect and copy records and documents may be exercised during normal business hours, at the County's sole expense, but shall not extend to confidential or proprietary information.

3.14 Monthly Reports

The Contractor shall provide monthly reports to the County concerning the Contractor's performance under this Agreement. At a minimum, the reports shall discuss the key events that occurred after the last report, plus any key events that are anticipated during the next month. Each report shall address: (a) any complaints received by the Contractor from the public or the County; (b) any Citations, as described in Section 3.5; (c) any spills or emergencies in transit, as described in Section 5.7; (d) any accidents or injuries at the Site, in transit, or at the Disposal Facility; (e) any new or revised operating practices or procedures; (f) any Pollution, Objectionable Odors, or nuisance conditions at the Site or the Disposal Facility; and (g) any other unusual or extraordinary occurrences affecting the Contractor's performance under the Agreement.

3.15 Communications Between the County and Contractor

The Contractor shall develop, implement and maintain a system that will allow the Contractor and the County to communicate with each other at any time, 24 hours per day, seven days per week. The Contractor's proposed communications system shall be subject to the Director's prior approval.

ARTICLE 4. THE CONTRACTOR'S RESPONSIBILITIES
FOR THE OPERATION AND MAINTENANCE
OF THE TRANSFER STATION

4.1 Schedule of Operations

The County shall receive deliveries of Solid Waste at the Transfer Station between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, and 8:00 A.M. to 2:00 P.M. on Saturday. The County will continue to operate the Transfer Station, and the Contractor shall continue to remove Acceptable Waste from the Transfer Station, until 6:00 P.M., Monday through Friday, and until 3:00 P.M. on Saturdays. The operating hours for the County's scale house shall be the same as the operating hours for the Transfer Station. The Transfer Station shall be open to receive Solid Waste every day of the year, except Sundays, Thanksgiving and Christmas. In cases where one of the foregoing holidays falls on a Sunday, the County shall operate the Transfer Station on the preceding Saturday and the following Monday.

The hours of operation for the Transfer Station may be changed by the County upon reasonable Notice to the Contractor. The total number of hours of operation shall not be increased unless the County agrees to revise the Service Fee accordingly.

During any of the County's hours of operation at the Transfer Station, the Contractor may deliver empty transport trailers to the Transfer Station, or remove trailers from the Transfer Station that have been filled with Acceptable Waste, or perform other tasks that are necessary to ensure the Contractor's compliance with this Agreement.

If emergency conditions (e.g., extreme wind or rain storms) make it impractical to dispose of the County's Acceptable Waste during the normal hours of operation for the Transfer Station, the County may open the Transfer Station on other days (up to a maximum of five days per year) or at other times reasonably determined by the County. Under such circumstances, the Contractor shall haul and dispose of the County's Acceptable Waste, without additional charge to the County, except for the County's payment of the Service Fee for the Acceptable Waste that is delivered from the Transfer Station to the Disposal Facility.

4.2 Equipment and Personnel at Transfer Station

The Contractor shall have a sufficient number of trailers, equipment and personnel available at the Transfer Station at all times to ensure that the operation of the Transfer Station is not delayed or interrupted and the requirements of this Agreement are satisfied. The Contractor also shall have trailers, equipment and personnel available to properly handle and transport the last load of Acceptable Waste received each day at the Transfer Station.

4.3 Right of Access For County

The County shall have the unrestricted right to inspect the Contractor's equipment and activities at the Transfer Station to verify the Contractor's compliance with the requirements of this Agreement. The Director also shall have the right to inspect the Disposal Facility during its normal operating hours. The Contractor may require the Director and any other Person entering the Disposal Facility to comply with reasonable safety rules.

4.4 Safety

The Contractor shall be responsible for the personal safety of its personnel and Subcontractors when they are at the Transfer Station. The County may require the Contractor and any other Person entering the Site to comply with reasonable safety rules.

4.5 Cooperation with County and Waste Haulers

The Contractor's activities at the Transfer Station will necessarily interface with the activities of the County and other Persons. The Contractor shall not impede or interfere with the County's efforts to ensure the efficient operation of the Transfer Station, or with the ingress, unloading, and egress of waste hauling vehicles. The Contractor's methods and procedures for delivering and removing its trucks and trailers shall be subject to review and approval by the Director. Similarly, the County shall not impede or interfere with the Contractor's duties and responsibilities under this Agreement.

4.6 Payment of Contractor's Utilities Bills

Except as provided herein, the County shall pay all of the monthly bills for the electricity, water, telephone, sanitary sewer and other utility services provided to the Transfer Station and scale house.

At its expense, the Contractor may install for its use separate telephone lines to the Transfer Station. The Contractor shall pay the monthly bills for the telephone services used by the Contractor.

4.7 Use of Premises

The Contractor shall not use the Transfer Station or Site for any activity unless the activity is expressly authorized by this Agreement or the Contractor has received the advance written approval of the Director.

The Contractor shall confine its equipment, materials and personnel to the areas designated by the Director. The Contractor shall not unreasonably encumber the Site with materials, equipment, trailers, or trucks.

The Contractor shall not use the Site for vehicle repairs or maintenance, except the repair or replacement of flat tires or other similar activities that do not pose a threat of On-site Pollution.

The Contractor shall not change or alter the County's Transfer Station, equipment or Site without the County's prior written approval.

4.8 Contractor's Testing Rights

The Contractor may conduct environmental assessments or otherwise test the air, soil, water, or Leachate at the Site at any time after the Effective Date. Any such tests shall be at the Contractor's sole expense. The Contractor shall immediately furnish to the County the results of any tests, as well as any reports or other documents resulting from said tests.

ARTICLE 5. THE CONTRACTOR'S RESPONSIBILITIES
FOR THE TRANSFER AND DISPOSAL
OF ACCEPTABLE WASTE

5.1 Transport and Disposal of Acceptable Waste

On the Commencement Date, the Contractor shall begin transporting Acceptable Waste from the Transfer Station to the Disposal Facility. Throughout the Term, the Contractor shall be responsible for the safe and lawful transport and disposal of all Acceptable Waste delivered to the Transfer Station. The Contractor's activities shall be conducted in accordance with Applicable Law, including laws governing highway weight limits, equipment inspections, safety standards, and speed limits.

5.2 Trucks and Trailers

The Contractor shall provide all of the trucks and trailers needed to haul the County's Acceptable Waste to the Disposal Facility. The Contractor shall make arrangements for or have access to additional trucks and trailers, if necessary, to ensure that there is no interruption in the operation of the Transfer Station. The Contractor shall replace the trucks and trailers as necessary to ensure that the Contractor has the ability to provide reliable service under this Agreement.

5.3 Loading, Covering and Inspecting Vehicles

The Contractor shall deliver empty transport trailers to the Transfer Station for filling with Acceptable Waste. In accordance with the County's instructions, the Contractor either shall drive the trailer inside the Transfer Station for filling by the County or the Contractor shall park the trailer outside the Transfer Station until it is needed. When requested by the County, the Contractor promptly shall drive the empty trailer to the designated location inside the Transfer Station. The Contractor shall move the trailer out of the Transfer Station immediately after the trailer is filled. If the Contractor fails to move its trailers into or out of the Transfer Station promptly after being requested to do so by the County, the County may collect a deduction from the Contractor pursuant to Section 10.4, below. The County also may move the Contractor's trailers into or out of the Transfer Station when the Contractor is unavailable, or unwilling or unable to do so.

The Contractor may park filled trailers On-site temporarily, but the Contractor shall not allow more than two (2) trailers filled with Acceptable Waste to be parked On-site at anytime. If requested by the County, the Contractor shall promptly remove any trailer from the Site that is filled with unusually odorous waste. The Contractor shall remove all filled trailers from the Site at the end of each Operating Day.

All trailers shall be securely covered by the Contractor promptly after they are removed from the Transfer Station. All trailers shall remain securely covered until they are unloaded at the Disposal Facility.

Contractor's trucks and trailers shall be maintained by the Contractor in a clean and sanitary condition to prevent odors, vectors, or nuisance conditions. The Contractor's trucks shall have leakproof seals, which shall be maintained to ensure that any leakage of leachate is minimized.

All trucks and trailers shall be inspected by the Contractor at the Transfer Station before every trip as part of Contractor's routine safety and operations program.

5.4 Approved Truck Routes

The Contractor shall use only the truck routes designated in Exhibit "E", which is attached hereto, when transporting Acceptable Waste from the Transfer Station to the Disposal Facility. The approved routes may be changed, if necessary, with the prior approval of the Contractor and the Board.

5.5 Signage on Trucks and Trailers

Each truck used by the Contractor to transport the County's Acceptable Waste shall bear the name and phone number of the Contractor in letters that are plainly visible and at least four inches high. Each trailer shall be labeled by the Contractor in the same manner on each side and on the tail gate. The Contractor's signs on the trailers shall be subject to the Director's prior written approval.

5.6 The Disposal Facility

The Contractor shall accept all of the Acceptable Waste delivered to the Transfer Station and shall dispose of all such Acceptable Waste at the Contractor's Okeechobee Landfill in Okeechobee County, Florida. The Contractor shall not take the County's Acceptable Waste to any other facility unless the Board gives its prior written approval for the use of a different Disposal Facility. The Board may withhold its approval of any other Disposal Facility, at its sole discretion.

Notwithstanding the provisions of the preceding paragraph, the Contractor may dispose of the County's Acceptable Waste at the Class I Central Landfill in Broward County or another Disposal Facility if the Contractor has received the County's Administrator's prior written approval to do so. The County Administrator's approval of an alternate facility shall be limited to sixty (60) days or less. The County Administrator's approval shall be granted only when necessary to respond to emergencies, Force Majeure events, and similar problems. The County Administrator, in consultation with the

Contractor, shall designate the routes that shall be used by the Contractor when transporting the County's Acceptable Waste to the Disposal Facility.

At any Disposal Facility, the Contractor shall place the County's Acceptable Waste only in those areas that have at least a double composite liner system.

5.7 Spills and Emergencies in Transit

If the Contractor's activities under this Agreement result in a spill or emergency on the highway, the Contractor shall implement the emergency plan that is contained in the Operation Manual. The Contractor shall promptly notify the Florida Highway Patrol or local sheriff, as required by law. The Contractor shall promptly initiate and complete clean-up activities, if necessary. The Contractor shall notify the Director verbally within twelve (12) hours and shall provide a written report to the Director within twenty-four (24) hours concerning the cause of the spill or emergency, the clean-up activities that were implemented, and the current status of the situation.

5.8 Disposal of Unacceptable Waste

The Contractor shall arrange and pay for the disposal of any Unacceptable Waste, Special Waste, or Prohibited Waste that is removed from the Site by the Contractor.

ARTICLE 6. THE COUNTY'S RESPONSIBILITIES

6.1 Ownership of Real Property

The County shall own all rights, title and interest in the Site necessary to enable the County and the Contractor to perform their respective obligations at the Site pursuant to this Agreement. The County shall obtain and maintain any and all land use servitudes, easements, and rights-of-way necessary for the performance of the obligations of both the County and the Contractor at the Site pursuant to this Agreement.

6.2 Ownership of Transfer Station and Equipment

The County shall own the Transfer Station and the other permanent improvements to the Site, including the buildings, structures and associated built-in equipment.

6.3 Access to Transfer Station

The County shall provide full and complete access to the Transfer Station for the Contractor, as necessary to carry out the requirements of this Agreement.

The County shall have at least one trained spotter on duty all times when Solid Waste is received at the Transfer Station. The County's spotter(s) shall inspect all of the Solid Waste received at the Transfer Station and shall determine whether the material constitutes Acceptable Waste. The County shall load all of the Acceptable Waste into the Contractor's trailers for transport to the Disposal Facility. However, the Contractor may refuse to accept any Solid Waste that the Contractor reasonably believes is not Acceptable Waste.

The Contractor and the County shall use their best efforts to ensure that Unacceptable Waste and Prohibited Waste are not taken to the Disposal Facility. If Unacceptable Waste or Prohibited Waste is received at the Transfer Station, the County shall remove such material from the Transfer Station and dispose of it in a lawful manner, at the County's expense, unless the Contractor delivered the Unacceptable Waste or Prohibited Waste.

The County shall provide the containers needed for the temporary storage of Special Waste and other materials that are segregated from the Acceptable Waste at the Transfer Station. The County shall arrange and pay for the removal of these materials from the Transfer Station.

The Contractor shall be provided access at all reasonable times to observe the operations in the Transfer Station. At its expense, the Contractor may assign one or more inspectors to observe the County's operations while loading the Contractor's trucks. The County shall cooperate with said inspectors in the performance of their duties. The Contractor and its inspectors shall not interfere with or impede the County's operation of the Transfer Station.

The County's employees shall perform their responsibilities safely, efficiently and in accordance with the Agreement, Permit and Applicable Law. The County's spotters and other employees at the Transfer Station shall be trained in accordance with Applicable Law. The County shall prepare and follow an operating plan that satisfies the requirements of Applicable Law. At a minimum, the County's operating plan shall describe how: (a) the Transfer Station will be operated; (b) the Solid Waste will be inspected; (c) Unacceptable Waste will be segregated from Acceptable Waste; and (d) emergencies will be handled.

The County shall use its best efforts to load the Contractor's trailers in a timely manner and fully, without exceeding any maximum load limits under Applicable Law. The County shall install scales in the Transfer Station to help ensure that the Contractor's trailers are filled appropriately. The scales shall be connected to a large visual display, which shall be located where it is readily visible, so that the County and the Contractor can easily determine the weight of the Contractor's trailers while they are being filled.

Any damage to the Contractor's trucks or trailers caused by the County's operations, other than normal wear and tear, will be the responsibility of the County, which shall take steps to promptly effect any necessary repairs.

6.5 Restrictions on Special Waste

The Contractor shall not accept any segregated loads of Special Waste at the Transfer Station, unless the Contractor has received the Director's prior written approval.

6.6 Prohibited Waste

Neither the County nor the Contractor shall knowingly deliver or accept any Prohibited Waste at the Transfer Station. The County shall not knowingly send and the Contractor shall not knowingly transport Prohibited Waste to the Disposal Facility.

6.7 Leachate Management

The County shall operate and maintain a Leachate collection and disposal system in accordance with the Permits and Applicable Law. All Leachate generated in the Transfer Station or on the Site shall be collected in the Leachate collection system. The Contractor shall not allow Leachate to be released into the soils, surface water or groundwater at the Site.

6.8 Site Access and Security

The County shall control access to the Transfer Station. Other than during hours of operation, the Transfer Station shall be secured and all gates locked.

6.9 Collection of Solid Waste Fees

The County shall be responsible for collecting the appropriate fees from any Person that delivers Solid Waste to the Transfer Station. The County shall determine the amounts of such fees, if any.

6.10 Payment to the Contractor

The County shall pay the Contractor every month in accordance with Article 7. The County shall pay any amounts owed to other Persons hired directly by the County, and the Contractor shall have no liability for such payments.

6.11 Measurement of Solid Waste Tonnage

All vehicles transporting Acceptable Waste to the Disposal Facility shall be weighed

when they leave the Transfer Station. If agreed upon by the County and Contractor, tare weights may be used for these purposes.

The County shall be responsible for determining the number of tons of Acceptable Waste taken from the Transfer Station by the Contractor and shall do so by utilizing the County's automated data collection system at the County's scale house. The County shall produce reports that summarize the scale house data for each Operating Day, Operating Month and Operating Year.

6.12 Scale House Operations

The County shall be responsible for the operation and maintenance of the scales and scale house at the Transfer Station. The County shall perform all required calibration of the scales or shall arrange for such services to be performed by an independent contractor at the County's expense. The scales shall be calibrated at least twice each year. If requested, the County shall provide the Contractor with copies of all relevant documents verifying the calibration of the County's scales.

The County's scale operators shall retain the original weight records. All disposal tickets issued by the County will be consecutively numbered. Hand receipts will be utilized if the County's automated data collection system is inoperable. The disposal tickets and other scale house records shall be available for inspection by the Contractor upon request.

The Contractor shall be provided access at all reasonable times to observe the operations of the scale house. The Contractor may, at its expense, assign one or more inspectors to observe the County's operations. The County shall cooperate with said inspectors in the performance of their duties.

The County and the Contractor shall work together in a cooperative manner to resolve any questions concerning the accuracy of the County's scales and weight records. The Contractor may, at its expense, hire an independent third party to verify the accuracy of the County's scales and records.

6.13 Environmental Monitoring

The County shall perform and pay for any groundwater, surface water, Leachate, or other routine environmental monitoring at the Transfer Station that is required by FDEP or any regulatory agency with jurisdiction over the activities at the Transfer Station. However, the Contractor shall pay for any enhanced or extraordinary environmental monitoring that is required as a result of Pollution or other problems caused by Contractor's activities.

6.14

Solid Waste Flow Control

To the extent allowed by law, the County shall deliver or cause to be delivered all Acceptable Waste within its lawful control to the Transfer Station. The County shall instruct its permitted, franchised and licensed haulers to deliver all Acceptable Waste collected within unincorporated Martin County to the Transfer Station. However, the County is not obligated to file a lawsuit or take any other enforcement action against any hauler to compel compliance with this requirement. Further, the requirements in this paragraph do not apply to the delivery of Construction and Demolition Debris or other types of Special Waste.

The County reserves the right to divert any or all of the County's Solid Waste to any other facility or location of the County's choice for the purpose of Recycling, removing Recovered Materials, removing organic materials, composting, or otherwise using or processing the Solid Waste. These activities also may be conducted at the Transfer Station or Site. The County shall give Notice to the Contractor at least ninety (90) days before the County begins to divert Solid Waste pursuant to the provisions of this paragraph. After the County's Solid Waste is processed in this fashion, the County shall deliver or have delivered all remaining Acceptable Waste to the Contractor at the Transfer Station.

Nothing in this Agreement shall be construed to require the County to deliver a minimum amount of Acceptable Waste to the Contractor on a daily, annual or other basis.

6.15 Ownership of Solid Waste

The County shall possess all right, title, and ownership of all Solid Waste, Recyclable Material, and Recovered Material that is delivered to the Transfer Station. All right, title, ownership and responsibility for the Solid Waste, Recyclable Material, and Recovered Material shall pass to the Contractor when the Contractor removes such materials from the Site.

6.16 Licenses and Permits

Subject to the provisions of Section 3.11 and this Section 6.16, the County shall take all actions necessary to obtain each license, approval and Permit needed for the construction and operation of the Transfer Station.

6.17 County Decisions and Appeals

All of the Contractor's work under this Agreement shall be performed to the reasonable satisfaction of the Director. The Director shall be the County's representative for the purpose of resolving any questions or disputes arising under or related to this Agreement. The Director's decisions may be appealed to the County Administrator. If the

Contractor is dissatisfied with the County Administrator's decision, the Contractor may pursue non-binding arbitration pursuant to Section 12.19.

ARTICLE 7. GENERAL PAYMENT PROVISIONS

7.1 Service Fee

After each Operating Month, the County shall pay a Service Fee in the amount and in the manner specified in this Agreement. The Service Fee is intended to fully and completely compensate the Contractor for all of Contractor's duties, obligations and responsibilities under this Agreement.

7.2 Method of Calculating Service Fee

The Contractor shall be paid a Service Fee for each Ton of Acceptable Waste that the Contractor takes from the Transfer Station and disposes at the Disposal Facility. The Department will use the Transaction Summary Report produced by the County's automated data collection system to calculate the total amount of the payment to be made to the Contractor.

On the Effective Date, the Service Fee for Acceptable Waste shall be \$32.07 per Ton. This Service Fee is comprised of a Base Rate of \$28.17 and a Host Fee of \$3.90.

On the Effective Date, the Service Fees for Special Wastes shall be as set forth in Exhibit "G".

7.3 Reductions In Service Fee

The amount of the Service Fee to be paid to the Contractor each month shall be reduced by the amount of any deductions taken by the County pursuant to Section 10.4.

7.4 Procedure For Payment of Service Fee

Each month the Department shall calculate the amount of the Service Fee that is owed to the Contractor, based on the provisions of this Agreement. Thereafter, the Department shall prepare a request for the payment of the Contractor's Service Fee. The Department's request for payment will be submitted to the County Finance Director, and a copy of the request for payment will be provided to the Contractor, within ten (10) days after the end of the Operating Month.

If the Contractor disagrees with the amount stated in the Department's request for payment, the Contractor shall notify the Director within five (5) days after the request for payment is received by the Contractor. The existence of a dispute shall not delay the payment of undisputed amounts. Payments to the Contractor of undisputed amounts shall be made within thirty (30) days after the request for payment is received by the County's Finance Director.

7.5 Adjustments to Fees

From time to time, the fees described in this Agreement may be adjusted in the manner provided below.

7.5.1 Consumer Price Index Adjustment

The Service Fee shall be adjusted on the Commencement Date, and on January 1 of each calendar year after the Commencement Date, in a manner consistent with the provisions of this Section 7.5.1. and Section 7.5.4.

The Base Rate component of the Service Fee for Acceptable Waste shall be \$28.17 per Ton until January 1, 2004, and then shall increase at an annual rate of one percent (1 %) through September 30, 2007.

When the Service Fee is adjusted on January 1, 2008, the adjustment shall reflect the increases in the Base Rate that are authorized through September 30, 2007, pursuant to the preceding paragraph, but shall not reflect increases or decreases in the Consumer Price Index (CPI) that occur between October 1, 2007 and January 1, 2008.

When the Service Fee is adjusted on January 1, 2009 and each January 1 thereafter, the Base Rate component of the Service Fee shall be adjusted upward or downward in an amount equal to eighty percent (80 %) of the change in the CPI during the twelve (12) month period extending from October 1 through September 30 of the prior year, provided that the CPI adjustment shall not exceed five percent (5 %) in any one year. If a CPI adjustment would exceed five percent (5 %), but for the provisions of the preceding sentence, the Base Rate shall be increased by five percent (5 %) at that time and the Contractor shall be entitled to receive the additional CPI increase (i.e., the amount that exceeds five percent) when the Base Rate is adjusted the next year, provided the total CPI adjustment never exceeds five percent (5 %) in any one year. If this Agreement is terminated by either party for any reason, the County shall have no obligation to pay damages or otherwise compensate the Contractor for any previously unpaid CPI adjustment.

If the CPI increased during the prior year, the amount of the CPI adjustment shall be calculated by using the following formula:

$$\text{New Price} = \frac{[(\text{CPI2} - \text{CPI1}) \times 0.80] + 1 \times \text{Current Price}}{(\text{CPI1})}$$

"CPI" - the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for all items in the wage earners and clerical workers category for the South Region.

"CPI1" - the published CPI for October in the preceding year.

"CPI2" - the published CPI for October in the year in which the Service Fee is being adjusted.

If the CPI decreased during the prior year, the reduction in the Service Fee shall be calculated in a similar manner to reflect the change in the CPI.

Adjustments to the Service Fee made in accordance with this section are intended to reflect changes in the purchasing power of a given amount of money expressed in dollars. If the method of establishing the CPI is revised to more accurately reflect inflation or deflation, the revised CPI shall be used thereafter when calculating the adjustments to the Service Fee. If CPI1 and CPI2 are not expressed in relation to the same base period, the County shall make an appropriate statistical adjustment or conversion. If the CPI is discontinued, the County shall select another index, which must be representative of the inflationary or deflationary trends affecting the parties' performance under this Agreement, and which is published by the United States government or by a reputable publisher of financial and economic indices.

7.5.2 Legal Changes Adjustment

After the Effective Date, if there is a Change in Law which has the effect of establishing a requirement that directly causes or will cause a significant increase or a decrease in the Contractor's cost of performing its obligations under this Agreement, then:

(a) In the event of an increase in costs, Contractor may notify the County of such event and seek an increase in the Service Fee to reflect the increased cost of performing those contract obligations that have been or will be affected by the Change in Law.

(b) In the event of a decrease in costs, the County may notify the Contractor of such event and seek a decrease in the Service Fee to reflect the decreased cost of performing those contract obligations that have been or will be affected by the Change in Law. Decreases in cost shall be calculated on the same basis as increases in costs.

The County shall bear 100% of any cost increase and obtain the benefit of 100% of any cost reduction.

If a Change in Law meets the requirements for an adjustment to the Service Fee, nothing in this Agreement shall be construed to require the County to pay more than its proportionate share of any increased cost resulting from the Change in Law.

To the extent either party is seeking an increase or reduction in the Service Fee pursuant to this Section, that party (the "requesting party") shall provide the other with as much detail as possible as to the nature of the Change in Law, the basis for the assertion that such change has had or will have an effect on the Contractor's costs, the total dollar amount associated with such effect, and a calculation of the change being sought in the Service Fee. Upon the receipt of such information, the other party (the "responding party") promptly shall review the information and within sixty (60) days shall respond to the requesting party in writing, stating whether it agrees or disagrees with the requesting party's proposal. If the responding party agrees, then the parties promptly shall meet and adjust the Service Fee. If the responding party disagrees with the request, then the parties shall attempt to resolve the dispute through non-binding arbitration pursuant to Section 12.19 of this Agreement.

The County shall be entitled to audit the Contractor's financial and operational records to verify the impact of a Change in Law on the Contractor's cost of performing under this Agreement.

If an adjustment to the Service Fee is made as a result of a Change in Law, the adjustment shall be applied retroactively to the date when the Contractor's costs first changed as a result of the Change in Law.

7.5.3 Adjustments to Transportation and Disposal Costs

The Service Fee established in this Agreement is based on the cost of transportation to and disposal at Contractor's Okeechobee Landfill in Okeechobee County, Florida. The Service Fee paid by the County shall remain the same if the Contractor takes the County's Acceptable Waste to the Central Landfill in Broward County or if the County Administrator authorizes the use of a different Disposal Facility on a temporary basis pursuant to Section 5.6, above. Except for these circumstances, the Service Fee shall be adjusted if the County's Acceptable Waste is taken to any other facility for disposal. If the County and the Contractor cannot mutually agree on the amount of the adjustment, the County may refuse to allow the Contractor to use a different disposal facility, pursuant to Section 5.6.

7.5.4 Host Fees

Subject to the limitations set forth herein, the Service Fee paid to the Contractor shall include funds sufficient to reimburse the Contractor for certain Host Fees paid by the Contractor to Okeechobee County for the disposal of the County's Solid Waste. The Host Fee component of the Service Fee shall be adjusted on the Commencement Date and on January 1 of each calendar year after the Commencement Date.

When the Contractor takes the County's Solid Waste to the Contractor's Okeechobee Landfill, the County shall pay the Contractor an amount equal to the applicable Host Fee, as established pursuant to Section 10.04 of the "Okeechobee County Landfill Privatization Agreement", as amended prior to the Effective Date ("Okeechobee Privatization Agreement"). Under such circumstances, the County also shall pay the Contractor an amount equal to the fee that the Contractor must pay to the Community Solid Waste Trust Fund, pursuant to Section 12.02 of the Okeechobee Privatization Agreement. A copy of the Okeechobee Privatization Agreement is attached hereto as Exhibit "H".

As of the Effective Date, the Contractor must pay a total of \$3.90 to Okeechobee County for each Ton of Acceptable Waste delivered to the Okeechobee Landfill. The payment of \$3.90 includes \$2.60 for Okeechobee County's Host Fee and \$1.30 for Okeechobee County's Community Solid Waste Trust Fund. As of the Effective Date, the Contractor also must pay a Host Fee to Okeechobee County of \$0.98 and a trust fund fee of \$1.29 for each Ton of ash. As of the Effective Date, the Contractor must pay a Host Fee to Okeechobee County of \$0.60 and a trust fund fee of \$1.29 for each Ton of Construction and Demolition Debris. The Contractor's payments to the Community Solid Waste Trust Fund apply to every Ton of Solid Waste (except certain types of Yard Trash) delivered to the Okeechobee Landfill. The Host Fees and the payments to the Community Solid Waste Trust Fund are adjusted each year in an amount equal to the percentage increase or decrease in the CPI for the prior twelve (12) month period. These CPI adjustments are based on the CPI index for all items (1982-84 = 100) in the wage earners and clerical workers category for the South Region. The Host Fees, trust fund payment, and CPI adjustments described in this paragraph are the specific payments that are required by the County pursuant to the preceding paragraph.

Section 10.04 of the Okeechobee Privatization Agreement establishes a Host Fee for the use of the existing Class I Landfill (a/k/a the Berman Road Landfill) and it establishes a larger Host Fee for the use of the proposed "future landfill site" (a/k/a the Clay Farms Landfill). When the Contractor takes the County's Acceptable Waste to the Okeechobee Landfill, the County's Host Fee payments to the Contractor shall be based on the rate established for the use of the Berman Road Landfill, until the seventh anniversary of the Effective Date or until the Contractor begins to deliver the County's Acceptable Waste to the future landfill site, whichever occurs later.

The County is not obligated to reimburse the Contractor for the payment of any Host Fee or other fee that is established by Okeechobee County after the Effective Date, or increased after the Effective Date, except for the CPI increases described in this Section 7.5.4.

ARTICLE 8. TERM

Unless terminated earlier in the manner provided herein, the Term of this Agreement shall be a minimum of thirty (30) years, which shall be divided into an initial Term of fifteen (15) years and renewal Terms of eight (8) years, and seven (7) years, respectively. The initial Term shall begin on the Commencement Date.

At the end of the initial Term and at the end of the first renewal Term, the Board shall have the right, in its sole discretion, to renew, renegotiate, or terminate this Agreement. The County shall provide at least 180 days advance Notice to the Contractor if the County wishes to renegotiate or terminate this Agreement at the expiration of the initial Term or the first renewal Term. This Agreement automatically shall be renewed and extended unless the County provides timely Notice to the Contractor of the County's desire to renegotiate or terminate this Agreement.

The provisions of the two preceding paragraphs shall apply for the first thirty (30) years of this Agreement. Thereafter, this Agreement may be renewed with the mutual consent of the County and the Contractor for four (4) additional Terms of five (5) years each, for a total of twenty (20) years and a cumulative total of fifty (50) years. The Agreement shall be renewed and extended automatically unless the County or the Contractor provides advance Notice, at least 365 days before the end of the Term, that it wishes to renegotiate or terminate this Agreement.

ARTICLE 9. TERMINATION AND SPECIAL CONDITIONS

9.1 For Cause

Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the material covenants or conditions contained herein for five (5) working days after the other party has given the party breaching or defaulting Notice of such breach or default, the other party may (i) terminate this Agreement as of any date; (ii) cure the breach or default at the expense of the breaching or defaulting party; and/or (iii) have recourse to any other right or remedy to which it may be entitled at law or in equity. The non-defaulting party's selection of any remedy specified herein shall not be

construed as a waiver of any other rights at law or in equity related to the defaulting party's breach.

If a default does not endanger the health, safety, or welfare of the County or its citizens, and in the exercise of due diligence during the aforesaid five (5) day period a cure cannot reasonably be effected, such five (5) day period shall be extended, to include such additional time as is reasonably necessary to effect a cure, provided the defaulting party exercises continuous diligent efforts to cure the default during the extended cure period.

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.

Each of the following shall constitute an event of default:

9.1.1 Failure or Refusal of a Party to Comply with Terms of the Agreement

The persistent, repeated, or substantial failure or refusal by either party to substantially fulfill any of its material obligations in accordance with this Agreement, unless excused or justified by a Force Majeure event, default by the other party, or other legally recognized cause customarily justifying or excusing non-performance; provided, however, that the first failure of the Contractor to meet its obligations in accordance with Section 10.4 shall not be an event of default so long as the Contractor pays the applicable deductions; and provided, that no such default shall constitute an event of default unless and until:

(a) The non-defaulting party has given Notice to the defaulting party that a default or defaults exist which will, unless corrected, constitute an event of default on the part of the defaulting party; and

(b) The defaulting party either has not corrected such default, or has not initiated reasonable steps expeditiously to correct such default within five (5) days from the date of such Notice.

The events by which the Contractor shall be deemed to have failed to fulfill a material obligation of this Agreement shall include, but not be limited to:

- (i) Failing to begin work on the Commencement Date;
- (ii) Discontinuing prosecution of the work required by this Agreement;

- (iii) Willful or negligent failure to comply with any Applicable Laws or the Permit;
- (iv) Breaching any material warranty or making any representation in this Agreement that is materially untrue;
- (v) Failing to pay, when due, any sums owed to a Subcontractor for services or materials provided pursuant to this Agreement;
- (vi) Failing to perform the work or satisfy the requirements established in this Agreement; or
- (vii) Failing to provide or continuously maintain the insurance or bonds required by this Agreement.

9.1.2 Voluntary Bankruptcy

Written admission by a party that it is bankrupt; or filing by a party of a voluntary petition under the Federal Bankruptcy Act; or consent by a party to the court appointment of a receiver or trustee for all or a substantial portion of its property or business; or the making of any arrangement by a party with, or for the benefit of, its creditors or assigning to a trustee, receiver, or similar functionary (regardless of how designated) all or a substantial portion of a party's property or business; or by becoming insolvent.

9.1.3 Involuntary Bankruptcy

Final adjudication of a party as bankrupt under the Federal Bankruptcy Act.

9.1.4 Habitual Violations

If the Contractor has frequently, regularly or repetitively defaulted in the performance of any of the conditions or requirements contained in this Agreement, the County may in its sole discretion deem the Contractor to be a "habitual violator", regardless of whether the Contractor has corrected each individual condition of default. Under such circumstances, the Contractor shall forfeit its right to any further notice or grace period to correct or cure future defaults. All of the Contractor's prior defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The County shall issue the Contractor a notice that the Contractor has been deemed a "habitual violator." Thereafter, any single default by the Contractor of whatever nature shall be grounds for immediate termination of this Agreement. In the event of any such default, the County may terminate this Agreement by giving a written Notice to the Contractor, which shall be effective upon the date specified in the Notice. The Contractor shall immediately

cease all activities under this Agreement. This section creates a supplemental and additional means of terminating this Agreement and it shall not be deemed to be in lieu of any other remedy available at law or equity.

9.2 Termination Due To Environmental Contamination

The County may terminate this Agreement at any time if the Board reasonably concludes that the continued use of the Disposal Facility exposes the County to significant liability under Applicable Law because of Pollution or environmental contamination at the Disposal Facility. Among other things, the Board may consider whether: (a) the Disposal Facility has been or soon will be included in EPA's National Priorities List or an analogous state or federal list of highly contaminated sites; (b) a state or federal agency has identified significant Pollution or contamination at the Disposal Facility that cannot be readily corrected; or (c) the County's continued use of the Disposal Facility is contributing to Pollution or contamination that poses a significant risk to human health or the environment.

The Board shall provide at least thirty (30) days advance Notice to the Contractor before the County terminates this Agreement pursuant to the provisions of this Section 9.2. The Board also shall hold a public hearing and provide an opportunity for the Contractor to present information concerning any relevant issue.

Regardless of the facts concerning the Disposal Facility, the Board shall not terminate this Agreement pursuant to this Section 9.2 if the Contractor agrees to take the County's Acceptable Waste to another Disposal Facility that does not suffer from the same concerns about Pollution or contamination, and provided that the Contractor agrees to use the alternate Disposal Facility under the same terms, conditions and prices that were prevailing at the original Disposal Facility.

9.3 Force Majeure

Force Majeure events shall be subject to the following provisions and limitations.

9.3.1 Obligations Excused

Notwithstanding any other provision in this Agreement, except the provisions of Section 10.1.2, neither the County nor the Contractor shall be liable to the other for any failure or delay in performance of any obligation under this Agreement due to the occurrence of a Force Majeure event. As a condition precedent to the right to claim excuse of performance, the party experiencing a Force Majeure event shall:

- (a) Promptly notify the other party verbally; and
- (b) As soon as practical, but in no event more than ten (10) days

thereafter, prepare and deliver to the other party a Notice with a written description of (1) the commencement of the Force Majeure event, (2) its estimated duration and cost impact, if any, on the party's obligations, under this Agreement, and (3) its estimated impact (other than cost), if any, on the party's obligations under this agreement.

9.3.2 Continuing Obligations

Whenever a Force Majeure event shall occur, the parties shall, as quickly as possible, to the extent reasonable, eliminate the cause therefor, reduce the costs thereof, and resume performance under this Agreement. Additionally, either party shall provide prompt Notice to the other of the cessation of a Force Majeure event.

The party claiming a Force Majeure event shall affirmatively prove to the other party the occurrence of the Force Majeure event and all resulting impacts, if any, to the performance of the Agreement.

The parties recognize that nothing in this subsection shall in any way limit each's duty, as otherwise specified within this Agreement, to comply with all Applicable Laws.

Although strikes, slowdowns, walk-outs, block-outs, industrial disturbances, or other labor disputes are not Force Majeure events, if such events occur, the Contractor shall take all reasonable steps to continue normal operations. Among such steps which may be required are the transfer of personnel from any other locations, hiring of additional short-term employees, and contracting with other entities to provide the necessary equipment or labor required to perform the Contractor's responsibilities under this Agreement.

9.3.3 County's or Contractor's Right to Terminate Due to Force Majeure Event

In the event that the County or the Contractor in good faith determines that a Force Majeure event will prevent or alter performance permanently or for such period of time or at such additional expense as to make performance unreasonable, the County or the Contractor may declare the Agreement terminated and neither party shall be further obligated to the other except for amounts due upon the date of termination of the Agreement.

9.4 Interim Operations

In the event that this Agreement is terminated before the end of any Term, 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 County in order to allow the County to obtain the services of a successor contractor or to make arrangements to transport and dispose of the Acceptable Waste with its own forces. The Contractor shall be paid for its

transport services during said interim period at the rates in effect prior to issuance of the Notice of termination. Any additional services will be paid for at an agreed upon rate.

9.5 Vacating the Site

Upon vacating the Site, the Contractor shall properly dispose of any accumulations of waste materials, rubbish, and other debris resulting from the Contractor's activities. The Contractor shall remove Contractor's tools, equipment, machinery, and materials from the premises and shall leave the Transfer Station and premises clean. The Contractor shall restore to original condition (ordinary wear and tear excepted) any portions of the Transfer Station or Site that were altered or changed by the Contractor without the County's approval, unless otherwise directed by the County.

ARTICLE 10. DAMAGES, INDEMNIFICATION, AND DEDUCTIONS

10.1 Liability, Indemnification, and Contribution

The provisions of this Article 10 shall survive the termination of this Agreement.

10.1.1 Liability

The Contractor shall be liable for those injuries and conditions that are caused by or result from the Contractor's failure to transport or dispose of Acceptable Waste in accordance with the terms of this Agreement. To the extent that the County and Contractor are joint tortfeasors, losses shall be apportioned in the manner described in Section 10.1.3, below.

10.1.2 Indemnification

To the extent of the Contractor's fault, the Contractor shall protect, defend, hold harmless and indemnify the County (including its elected officials, agents, representatives and employees) from and against any and all claims, damages, demands, liabilities (including strict liabilities), losses, delays, fines, penalties, settlements, injuries and expenses of any kind or nature, including court costs and reasonable attorney's fees (including costs and fees for appeals, mediations, arbitrations, and administrative proceedings) (collectively "claims"), which in any way arise out of, result from or relate to the Contractor's failure to haul or dispose of Solid Waste in accordance with the terms of this Agreement, provided that any such claim is (a) attributable to, resulting from, or related to bodily injury, sickness, disease, or death, or injury to or destruction of tangible personal property or natural resources, including the loss of use resulting therefrom, or Pollution or contamination of the environment, or actual or alleged violations of Applicable

Law, or the breach of, misrepresentation in, untruth in, or inaccuracy in any representation, warranty or covenant by the Contractor in this Agreement, and (b) is caused by an act, omission, misconduct or negligence of the Contractor, any Subcontractor, any Person employed by any of them, or any Person for whose acts any of them may be liable. The Contractor's obligations shall not be limited by, or in any way to, any insurance coverage, including but not limited to benefits payable under any Workers' Compensation acts, disability benefit acts, or other employee benefit acts, or by any provision in or exclusion or omission from any policy of insurance. Notwithstanding anything to the contrary set forth above, the Contractor shall investigate, handle, respond to, provide a defense for and defend against any such claim at the Contractor's sole cost and expense, and shall bear any and all other costs and expenses related thereto, even if the claims are groundless, false, fraudulent or ultimately are determined to have not occurred as the result of the fault of the Contractor, provided that, at a minimum, a colorable claim is alleged against the Contractor.. The Contractor acknowledges that the first Five Thousand Dollars (\$5,000.00) paid to the Contractor pursuant to this Agreement is in consideration for the indemnification granted to the County in this paragraph.

Notwithstanding any other provision contained in this Agreement, the Contractor's obligations under this Section 10.1.2 shall extend to and include claims that are based upon, arise out of, result from, or relate to strict liability (i.e., where fault is not an issue) or Force Majeure events (i.e., where the Contractor's other obligations under this Agreement may be excused).

If the County is entitled to be indemnified and defended by the Contractor in the manner described above and the Contractor fails to promptly assume and pay for the defense of any such claim, then the County may contest or settle any such claim after notice to Contractor and an additional opportunity to defend and the Contractor shall pay any and all sums expended by the County in contesting or settling such claim (including costs, expenses, and attorney's fees). Any attorney or law firm hired by the Contractor to defend or represent the County with regard to any claim must first be approved in writing by the County and not have a conflict with its representation of the County. If the County and the Contractor are defendants with regard to any claim and it is determined by the County that there are or may be legal defenses available to the County which are different from or in addition to those defenses available to the Contractor, or if it is determined by the County that the County has or may have a claim against the Contractor, then the County shall have the right to select separate counsel to represent the County and to assert the County's legal defenses and claims against the Contractor. In such cases, the Contractor shall promptly pay all costs and expenses for the County's defense or claim, when and as such costs and expenses become due and payable.

10.1.3 Contribution

In the event of joint negligence on the part of the County and the Contractor, any

loss and costs shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the Effective Date, subject to the recovery limits set forth in Section 768.28, Florida Statutes, in effect on the Effective Date.

10.2 Parent Corporation Guarantee

If the Contractor fails or refuses to satisfy the requirements of Section 10.1.2 with regard to any claims based on, related to or arising out of Pollution at the Disposal Facility, then the Contractor's parent corporation (Waste Management, Inc.) shall satisfy the Contractor's obligations under Section 10.1.2, in accordance with the guarantee that is attached hereto as Exhibit "D."

10.3 Damages

Except where otherwise specifically provided, the measure of damages to be paid by the Contractor to the County or by the County to the Contractor, due to any failure by the Contractor or the County to meet any of its obligations under this Agreement, shall be the actual damages incurred by the County or the Contractor, including any and all Consequential Damages. Said damages shall include, but shall not be limited to, the following damages:

10.3.1 Damages in the Event of Termination

If the County terminates this Agreement because of a default by the Contractor, the Contractor shall be liable to the County for all actual damages incurred by the County as a result of Contractor's default. The foregoing shall apply without regard to the County's rights pursuant to the Performance and Payment Bond, but in no event shall the County recover more than its actual damages.

10.3.2 Damages Due to Failure to Remove and Dispose of Acceptable Waste

If, after Notice to Contractor and failure to cure pursuant to Section 9.1 of this Agreement, the Contractor fails or refuses to remove Acceptable Waste from the County's Transfer Station and dispose of the Acceptable Waste in accordance with this Agreement, the County shall have the right to take such actions as were required to be taken by the Contractor (including but not limited to contracting with third parties) and the Contractor shall pay the County all costs and expenses reasonably incurred by the County. The foregoing shall apply regardless of whether the County terminates this Agreement and shall be in addition to any other damages for which the Contractor may be liable pursuant to other sections of this Agreement.

10.3.3

The County's Damages Due to Contractor's Failure to Comply with Environmental Or Other Applicable Laws

If the Contractor or Subcontractor fails to comply with any applicable environmental regulations or other Applicable Laws, the Contractor shall pay to the County the following:

(a) All lawful fines, penalties, and forfeitures charged to the County by any judicial orders or by any governmental agency responsible for the enforcement of environmental or other Applicable Laws; and

(b) The actual costs incurred by the County as a result of the failure to comply with the environmental or other Applicable Laws, including any costs incurred in investigating and remedying the conditions which led to the failure to comply with the Applicable Laws.

10.4

Deductions

The parties acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would or might be incurred by the County due to those failures or circumstances described in this Section 10.4 and for which the Contractor would otherwise be liable. Accordingly, deductions from the Service Fee may be assessed against the Contractor for the following failures to comply with this Agreement:

- (a) The Contractor shall:
 - (i) promptly move empty trailers into the Transfer Station when requested by the County;
 - (ii) promptly move filled trailers out of the Transfer Station when requested;
 - (iii) securely and completely cover each trailer promptly after the trailer is filled with Acceptable Waste;
 - (iv) keep each trailer securely and completely covered when transporting Solid Waste in Martin County; and
 - (v) remove all filled trailers from the Site by the end of each Operating Day.

If the Contractor fails to comply with any one of these requirements, the Director shall give Notice to the Contractor of the foregoing failure, and the County shall assess a deduction in the amount of Two Hundred Fifty Dollars (\$250) per occurrence against the Contractor.

(b) If, due to Contractor's misconduct or negligence, the quality of surface water discharged from the Transfer Station falls below the standards established by the Permits or Applicable Law, the Director shall give Notice to the Contractor of the foregoing failure. If the Contractor fails to commence actions to remedy the conditions which produced the substandard surface water quality within two (2) Operating Days of Notice from the Director, deductions in the amount of Four Hundred Dollars (\$400) per day shall be assessed against the Contractor until such time as the Director determines that the Contractor has commenced actions to remedy the conditions which produced the substandard surface water quality.

(c) If the Contractor fails to maintain and utilize the levels of labor and equipment required by this Agreement, the Director shall give Notice of the foregoing failure to Contractor. If Contractor fails to remedy the foregoing failure within one (1) Operating Day of Notice from the Director, deductions in the amount of Four Hundred (\$400) per day shall be assessed against Contractor until such time as the Director determines that Contractor has remedied the foregoing failure.

(d) If the Contractor's activities at the Transfer Station result in Objectionable Odors at or beyond the boundary of the Site, the Director shall give Notice to the Contractor. If the Contractor fails to remedy the odor problem within two (2) Operating Days of Notice from the Director, deductions in the amount of Four Hundred Dollars (\$400) per day shall be assessed against the Contractor until such time as the Director determines that the Contractor has remedied the foregoing problem.

If the Contractor fails to comply with any one of the requirements identified in subparagraphs (a) - (d), above, on three or more occasions in one Operating Year, the amount of the deduction for that one requirement shall be doubled.

If the Contractor objects to the County's deductions, the Contractor may request non-binding arbitration pursuant to Section 12.19.

10.5 Settlement And Release

If this Agreement is terminated, the County shall pay to the Contractor any and all sums due, owing, and unpaid to the Contractor by the County for work performed through the date of termination, less any and all sums owed by the Contractor to the County and less any and all deductions or other offsets the County may have. In exchange for this payment and the payment of any damages which may be owed to Contractor by the County, the Contractor shall execute and deliver to the County a general release of the County, its

ected officials, employees, representatives, and agents. This payment to the Contractor shall constitute Contractor's full and final compensation under this Agreement and the Contractor shall have no right to receive any further payments. This provision does not limit the rights of either party to receive indemnification in the future.

ARTICLE 11. STATEMENT OF ASSURANCE

The Contractor assures the County that said Contractor will not on the grounds of race, color, national origin, religion, sex, age, handicap, or marital status, discriminate in any form or manner against said Contractor's employees or applicants for employment (as provided in Title VI of the 1964 Civil Rights Act, and the Florida Human Rights Act of 1977). The Contractor understands and agrees that this Agreement is conditioned upon the veracity of this Statement of Assurance. Furthermore, the Contractor herein assures the County that said Contractor will comply with Title VI of the Civil Rights Act of 1964 when federal grant(s) and other applicable federal and State laws are involved. Executive Orders and regulations prohibiting discrimination as hereinabove referenced are included by this reference thereto. This Statement of Assurance shall be interpreted to include Vietnam-Era Veterans and Disabled Veterans within its protective range of applicability.

The Contractor also agrees to comply with the applicable provisions of the Civil Rights Act of 1866; Civil Rights Act of 1871; Equal Pay Act of 1963; Civil Rights Act of 1964; Civil Rights Restoration Act of 1987; Age Discrimination Act of 1975; Florida Statute Sections 112.041, 112.043, and 413.08; Age Discrimination and Employment Acts of 1967; Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Federal Civil Rights Act of 1991; Florida Civil Rights Act of 1992; any and all amendments to the foregoing; and all other Applicable Laws.

ARTICLE 12. GENERAL CONDITIONS

12.1 Proposal Bond

On or before the Effective Date, the Contractor shall deliver a Proposal Bond to the County. The Proposal Bond shall be in an amount not less than \$50,000. On or before the first anniversary of the Effective Date, the Contractor shall increase the amount of the Proposal Bond to \$100,000. The Proposal Bond shall remain in full force and effect until the Contractor delivers the required Certificates of Insurance and the Performance and Payment Bond to the County and receives the County's confirmation that the Certificates of Insurance and Performance and Payment Bond are in compliance with the requirements of this Agreement.

The Proposal Bond shall be in a form that is acceptable to the County. The surety or sureties shall be a company or companies acceptable to the County.

The Proposal Bond, as well as the Performance and Payment Bond, shall be delivered to the County at the following address:

Director, Utilities & Solid Waste Department
Martin County
P.O. Box 9000
Stuart, Florida 34995-9000

12.2 Forfeiture of Proposal Bond

The County may declare this Agreement and the Proposal Bond to be forfeited if:

- (a) the Contractor fails to increase the amount of the Proposal Bond to \$100,000 within one year after the Effective Date;
- (b) the Contractor fails to deliver the required Certificates of Insurance at least 20 days before the Commencement Date; or
- (c) the Contractor fails to deliver the Performance and Payment Bond at least 30 days before the Commencement Date, or fails to record said bond in the public records of the County before the Commencement Date.

The forfeiture of the Proposal Bond shall constitute liquidated damages to the County, not a penalty.

12.3 Performance and Payment Bond

The Contractor shall execute the Performance and Payment Bond included herein as security for the faithful performance and payment of all its obligations under this Agreement. The Performance and Payment Bond shall be in the form and amounts specified in Exhibit "C" and shall be approved by the County. The surety or sureties shall be a company or companies acceptable to the County. The Performance and Payment Bond shall remain in full force and effect until all liabilities and obligations covered thereby have been performed, discharged, or are otherwise barred by Applicable Law.

Initially, the Performance and Payment Bond shall be in an amount not less than 110% of the total amount of the Service Fees that are expected to be paid to the Contractor during the first Operating Year. The amount of the Performance and Payment Bond shall be adjusted on or before each anniversary of the Commencement Date, and shall be in an amount not less than 110% of the total amount of the Service Fees paid to the Contractor

during the prior Operating Year.

12.4 Insurance Coverages Required of the Contractor

12.4.1 General Information

The Contractor shall purchase at its cost and maintain the following insurance coverages with insurance companies acceptable to the County for limits of liability of not less than as required herein. The Board of County Commissioners is to be an additional named insured under the Commercial General Liability, Automobile Liability, Umbrella Liability, and Environmental Impairment Liability policies with the Severability of Interest Provision applicable to each policy. Other local governments using the Transfer Station shall be added as named insureds within thirty (30) days after the Contractor receives the County's written request to add such governments. All liability insurance shall be on the "occurrence form." Each policy shall also provide that the Contractor's coverage is primary to any insurance or self-insurance program of the County and that the County shall not be directly responsible for the payment of any insurance premium due the insurance companies. The insurance coverages and limits required must be evidenced by properly executed Certificates of Insurance supplied by the Contractor as shown herein. Policies of insurance shall be with carriers admitted to do business in the State of Florida. Carriers shall be "A" rated and have a financial rating size of "IX" or better, according to the A. M. Best Key Rating Guide. Certificates of Insurance shall show the certificate holder as: The Board of County Commissioners of Martin County, Stuart, Florida. The Certificate of Insurance shall reflect thirty (30) days' Notice of any cancellation or reduction in insurance coverage. No County property shall be occupied or work started under this Agreement until the properly executed Certificates of Insurance have been received and approved by the County. On renewal at the end of each policy term, properly executed Certificates of Insurance must be delivered to the County at least thirty (30) days before expiration of the insurance policies for the County's review and approval so that there will be no interruption in the Contractor's work under this Agreement due to the lack of proof of insurance. Certificates of Insurance, along with any subsequent Notices of change or cancellation, shall be provided to the County as specified at the following address:

Director, Utilities & Solid Waste Department
Martin County
P.O. Box 9000
Stuart, Florida 34995-9000

12.4.2 Workers' Compensation and
Employer's Liability Insurance

Workers' Compensation and Employer's Liability Insurance shall be maintained by the Contractor in compliance with the laws of the State of Florida. The Employer's

Liability limit shall not be less than Five Hundred Thousand Dollars (\$500,000) for each person-accident, \$500,000 each person-disease. If a Self-Insurance Workers' Compensation Program is used, it must be approved by the Insurance Commissioner of the State of Florida in accordance with the laws of the State of Florida.

12.4.3 Commercial General Liability Insurance

Commercial General Liability insurance shall be maintained by the Contractor with minimum combined single limits of One Million Dollars (\$1,000,000) including coverage parts of bodily injury, personal injury, broad form property damage, blanket contractual liability, independent contractors, and products and completed operations. The exclusion for explosion, underground damage and collapse shall be removed.

12.4.4 Automobile Liability Insurance

Automobile Liability insurance shall be maintained by the Contractor with minimum combined single limits of One Million Dollars (\$1,000,000) for all owned, hired, and non-owned vehicles.

12.4.5 Umbrella Liability Insurance

Umbrella Liability "Form Following" Insurance shall be maintained by the Contractor with a limit of not less than Five Million Dollars (\$5,000,000). Coverage shall be form following and drop down to underlying coverages where limits are eroded. Umbrella coverage shall mirror and be no more restrictive than the underlying coverage.

The Contractor may belong to a self-insured fund or group or be individually self-insured in a plan approved under the laws of the State of Florida. Such self-insured funds or groups are subject to the prior approval of the County, which shall not be unreasonably withheld.

12.4.6 Environmental Impairment Liability Insurance

Environmental Impairment Liability Insurance shall be maintained by the Contractor with a limit of not less than Ten Million Dollars (\$10,000,000) for claims based on or arising from Pollution or other conditions at the Disposal Facility, including but not limited to claims based on CERCLA, RCRA, the Permits, Applicable Law, common law or equity. The Environmental Impairment Liability Insurance shall cover both sudden and non-sudden pollution incidents.

12.4.7 Noncompliance

Should the Contractor at any time fail to maintain the insurance coverages required

in this Agreement, the County, at its discretion, is authorized to purchase such coverages and charge the Contractor for such coverages purchased. The County shall be under no obligation to purchase such insurance or to be responsible for the coverages purchased or the financial stability of the insurance companies used.

12.4.8 Notice of Claims

The Contractor shall notify the County of all accidents, incidents, events or injuries which the Contractor reasonably believes may result in a claim of \$50,000 or more, arising out of the Contractor's performance of this Agreement, including but not limited to claims relating to workplace injuries. The Contractor shall notify the County of any claim established and accepted as a liability under its commercial insurance or self insurance which is paid in an amount equal to or greater than \$50,000.00. The Contractor shall notify the County of any death arising out of the Contractor's performance under this Agreement. The Contractor shall notify the County of any and all events, accidents, injuries, incidents, suits, claims, or Citations which name or otherwise may involve or create a liability for the County, including events involving Pollution or environmental contamination at the Transfer Station, Site or Disposal Facility. The Contractor's obligations hereunder do not include claims based upon any rights which exist or may exist under the laws pertaining to employment rights such as, but not limited to the 1964 Civil Rights Act, as amended, the National Labor Relations Act, the Florida Human Rights Act, the Americans With Disabilities Act or the Family Medical Leave Act. The Contractor's obligations hereunder are subject to any confidentiality agreement relating to any claim. All Notices required under this Section 12.4.8 shall be provided promptly.

12.5 Assignment or Transfer

This Agreement may not be assigned by either the County or the Contractor without the written consent of the other, which shall not be unreasonably withheld, and subject to such consent, shall be binding upon, and inure to the benefit of, the assignor's successors and assigns. This Agreement also shall not be transferred to or assumed by another entity (by sale, merger or other process), without the County's prior written consent, which shall not be unreasonably withheld. As part of its evaluation of any assignment, assumption or transfer of this Agreement, the County may require the Contractor's successor to verify in writing that (a) it will comply with all of the Contractor's obligations under this Agreement and (b) it has the financial resources, technical expertise, facilities, equipment and personnel to comply with the Contractor's requirements under this Agreement.

12.6 Agreement Governed by Florida Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and it shall be binding upon, and inure to the benefit of, the parties, their successors, and assigns. The Contractor shall submit to service of process and the

jurisdiction of the State of Florida for any controversy or claim arising out of or relating to the Agreement. Any action to interpret or enforce the Agreement shall be brought and maintained in the State of Florida. Venue shall be in Martin County, Florida.

12.7 Representatives of the Parties

The authorized representative of the County for purposes of this Agreement shall be the Director. The authorized representative of the Contractor for purposes of this Agreement shall be Mr. Matt Orr, the District Manager of the Okeechobee Landfill. Either party may change its representative upon five (5) days' prior Notice to the other party.

12.8 Notices

All Notices and consents required or permitted by this Agreement shall be in writing and transmitted in person or by registered or certified mail, return receipt requested, with notice deemed to be given upon receipt, as follows:

If to the County:

Director, Utilities & Solid Waste Department
Martin County
P.O. Box 9000
2378 S. E. Ocean Boulevard (34996)
Stuart, Florida 34995-9000

With a copy to:

Martin County Attorney
2401 S.E. Monterey Road
Stuart, Florida 34996

If to the Contractor:

Matt Orr
District Manager
Okeechobee Landfill, Inc.
10800 N.E. 128th Avenue
Okeechobee, Florida 34972

With copies to:

Ron Kaplan, Esquire
Florida Counsel
Waste Management Inc. of Florida
2700 NW 48th Street
Pompano Beach, Florida 33073

Jeff Sabin
Governmental Affairs Manager
Nichols Sanitation
7700 SE Bridge Road
Hobe Sound, Florida 33455

Copies also shall be provided by hand-delivery or regular U.S. Mail to the On-site representative of the County and Contractor.

Changes in the respective addresses to which such Notices may be directed may be made from time to time by either party by Notice to the other party.

12.9 Waiver

Unless otherwise specifically provided by this Agreement, no delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the County or Contractor at any time to require performance by the other party of any term in this Agreement shall in no way affect the right of the County or Contractor thereafter to enforce same; nor shall waiver by the County or Contractor of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

12.10 Representations of the Contractor

The Contractor represents that: (a) it is a corporation duly organized under the laws of the State of Florida and is qualified to do business in the State of Florida; (b) this Agreement has been duly authorized, executed, and delivered in the State of Florida; (c) the Contractor has the required power and authority to perform this Agreement; (d) the Contractor, the Okeechobee Landfill and the Central Landfill are in compliance with Applicable Law; (e) the Okeechobee Landfill and the Central Landfill do not contain and will not accept regulated quantities of Hazardous Waste; (f) the Okeechobee Landfill and

the Central Landfill have not been included and are not proposed for inclusion in the CERCLA National Priorities List or any other analogous inventory of contaminated sites; and (g) there are no civil, criminal or administrative claims, cases, or Citations pending or threatened against the Contractor based on, related to, or associated with Pollution or environmental contamination at the Okeechobee Landfill or Central Landfill.

12.11 Representations of the County

The County represents that (a) this Agreement has been duly authorized, executed, and delivered by the Board of County Commissioners in accordance with law, and (b) the County has the required power and authority to enter into this Agreement.

12.12 Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

12.13 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

12.14 Severability

If any term, condition, covenant or obligation of this Agreement is declared illegal, void or unenforceable, the remaining terms will not be affected but will remain in full force and effect, and this Agreement shall be construed as if such illegal, void or unenforceable provision had never been contained herein.

12.15 Survivability

Any term, condition, covenant, or obligation which requires performance by a party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

12.16 Third Party Beneficiaries

It is agreed between the parties hereto that no provision of this Agreement is intended to create any third-party beneficiaries hereunder, or to authorize anyone not a party to this Agreement to maintain an action pursuant to the terms or provisions of this Agreement.

Contractor expressly acknowledges that the County is or may become a party to various agreements which affect or may affect the Transfer Station, including but not limited to interlocal agreements. Contractor understands and agrees that it is not an intended or third-party beneficiary under any of these agreements, and hereby waives any right to claim any interest therein.

12.17 Personal Liability

Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the County or the Contractor.

12.18 Independent Contractor

When performing the activities required by this Agreement, the Contractor will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or associate of the County. The Contractor shall be solely responsible for the means, methods and procedures used by the Contractor to perform under this Agreement. Neither the Contractor nor any of its employees, officers, agents or Subcontractors shall represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the County. The Contractor shall have no authority to bind the County to any agreement or contract. No person performing any work or services for the Contractor under this Agreement shall be entitled to any benefits available or granted to employees of the County.

12.19 Resolution of Disputes

The parties agree to reasonably cooperate with each other so as to allow each other to comply with their respective obligations hereunder. Prior to the filing of any action at law or in equity, the parties agree to submit any dispute to a non-binding arbitration process whereby each side appoints one of three arbitrators and the two appointees then select the third "neutral" arbitrator. The arbitration process shall be governed by the rules of the American Arbitration Association. Neither Contractor nor the County shall be bound by the decision reached pursuant to this process, and Contractor and County acknowledge that this arbitration process is designed to facilitate the resolution of disputes through the process of an advisory decision by the arbitration panel. Each party shall bear its own expenses in connection with the resolution of disputes by arbitration. Notwithstanding the foregoing, if either party terminates this Agreement for cause pursuant to Section 9.1, the terminating party shall have the right, in its sole discretion, to proceed directly with litigation of any claims or disputes relating to the termination for cause (and may include other claims and disputes unrelated to the termination) and shall not be required to submit such claims or disputes to the arbitration process set forth in this Section.

12.20 Merger Clause

This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein. This Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

12.21 Organization Employment Disclaimer

The Contractor hereby agrees that no person supplied by it in the performance of the Agreement shall be an employee of the County and further agrees that no rights of the County's rules accrue to any such person. The Contractor shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, taxes, other benefits and premiums appurtenant thereto of its employees in the performance of this Agreement.

12.22 Fair Dealing

The Contractor declares and warrants that the Contractor enters into the Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no County Commissioner, County officer, or County employee, directly or indirectly owns more than 5% of the total assets or capital stock of the Contractor, nor will any such person directly or indirectly benefit by more than 5% from the profits or emoluments of this Agreement. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this contract and the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this contract. Further, the Contractor declares and warrants that the Contractor is not subject to the restrictions in Sections 287.133 and 287.134, Florida Statutes, for a public entity crime.

12.23 Sovereign Immunity

Nothing in this Agreement shall be interpreted or construed to mean that the County waives its common law sovereign immunity or the limits on liability set forth in 768.28, Florida Statutes.

12.24 Amendment

Except as otherwise specifically provided herein, this Agreement may be amended only by written instrument specifically referring to this Agreement and executed by both

parties with the same formalities as this Agreement.

12.25 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.

12.26 Construction of Agreement

Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party that physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

12.27 Terms Generally

Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa. Unless otherwise specifically noted, the words "include," and "including" as used herein shall be deemed to be followed by the following phrase "without limitation." The words "agree," "agreement," "consent," "establish," "impose" as used herein shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed" except as specifically noted. Words or phrases which are defined herein by reference to a statute, rule or regulation shall have the meaning ascribed to such word or phrases as of the Effective Date, without regard to subsequent changes in such statutes, rules or regulations, except where this Agreement expressly provides otherwise.

12.28 Exhibits

All exhibits attached hereto are specifically incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates noted below.

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

By: Elmira R. Gainey

Elmira R. Gainey, Chairman

ATTEST:

By: Marsha Ewing
Marsha Ewing, Clerk

(SEAL)

APPROVED AS TO FORM:

Stephen Fry

Martin County Attorney's Office

By: ~~Steve Fry~~ STEPHEN FRY

OKEECHOBEE LANDFILL, INC.

By: Charles J. Campagna
As Vice President of
Okeechobee Landfill, Inc.

Printed Name: Charles J. Campagna

Date: 07-12-02



Witness

[Signature]
Signature

07-12-02

Date

RONALD KAPLAN
Printed Name

Witness

[Signature] 07-12-02
Signature Date

Ann-Marie Maratt
Printed Name

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 12th day of July, 2002,
by CHARLES J. CAMPAGNA as VICE PRESIDENT of
OKEECHOBEE LANDFILL, INC., a Florida corporation, on behalf of the corporation.
He/She is personally known to me or has produced N/A as identification.

[Signature]
Notary Public - State of Florida



Susan Christa Johnson
Commission # DDO61888
Expires Jan. 29, 2006
Bonded Thru
Atlantic Bonding Co., Inc.

Print name: _____
Commission number: _____
Commission expiration date: _____

