

ADDITIONAL MATERIAL
Public Hearing

JANUARY 28, 2025

SUBMITTED AT THE REQUEST OF
OFFICE OF THE COUNTY ATTORNEY

Additional material submitted by the County Attorney's Office:

1. January 17, 2025, memorandum from the County Attorney to the Board (exclusive of exhibits, which are separately attached);
2. Current version of Declaration of Restrictive Covenants ("DRC") (minus Exhibit C);
3. Current version of the applicable agreement ("Agreement") as of January 17, 2025; and
4. A copy of the January 14, 2025, letter from Waste Management (through counsel) to the Board, stating the commitments Waste Management is willing to voluntarily undertake in connection with any approval of these agenda items.

The County Attorney's Office expects to distribute as additional material, on or before January 24, 2025, revised, executed versions of the Agreement and DRC, with any required memorandum to advise of any material changes between the prior versions and the executed versions.



ANDREW J. MEYERS, County Attorney

115 S. Andrews Avenue, Room 423 • Fort Lauderdale, Florida 33301 • 954-357-7600 • FAX 954-357-7641

MEMORANDUM

TO: Board of County Commissioners

FROM: Andrew J. Meyers, County Attorney /s/ *Andrew J. Meyers*

DATE: January 17, 2025

RE: **Documents in Connection with January 28, 2025, Public Hearing Items 57, 58, and 60**

On January 28, 2025, the Board will be considering three public hearing items that could result in vertical and horizontal expansions to the Monarch Hill landfill. The vertical expansion would change the landfill's maximum height from 225 feet to 325 feet, and the horizontal expansion would result in the addition to the landfill of a 24.2-acre parcel, surrounded by the landfill on three sides, upon which a waste-to-energy facility was previously located.

In an effort to address the impacts (known and unknown, actual, and potential) of the proposed horizontal and vertical expansions in a manner intended to sufficiently address concerns related to the proposed expansions, on January 14, 2025, Waste Management's counsel sent a letter to each of you. The letter describes voluntary commitments Waste Management is proposing to undertake if one or both expansions are approved. Waste Management understands that to further address the enforceability of its voluntarily offered commitments, it will be required to enter into a formal written agreement with the County and to also execute a declaration of restrictive covenants ("DRC"). The DRC, for the most part, merely incorporates applicable obligations contained in the agreement to ensure they each "run with the land" and bind any future owner of the property. Copies of the proposed agreement and DRC are attached to this memorandum and will be distributed as additional material under the applicable agenda items.

Preparation of the agreement has been complicated by, among other things, the fact that some of the commitments proposed by Waste Management are dependent on a contract amendment with Wheelabrator South Broward, Inc., the entity with which the County directly contracts for solid waste disposal services for areas within the BMSD and to provide access to solid waste disposal to municipalities that have separately contracted with the County for that access. Wheelabrator South Broward, Inc., is not a party to the

agreement before the Board on January 28. This made drafting more challenging. It also required us to refer to a schedule addressing certain commitments (the "Capacity Schedule") that has not yet been finalized and will be distributed with the final version of the agreement.

It is likely that other provisions of the proposed agreement will be revised prior to January 28 (which, in turn, will impact corresponding provisions in the DRC). We do not expect material revisions. Aside from finishing development of the Capacity Schedule, we expect the revisions to be mostly cleanup or to address interrelated remedy provisions. If there are any material changes, I will alert the Board by memorandum or alert each Commissioner individually.

Senior County staff and my Office have been working with Waste Management's regional counsel and representative, who have been coordinating with officials from corporate headquarters. The terms of Waste Management's proposal are not final until the agreement and DRC are signed by them, which would happen by Friday, January 24 (the Friday before the public hearings). In the unlikely event Waste Management seeks any modification that would require either County Administration or my Office to recommend against approval of the above-referenced agenda items, we expect to know by late next week. Should that occur, I will advise the Board that we should plan to either defer the items without opening the public hearings or that we should open the public hearings but then continue them to the Board meeting on February 11. In the event of deferral, we would look to notify communities that have indicated an intent to have their residents attend on January 28, hoping to minimize inconvenience to those residents. If the Board were to instead open and continue the public hearings until February 11, the Board would have the option to defer public comment until that meeting.

I will address the details of these items, including the proposed agreement and DRC, in agenda briefings. In the interim, if you have any questions, please feel free to contact Senior Assistant County Attorney Matt Haber (x7615), who among other things is our lead solid waste attorney; Deputy County Attorney Nathaniel Klitsberg (x7622); or me.

AJM/gf
Attachments

c: Monica Cepero, County Administrator
Dr. Kimm Campbell, Deputy County Administrator
Kevin Kelleher, Assistant County Administrator
Bob Melton, County Auditor
René Harrod, Chief Deputy County Attorney
Nathaniel A. Klitsberg, Deputy County Attorney
Matthew S. Haber, Senior Assistant County Attorney

Return to: (enclose self-addressed stamped envelope)

Name:

Address:

This Instrument Prepared by:

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DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made by Waste Management Inc. of Florida, a Florida corporation ("Declarant"), its successors and assigns, for the benefit of Broward County, a political subdivision of the State of Florida ("County").

WITNESSETH:

A. Declarant is the fee simple owner of lands located in the Broward Municipal Services District, more particularly described in Exhibit A, the "Landfill Property," and Exhibit B, the "LUPA Property" (collectively, the "Property").

B. Declarant requested that County approve applications to amend the Future Unincorporated Land Use Plan Element (FULUPE) and the Countywide Land Use Plan (LUP) for the LUPA Property from Electrical Generation Facilities to Industrial (FULUPE) and Commerce (Countywide LUP) (individually, "Application" and collectively, "Applications").

C. The Landfill Property surrounds the LUPA Property on three (3) sides and includes a regional landfill. Approval of the applicable Application(s) will allow proposed additional development on the LUPA Property, thereby allowing expansion of the landfill use on the Landfill Property.

D. Landfills provide a necessary public health function and a convenient solid waste disposal location, the benefits of which are diffused across multiple communities throughout the region.

E. Landfills can also impose negative externalities on a host community due to, among other potential impacts, additional noise, odors, increased traffic, and stigma.

F. Most local landfills have been replaced with larger, regional landfills, which further diffuse the benefits of the landfill across an even larger population throughout the region and further concentrate the detrimental impacts on a host community.

G. The proposed additional development of the Property will impact the provision of solid waste disposal and other services by the County and will create

operational impacts for Broward County properties, including the Broward County Landfill, while providing Declarant with economies of scale.

H. Declarant has undertaken several voluntary commitments to address concerns raised by County regarding potential negative externalities and impacts, including unknown externalities and impacts, with the intent: (i) that the Board of County Commissioners of Broward County (“Board”) may rely on these commitments when deciding whether to approve the Applications and (ii) to induce the Board into approving its Applications.

I. Declarant has incorporated the voluntary commitments into that Agreement between Declarant and County, attached hereto and incorporated herein as Exhibit C (“Agreement”).

J. Although not a requirement of the Applications, the voluntarily-offered commitments contained in the Agreement have a direct and substantial relationship with Declarant’s proposed development of the Property that is roughly proportional to the impact of that development.

K. In connection with the Applications, Declarant has voluntarily agreed to place the below-stated commitments contained in the Agreement as restrictions on the development of the Property, to run with the land and be binding on Declarant’s successors and assigns, if any, in favor of the County.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants herein contained, Declarant hereby voluntarily declares that the Property described in Exhibits A and B shall be subject to the covenants, restrictions, and regulations hereinafter set forth, all of which shall run with the land and which shall be binding upon all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns.

1. *Recitations.* Declarant has read, understood, and consents to each of the recitals and legislative findings referenced above and agrees that all of such recitals and legislative findings are true and correct and are incorporated into this Declaration by this reference.

2. *Commitments Voluntarily Undertaken by Declarant.* The Agreement is deemed incorporated into this Declaration as though fully set forth in this section. Accordingly, Declarant shall comply with the following commitments, which shall run with the Property:

- 2.1. Payment to County of a Host Charge (as defined in the Agreement), for each ton of waste disposed of at the Property, in the amount(s) set forth in Section 2.2 of the Agreement;
- 2.2. Pursuant to Sections 2.3.2 and 2.3.4 of the Agreement, prohibit the deposit at the LUPA Property of “Excluded Waste,” as defined by the Agreement;

- 2.3. Consistent with Section 2.4.3 of the Agreement, prohibit the disposal of any waste on the LUPA Property for a period of eighteen (18) months after January 28, 2025 (as same may be extended pursuant to the terms of Section 2.4.3);
- 2.4. Provide Contingency Disposal Services consistent with Section 2.9 of the Agreement; and
- 2.5. If applicable pursuant to Section 2.12.1 of the Agreement, relinquish its rights to utilize the Property, or some portion of the Property if Section 2.12.1 does not require it for the entire Property, for solid waste disposal purposes.

If Declarant obtains authorization to increase the height of the Property above two hundred twenty-five (225) feet National Geodetic Vertical Datum (“NGVD”) (defined in the Agreement as the “Vertical Expansion Condition”), Declarant shall also comply with the following voluntary commitments undertaken in the Agreement that are contingent on approval of the Vertical Expansion Condition (and subject to any other conditions stated in the Agreement):

- 2.6. Pursuant to Sections 2.3.3 and 2.3.4 of the Agreement, prohibit the deposit at the Landfill Property of “Excluded Waste,” as defined by the Agreement;
- 2.7. Consistent with Section 2.4.1 of the Agreement, limit the annual volume of waste accepted for disposal at the Property from sources outside of Broward County to no more than the “Non-Broward Limit,” as defined by the Agreement; and
- 2.8. Pursuant to Section 2.5.1 of the Agreement, make available to County an “Increased Disposal Capacity Commitment,” as defined by the Agreement.

3. *Amendment; Release.* Except as otherwise provided herein, this Declaration shall not be modified, amended, or released as to any portion of the Property except by written instrument, executed by the then owner or owners(s) of the portion of the Property affected by such modification, amendment, or release, and approved by the Board at a public meeting.

4. *Recordation and Effective Date.* This Declaration shall not become effective and shall not be recorded in the Official Records of Broward County, Florida, until after approval by County of either Application or both Applications and the expiration of all appeal periods or, if an appeal is filed, the conclusion of such appeal in a manner that does not affect County’s approval of the Application(s). Once recorded, this Declaration shall run with the land for the sole benefit of County and shall bind all of Declarant’s successors-in-interest with respect to the Property. This Declaration shall not give rise to any other cause of action by any parties other than the County, and no parties other than County shall be entitled to enforce this Declaration. Any failure by the County to enforce this Declaration shall not be deemed a waiver of the right to do so thereafter. Any amendment, modification or release of this Declaration shall be recorded in the Official Records of Broward County, Florida, at the then owner's expense.

5. *Enforcement.* In the event the Declarant, its successors or assigns, violate any of the covenants and restrictions contained herein, by reference or otherwise, Declarant acknowledges and agrees that County may withhold further permits and approvals with respect to the Property, provided County first provides Declarant with written notice and a thirty (30) day opportunity to cure the violation(s). County is the beneficiary of this Declaration and, as such, County may enforce these covenants and restrictions by action at law or in equity including, without limitation, a decree of specific performance or mandatory or prohibitory injunction, against any person or persons, entity or entities, violating or attempting to violate the terms of this Declaration.

6. *Severability.* If any court of competent jurisdiction shall declare any section, paragraph or part of this Declaration invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect. The agreed upon venue shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. The severing of any provision pursuant to this clause shall not impact any obligation in the Agreement.

7. *Law, Jurisdiction, Venue, Waiver of Jury Trial.* This Declaration will be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Declaration will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

8. *Captions, Headings, and Titles.* Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

9. *Incorporation by Reference.* Any and all Recital clauses stated above are true and correct and are incorporated in this Declaration by reference. The attached Exhibits are incorporated into and made a part of this Declaration.

10. *Priority of Provisions.* Except to the extent that this Declaration references an obligation or commitment contained in the Agreement, attached as Exhibit C, if there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Declaration and any provision of Sections 1 through 10 of this Declaration, the provisions contained in Sections 1 through 10 shall prevail and be given effect. Where this Declaration references an obligation or commitment contained in the Agreement, the terms of the Agreement shall prevail and be given effect.

11. *Context.* Whenever the context requires or admits, any pronoun used herein

EXHIBIT A
LEGAL DESCRIPTION
LANDFILL PROPERTY

EXHIBIT B
LEGAL DESCRIPTION
LUPA PROPERTY

EXHIBIT C
AGREEMENT BETWEEN COUNTY AND WASTE MANAGEMENT



**AGREEMENT BETWEEN BROWARD COUNTY AND WASTE MANAGEMENT INC.
OF FLORIDA TO ADDRESS IMPACTS OF FURTHER DEVELOPMENT OF THE
MONARCH HILL LANDFILL**

This agreement (“Agreement”) is between Broward County, a political subdivision of the State of Florida (“County”), and Waste Management Inc. of Florida, a Florida for Profit Corporation (“Waste Management”) (each a “Party” and collectively referred to as the “Parties”).

RECITALS

A. Landfills provide a necessary public health function and a convenient solid waste disposal location, the benefits of which are diffused across multiple communities throughout the region.

B. Landfills can also impose negative externalities on a host community due to, among other potential impacts, additional noise, odors, increased traffic, and stigma.

C. Most local landfills have been replaced with larger, regional landfills, which further diffuse the benefits of the landfill across an even larger population throughout the region and further concentrate the potential impacts on a host community.

D. The Monarch Hill landfill, owned by Waste Management, is one such regional landfill. The Monarch Hill landfill is located on the south side of Wiles Road/Northwest 48th Street, between Powerline Road and the Florida Turnpike in the Broward Municipal Services District (“Existing Landfill”).

E. If the conditions described below are met, the Existing Landfill will be expanded both vertically—raising its height from 225 feet to 325 feet—and horizontally, incorporating an approximately 24.2-acre parcel at 2600 Wiles Road, Pompano Beach, Florida 33073, previously used for a waste-to-energy plant (“Horizontal Expansion Site”). A legal description of the Horizontal Expansion Site is attached as **Exhibit A**. The Existing Landfill, together with the Horizontal Expansion Site and/or the new air space created by the Vertical Expansion Condition (as defined below), is referred to herein as the “Expanded Landfill.”

F. In a letter dated January 14, 2025, a copy of which is attached as **Exhibit B** (“Commitment Letter”), Waste Management voluntarily made specific commitments to address concerns raised by County regarding potential negative externalities and impacts, including unknown externalities and impacts, with the intent: (i) that the Board of County Commissioners (“Board”) may rely on those commitments when deciding whether to provide approvals necessary for the proposed vertical and/or horizontal expansion(s) and (ii) to induce the Board into providing such approvals.

G. On January 28, 2025, the Board is considering adoption of ordinances relating to the proposed vertical and horizontal expansions of the Existing Landfill (collectively, “Development Ordinances”).

H. In conjunction with the Development Ordinances, Waste Management has agreed to record restrictive covenants to run with the land and bind Waste Management’s successors and assigns, if any, which restrictive covenants are contained in the Declaration of Restrictive Covenants attached as **Exhibit C** (“Restrictive Covenants”).

I. The proposed vertical and horizontal expansions will impact the provision of solid waste disposal and other services by County while providing Waste Management with economies of scale.

J. To address the potential negative externalities and impacts created by the further proposed expansions, as would be enabled by enactment of the Development Ordinances, Waste Management agrees to perform the obligations and commitments set forth in this Agreement and County agrees, as it determines in its sole discretion, to utilize the performance by Waste Management to benefit County’s residents and businesses in connection with solid waste disposal including, without limitation, to: offset costs of recycling and solid waste management; enhance litter control programs; expand public education efforts for solid waste management, recyclable materials management, hazardous waste management, and litter control; and to otherwise address the potential negative externalities and impacts, whether known or currently unknown, from the proposed vertical and/or horizontal expansion of the Existing Landfill.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 “Adjustment CPI” means for All Urban Consumers, U.S. City Average, All Items, Not Seasonally Adjusted, Series ID: CUUR0000SA0.

1.2 “Contracted Processable Waste” means any Class I waste (as defined by the Florida Administrative Code), refuse, garbage (as defined by the Florida Administrative Code), trash, and rubbish that is: (i) generated from residential or commercial properties located within Broward County, and (ii) delivered by or on behalf of County, whether such solid wastes were delivered from within the unincorporated areas of Broward County or within incorporated areas that are under contract with County for solid waste disposal services. Notwithstanding the foregoing, the Parties hereby agree that the definition of “Contracted Processable Waste” will be consistent with the definition of that term in the Global Amendment (defined below).

1.3 “Disposal Agreement” means the Solid Waste Disposal Services Agreement entered into on June 26, 2012, by County and Wheelabrator Environmental Systems, Inc., regardless of any assignment, and as amended.

1.4 “Disposal Agreement End Date” means the: (i) date the Disposal Agreement expires, including any renewals thereof which renewals may continue through part of the year 2038; or (ii) the effective date of its termination, if applicable.

1.5 “Global Amendment” means the Global Amendment, dated as of May 19, 2015, among County, Waste Management, Wheelabrator South Broward Inc., and other entities, as amended.

1.6 “Horizontal Expansion Condition” means the issuance of all permits, licenses, and other approvals required to authorize disposal of any waste on the Horizontal Expansion Site, including any required solid waste permit, solid waste license, environmental resource permit, surface water management license, and zoning change. The Horizontal Expansion Condition will automatically be deemed to have been satisfied if Waste Management begins disposing of any revenue-generating waste on the Horizontal Expansion Site, but such disposal is not required for the Horizontal Expansion Condition to be deemed satisfied.

1.7 “Okeechobee Landfill” means Waste Management’s Okeechobee landfill facility, located at 10800 N.E. 128th Avenue, Okeechobee, Florida 33972.

1.8 “Vertical Expansion Condition” means the issuance of all permits, licenses, and other approvals required to authorize disposal of waste at the Existing Landfill up to 325 feet National Geodetic Vertical Datum (“NGVD”), including any required solid waste permit, solid waste license, environmental resource permit, and surface water management license. The Vertical Expansion Condition will automatically be deemed to have been satisfied if Waste Management begins disposing of any revenue-generating waste at the Existing Landfill or Expanded Landfill above 225 feet NGVD, but such disposal is not required for the Vertical Expansion Condition to be deemed satisfied.

ARTICLE 2. WASTE MANAGEMENT OBLIGATIONS

2.1. Binding Effect of Voluntary Commitments. Waste Management has read, understands, and concurs with each of the recitals and legislative findings contained in the Development Ordinances and otherwise referenced above, and agrees that all such recitals and legislative findings are true and accurate and are incorporated into this Agreement.

In addition, Waste Management is voluntarily undertaking several commitments including, but not limited to, a voluntarily commitment to pay County a Host Charge (defined below) and other matters contained herein and in the Restrictive Covenants that will run with the land and encumber the Expanded Landfill. Waste Management has voluntarily undertaken these specific commitments to address concerns raised by County regarding potential negative externalities and impacts, including contingent and unknown externalities and impacts, resulting from the expansion. Waste Management’s voluntary commitments were made with the express intent that County may rely upon them in considering the Development Ordinances referenced above. The purpose of this Agreement and the Restrictive Covenants is to ensure that Waste Management is legally bound to perform each such voluntary commitment (subject to any stated conditions) and to ensure that, as applicable, such commitments are binding upon any successors and assigns of Waste Management.

As further specified below, Waste Management’s obligation to perform some of its commitments is conditioned upon satisfaction of both the “Vertical Expansion Condition” and the “Horizontal Expansion Condition.” Therefore, Waste Management agrees to use its best efforts to diligently and expeditiously achieve satisfaction of both the Vertical Expansion Condition and the Horizontal Expansion Condition as soon as possible and without any undue delay.

Unless otherwise specified in this Agreement, where Waste Management agrees to provide capacity for disposal of waste of any nature (whether such waste was generated within the unincorporated areas of Broward County or within incorporated areas that are under contract with County for solid waste disposal services), Waste Management will provide such capacity at the rates and on the applicable terms as stated in the Capacity Schedule attached as **Exhibit D**.

Waste Management’s binding commitments are described in more detail below.

2.2. Host Charge.

2.2.1. *Per ton rates.* To mitigate potential negative externalities and impacts, known and unknown, to County from the proposed horizontal and/or vertical expansion of the Existing Landfill, Waste Management hereby agrees to pay County for each ton of waste disposed of at any height in the Expanded Landfill (collectively, “Host Charge”):

- (i) \$3.50 per ton of “ash residue,” “bottom ash,” “fly ash,” “industrial solid waste,” and “Class III waste” (including but not limited to yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, and other items of bulky waste), as those terms are defined in Rule 62-701.200, Florida Administrative Code, for all of such waste generated within Broward County, as well as for any other types of waste not specifically referenced in Section 2.2.1 generated within Broward County;
- (ii) \$6.00 per ton of “household waste” and “commercial solid waste,” as those terms are defined in Rule 62-701.200, Florida Administrative Code, generated within Broward County; and
- (iii) \$6.00 per ton of waste of any nature generated, originating, or delivered from outside of Broward County.

2.2.2. *Option for credit or payment.* At the sole discretion of the County Administrator, Waste Management will either: (i) pay the Host Charge to County, or (ii) provide County an offset or credit against any fees owed to Waste Management by County. Any reference in this Agreement to Waste Management’s payment of the Host Charge will also be deemed to apply to the offset or credit described in this paragraph. The County Administrator may at any time change the County’s election to/from an affirmative payment to/from a credit through written notice to Waste Management.

2.2.3. *Payment schedule.* Waste Management will pay the Host Charge to County monthly in arrears within thirty (30) days of the end of the calendar month.

2.2.4. *Rate adjustment.* Waste Management will adjust the value of the Host Charge paid or credited to County annually on each January 1 based on the change (September to September, if practicable) in the Adjustment CPI. If the initial adjustment of the Host Charge is scheduled to occur less than eleven (11) months after the commencement of Host Charge payments, as described in Section 2.2.6, the initial adjustment of the Host Charge will be prorated.

2.2.5. *Host Charge exemption; auditor.* The Host Charge will not apply to: (i) materials (such as cover, capping, or construction materials) that are lawfully allowed into the Expanded Landfill, taken in at no charge for disposal (if any amount is charged by Waste Management the Host Charge shall be paid unless the material is not disposed of at the Expanded Landfill); and (ii) sludge, grit, and screenings from a wastewater treatment plant that are delivered by County or delivered on County's behalf (collectively, "Exempt Material"). However, this exemption applies only to the extent the percentage of Exempt Material does not exceed the reasonable and customary percentage, relative to revenue-generating waste, accepted by similar solid waste disposal facilities. Any amount of Exempt Material exceeding this reasonable and customary percentage will not be exempt from the Host Charge.

2.2.5.1. In addition to the audit rights and obligations contained in the "Retention of Records and Trade Secrets" section of this Agreement, County has the right, whether through its employees or any outside representative engaged by County, to audit the books, records, and accounts of Waste Management (and any subcontractors with records related to the Host Charge payments but only to the extent Waste Management does not, in any material sense, maintain sufficient records for the below-stated auditing purposes, hereinafter "Subcontractors") for the purpose of verifying the tonnages subject to, and the tonnages exempted from, the Host Charge. Waste Management, and any and all such Subcontractors (if applicable as per the above) will keep such books, records, and accounts as may be necessary to record complete and correct entries related to payment of the Host Charge.

2.2.5.2. Waste Management will ensure that all of the books, records, and accounts subject to County's audit contain sufficient detail to either verify Waste Management's full payment, or precise underpayment, of the Host Charge. These books, records, and accounts include, without limitation, documents and data related to the tonnages and types of Exempt Material allowed into the Expanded Landfill at no charge, tonnages and types of revenue-generating waste allowed into the Expanded Landfill, place(s) of origin for any such Exempt Material or revenue-generating waste allowed into the Expanded Landfill, related scale and payment records, as well as any surveys of the Expanded Landfill and related GPS data that may be used to calculate the amount of Exempt Material and revenue-generating waste allowed into the Expanded Landfill. All such books, records, and accounts

must be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Waste Management, and any and all such Subcontractors (if applicable as per the above) will make same available in written form at no cost to County. Waste Management will provide County (including any outside representative engaged by County) with reasonable access to the Expanded Landfill and Waste Management's facilities where such books, records, and accounts are kept.

2.2.5.3. County (including any outside representative engaged by County) will be allowed to interview all current or former employees to discuss matters pertinent to the Host Charge and to conduct spot inspections of the Expanded Landfill without prior notice once per month. The contents of any audit report produced by County (including any outside representative engaged by County) will generally be limited to the verified categories, types, place(s) of origin, and tonnage amounts of Exempt Material and revenue-generating waste needed to calculate the Host Charge payment(s).

2.2.5.4. If an audit or inspection reveals underpayment(s) of the Host Charge by Waste Management to County of any nature, Waste Management will increase the next Host Charge payment by the amount underpaid plus interest (accruing at an annual rate of five and one-half percent (5.5%).

2.2.6. *Condition(s) precedent.* Waste Management's obligation to pay the Host Charge commences upon satisfaction of the earlier of the Vertical Expansion Condition or the Horizontal Expansion Condition. Once satisfaction of one such condition has occurred, Waste Management will begin paying to County the Host Charge at rates equal to one-half (1/2) of the rates specified in Section 2.2.1. Upon satisfaction of both the Vertical Expansion Condition and the Horizontal Expansion Condition, Waste Management will commence paying to County the additional one-half (1/2) of the Host Charge such that the entire amount of the Host Charge value will be paid once both conditions have been satisfied. Waste Management will use best efforts to facilitate the commencement of payment of both one-half (1/2) of the Host Charge and the entire Host Charge without undue delay.

2.2.7. *No pass through.* Waste Management agrees that it will not include any portion of the Host Charge as a line item on any bill, invoice, ticket, or other charge provided to any customer of Waste Management, nor will Waste Management include any portion of the Host Charge in any express charge addressing governmental fees, taxes, or other costs.

2.2.8. *Duration.* The commitments in this Section 2.2 commence as stated above and will remain in effect for the entire remaining operating life of any part of the Expanded Landfill. The commitment to pay the Host Charge applies to all waste deposited into any part of the landfill (except the waste expressly excluded above) for so long as any part of the Expanded Landfill (at any height) continues to operate (and thereafter until the last required Host Charge payment resulting from the final month of landfill operations is made).

2.3. Exclusion of Certain Wastes.

2.3.1. *Excluded waste.* For the purposes of this Section 2.3, “household waste” and “commercial solid waste,” as defined in Rule 62-701.200, Florida Administrative Code, are collectively referred to as “Excluded Waste.”

2.3.2. *Exclusion from Expanded Landfill.* Except as stated below, Waste Management will not, at any time, accept Excluded Waste into any part of the Expanded Landfill that is not part of the Existing Landfill. Specifically, Excluded Waste is prohibited above 225 feet in any portion of the Expanded Landfill or at any height in the Horizontal Expansion Site. This commitment will commence upon the Effective Date and will remain in effect for the entire remaining operating life of the Expanded Landfill.

2.3.3. *Exclusion from Existing Landfill.* Waste Management will cease accepting Excluded Waste for disposal in the Existing Landfill at or below 225 feet in height beginning October 1, 2027, provided that both the Vertical Expansion Condition and Horizontal Expansion Condition are satisfied. If the Vertical Expansion Condition and Horizontal Expansion Condition are not both satisfied by October 1, 2027, but they are both later satisfied, Waste Management will cease accepting Excluded Waste for disposal in the Existing Landfill at or below 225 feet in height within sixty (60) days after the second of those conditions is satisfied, subject to the stated exceptions. This commitment will commence upon satisfaction of both the Vertical Expansion Condition and the Horizontal Expansion Condition and will remain in effect for the entire remaining operating life of the Expanded Landfill.

2.3.4. *Exceptions.* Excluded Waste may only be accepted in the Existing Landfill or Expanded Landfill, where otherwise prohibited, under the following conditions: (i) during a declared state of emergency, or (ii) upon an express finding by County (by the Board, or in the event of an exigency by the County Administrator, subject to the Board’s ratification at its next meeting) that such temporary acceptance is in the public interest, and provided that such acceptance is limited to the duration of County’s finding and does not conflict with any of Waste Management’s applicable contractual obligations to the City of Coconut Creek as set forth in the 2015 settlement agreement between those entities.

2.4. Onsite Commitments.

2.4.1. *Non-Broward waste.* Waste Management will limit the annual volume of waste accepted for disposal at the Expanded Landfill from sources outside of Broward County to no more than twenty percent of the total incoming waste volume, calculated on an annual basis (“Non-Broward Limit”). Waste Management may only exceed the Non-Broward Limit after receiving written authorization from the County Administrator: (i) during a declared state of emergency, or (ii) to allow reciprocal acceptance of waste originating from a Florida county where waste generated from residential or commercial properties located within Broward County is disposed. This commitment will commence upon satisfaction of both the Vertical Expansion Condition and the Horizontal Expansion

Condition and will remain in effect for the entire remaining operating life of the Expanded Landfill.

2.4.2. *Methane gas supply.* If County (through the County Administrator) elects to install a wastewater sludge dryer near the Expanded Landfill, Waste Management will cooperate in good faith with County to supply methane gas generated at the Expanded Landfill to the dryer on commercially reasonable terms, if County funds and installs all necessary infrastructure and equipment required to transport the methane gas to the dryer facility. County will use the methane gas supplied by Waste Management to support County's renewable energy initiatives and provide a sustainable solution for wastewater sludge disposal, consistent with the envisioned purpose of the dryer facility. This commitment will commence upon satisfaction of both the Vertical Expansion Condition and Horizontal Expansion Condition and will remain through the Disposal Agreement End Date.

2.4.3. *Option to purchase Horizontal Expansion Site.* Notwithstanding the status of the Horizontal Expansion Condition and Vertical Expansion Condition, for a period of eighteen (18) months after the Effective Date ("Option Period"), County has the right and option to purchase the Horizontal Expansion Site at its Fair Market Value (as defined below) to use for any lawful purpose except residential uses, resource recovery facilities (except for operation of a newly constructed waste-to-energy facility, unless (i) such activity is otherwise prohibited in Schedule 6.24(b) of the 2015 agreement between Waste Management and Granite Acquisition, Inc., and (ii) County cannot obtain consent from the "Company" (as defined in that 2015 agreement) or its applicable successor, to modify or eliminate the restriction), construction and demolition recycling facilities, or transfer stations ("Option"). During the Option Period, whether before or after County has given provision of the Option Notice (as defined below), Waste Management will not dispose of any waste on the Horizontal Expansion Site. County may exercise the Option within eighteen (18) months after the grant of the two Land Use Planning Amendments ("LUPAs") by County on January 28, 2025 (the LUPAs would result from approval of two applicable ordinances being considered by the Board on January 28, 2025, and the LUPAs together with any other required permits or approvals would allow Waste Management to use the Horizontal Expansion Site as a landfill, if the Option is not exercised by County), by providing written notice to Waste Management ("Option Notice"). If County fails to timely provide the Option Notice within eighteen (18) months after January 28, 2025, then the option to purchase shall terminate. "Fair Market Value" means the fair market value of the Horizontal Expansion Site based upon its highest and best use, following exercise of the Option, determined as follows:

- (i) *Mutual Agreement on Fair Market Value.* For a period of thirty (30) days after Waste Management's receipt of the Option Notice, the Parties shall attempt to arrive at a mutually agreeable fair market value for the Horizontal Expansion Site. If the Parties cannot agree on the fair market value within this thirty (30) day period, then either Party, by sending written notice to the other within five (5) days after the end of the thirty (30) day period, shall cause the matter to be submitted to appraisal ("Appraisal Notice").

- (ii) Use of Appraisers. Within thirty (30) days after the Appraisal Notice, each Party, at its own cost and by giving notice to the other Party, shall appoint a qualified real estate appraiser having at least ten (10) years' full-time experience having an MAI designation and experienced in industrial and/or landfill appraisals, to appraise and determine the Fair Market Value using the valuation methodology set out below. The two (2) appraisers shall independently, and without consultation, prepare a written appraisal of the fair market value within sixty (60) days after such appointment. If the values of the appraisals differ by no more than five percent (5%) of the value of the higher appraisal, then the fair market value will be the average of the two (2) appraisals. If the values of the appraisals differ by more than five percent (5%) of the value of the higher appraisal, the appraisers shall jointly designate in writing (within 10 days) a third appraiser meeting the qualifications set out above. The third appraiser shall make an appraisal of the Fair Market Value within thirty (30) days after selection, without consultation with the first two (2) appraisers, and using the valuation methodology set out below. The Fair Market Value will be the value selected by the one of the original two (2) appraisers that is closest, on a dollar basis, to the Fair Market Value determined by the third appraiser. This determination of Fair Market Value will be binding and conclusive. Each Party shall pay the fees and expenses of its own appraiser and fifty percent (50%) of the fees and expenses of the third appraiser.
- (iii) Fair Market Value methodology. Each appraiser shall prepare a valuation of the Horizontal Expansion Site using all of the following three methods: (1) Income Approach based upon net present value of future income from the Horizontal Expansion Site from permitted landfill operations; (2) Income Approach based upon the net present value of future income from the Horizontal Expansion Site from waste-to-energy operations plus the current value of onsite improvements; and (3) highest and best use of the Horizontal Expansion Site. Each appraiser's determination of Fair Market Value for purposes shall be the value arrived at under the above method which resulted in the highest valuation.

After Fair Market Value is determined, County shall have thirty (30) days to provide Waste Management with written notice that it intends to close on the purchase of the Horizontal Expansion Site within sixty (60) days after such notice is provided. The Option shall immediately expire if County does not timely provide such notice. A condition precedent to County's right to close on its purchase of the Horizontal Expansion Site is the satisfaction of the Vertical Expansion Condition and the Horizontal Expansion Condition (unless Waste Management agrees in writing to forgo the Horizontal Expansion Condition).

2.5. Additional Operational Commitments. Waste Management acknowledges that fulfilling these commitments will require coordination with County's solid waste disposal contractor: Wheelabrator Environmental Systems, Inc., (or its assignee). For County's benefit, Waste Management agrees to cooperate with County's solid waste disposal contractor as is reasonably required to comply with Waste Management's obligations under this Agreement.

2.5.1. *Increased disposal capacity.* Upon the County Administrator’s written request, Waste Management will make available to County a minimum of 775,000 tons per year of solid waste processing and disposal capacity for Contracted Processable Waste at the Okeechobee Landfill or, if it is operationally unavailable, such other Waste Management disposal facility as may be approved by County and Waste Management (“Increased Disposal Capacity Commitment”). The Increased Disposal Capacity Commitment does not create an obligation for Waste Management to pay the costs to transport such Contracted Processable Waste. Waste Management will fulfill the Increased Disposal Capacity Commitment on the same terms (including, without limitation, rates) as its current capacity commitment of 575,000 tons per year contained in Section III.F.5 of the Global Amendment, and pursuant to any terms in the Capacity Schedule. Waste Management will maintain its current capacity commitment of 575,000 tons per year unless and until the Increased Disposal Capacity Commitment takes effect. Waste Management will fulfill the Increased Disposal Capacity Commitment commencing upon satisfaction of both the Vertical Expansion Condition and the Horizontal Expansion Condition and will continue to fulfill it through the Disposal Agreement End Date.

2.5.2. *Transportation costs.*

2.5.2.1. Waste Management currently disposes of 35,000 tons per year of Contracted Processable Waste at the Existing Landfill, and agrees to continue doing so (or assume responsibility for the cost of diversion) through October 1, 2025. If neither the Horizontal Expansion Condition nor the Vertical Expansion Condition has been satisfied by October 1, 2025, then the aforementioned 35,000 tons per year of Contracted Processable Waste will no longer be disposed of at the Existing Landfill. The aforementioned 35,000 tons per year of Contracted Processable Waste will instead be disposed of at the Okeechobee Landfill (and Waste Management will not be responsible for such transportation costs). Upon satisfaction of either the Horizontal Expansion Condition or the Vertical Expansion Condition, the 35,000 tons per year of Contracted Processable Waste will once again be accepted at the Expanded Landfill, subject to the “Exclusion of Certain Wastes” section of this Agreement.

2.5.2.2. If Waste Management is required to cease accepting Contracted Processable Waste at the Existing Landfill or the Expanded Landfill, Waste Management will annually pay County an amount equal to the cost incurred (or assume direct responsibility for the cost) to transport up to 35,000 tons per year of Contracted Processable Waste to the Okeechobee Landfill, or to such other Waste Management disposal facility as may be approved by County and Waste Management, but that would not have been incurred if the Contracted Processable Waste had been disposed of pursuant to Section 2.5.2.1, above, or transported directly to the Wheelabrator South Broward waste-to-energy facility located at 4400 South State Road 7, Fort Lauderdale, Florida 33314 (“Transportation Cost Commitment”). The Transportation Cost Commitment will equal the difference in the cost between the destinations, described above, to transport up to 35,000 tons per year of Contracted Processable Waste.

2.5.2.2.1. If County delivers less than the entire 35,000 tons of Contracted Processable Waste in a given year (“Delivery Deficit”), then the tonnage of Contracted Processable Waste used to calculate the payment of the Transportation Cost Commitment for the succeeding year will be increased by an amount equal to the prior year’s Delivery Deficit. Each year’s Delivery Deficit may only be carried over to the following year.

2.5.2.2.2. Waste Management will fulfill the Transportation Cost Commitment annually beginning on the date that Waste Management ceases to accept Contracted Processable Waste at any part of the Expanded Landfill through the Disposal Agreement End Date, provided either or both the Vertical Expansion Condition or the Horizontal Expansion Condition are satisfied.

2.5.3. *Class III waste.* Waste Management is currently providing to County, and will continue to provide to County, processing and disposal capacity sufficient to dispose of all deliveries of any of the following solid wastes that may be delivered by or on behalf of County, including such solid wastes generated within the unincorporated areas of Broward County or within incorporated areas that are under contract with County for solid waste disposal services: construction and demolition debris, tropical storm or hurricane related debris, yard waste, recyclable materials, any large household appliances (commonly referred to as “white goods”) that do not contain chlorofluorocarbons, and other items of bulky waste (collectively, “Class III Waste Commitment”). Waste Management will use commercially reasonable efforts to fulfill the Class III Waste Commitment at the Existing Landfill or Expanded Landfill. Waste Management will otherwise fulfill the Class III Waste Commitment at the Okeechobee Landfill or, if the former is operationally unavailable, such other Waste Management disposal facility approved by County and Waste Management. Other than the disposal rates in the Capacity Schedule, Waste Management will fulfill the Class III Waste Commitment without imposing any costs for such processing. The Class III Waste Commitment does not create an obligation for Waste Management to pay the costs to transport such waste to the disposal destination. Waste Management will continue to fulfill the Class III Waste Commitment on and after the Effective Date, and through the Disposal Agreement End Date, unless the Vertical Expansion Condition and/or the Horizontal Expansion Condition are not satisfied by December 31, 2027, in which event Waste Management may cease fulfilling the Class III Waste Commitment effective July 3, 2028, by providing County prior written notice thereof by April 3, 2028.

2.5.4. *Transfer stations.* Waste Management is currently providing to County, and will continue to provide to County, access to and the right to use, without cost, Waste Management’s transfer stations located within Broward County for the delivery of Contracted Processable Waste (“Transfer Station Commitment”). Waste Management is not obligated to pay disposal fees for Contracted Processable Waste delivered under the Transfer Station Commitment. County agrees that all Contracted Processable Waste delivered under the Transfer Station Commitment shall be disposed of at the Okeechobee

Landfill or, if it is operationally unavailable, such other Waste Management disposal facility as may be approved by County and Waste Management. Waste Management will fulfill the Transfer Station Commitment, in part, by providing access to and the right to use the following transfer stations, to the extent they remain in use by Waste Management, and providing access to and the right to use any additions to Waste Management’s transfer station network:

- (i) Reuter transfer station, located at 20701 Pembroke Rd, Pembroke Pines, Florida;
- (ii) Davie transfer station, located at 2380 College Avenue Davie, Florida; and
- (iii) Deerfield West transfer station, located at 1750 SW 43rd Terrace, Deerfield Beach, Florida.

Waste Management will continue to fulfill the Transfer Station Commitment on and after the Effective Date, and through the Disposal Agreement End Date, unless the Vertical Expansion Condition and/or the Horizontal Expansion Condition are not satisfied by December 31, 2027, in which event Waste Management may cease fulfilling the Transfer Station Commitment effective July 3, 2028, by providing County prior written notice thereof by April 3, 2028.

2.5.5. *Out-of-network transfer station credit.* Nothing contained in this Agreement prevents County from using any transfer station(s) not owned or operated by Waste Management (“Other Transfer Stations”). If County uses any Other Transfer Stations after the Effective Date, Waste Management will, at County’s option, either reduce the tipping fee for Contracted Processable Waste by \$8 per ton or provide a credit to County of equal value at the time County transfers Contracted Processable Waste from any Other Transfer Station to: the Okeechobee Landfill or, if the former is operationally unavailable, such other Waste Management disposal facility as may be approved by County and Waste Management (“Out-of-Network Transfer Station Credit Commitment”). Effective January 1, 2026, the value of the Out-of-Network Transfer Station Credit Commitment provided by Waste Management will be increased annually, regardless of whether County has begun using Other Transfer Stations, based on the percentage change in the Adjustment CPI, for the twelve-month period ending in September of the preceding calendar year. Waste Management will continue to fulfill the Out-of-Network Transfer Station Credit Commitment through the Disposal Agreement End Date.

2.6. Recycling Commitments.

2.6.1. *Methane recycling.* Waste Management will collect methane gas generated from “household waste” and “commercial solid waste,” as defined in Rule 62-701.200, Florida Administrative Code, delivered by or on behalf of County to the Okeechobee Landfill. Waste Management will capture methane gas produced from the decomposition of waste, purify it to pipeline-quality standards, and inject it into the gas utility pipeline at said facility. Waste Management will subsequently extract the gas from the utility pipeline at its hauling companies and use it to fuel refuse collection vehicles, to recycle available

resources and reduce total greenhouse gas emissions. Waste Management will perform such services beginning upon: (i) completion of the required facilities currently under construction; and (ii) satisfaction of either the Vertical Expansion Condition or the Horizontal Expansion Condition (whichever is earlier). Waste Management will continue to perform such services through the Disposal Agreement End Date.

2.6.2. *Recycling education contributions.* Waste Management will contribute a total of \$2,300,000 to the independent legal entity known as the “Solid Waste Disposal and Recyclable Materials Processing Authority of Broward County, Florida” (“Authority”) over ten (10) years to promote recycling education. Waste Management will contribute \$1,150,000 each upon satisfaction of the Vertical Expansion Condition and upon satisfaction of the Horizontal Expansion Condition, payable as follows for each:

- (i) \$250,000 in Year 1;
- (ii) \$200,000 in Year 2;
- (iii) \$150,000 in Year 3;
- (iv) \$100,000 in Year 4; and
- (v) \$75,000 per year for each of Years 5 through 10.

Each Year 1 payment is due ninety (90) days after satisfaction of the applicable condition, with subsequent payments due annually on the same date.

2.6.3. *Composting.* By December 31, 2027, County (through the County Administrator) or the Authority may notify Waste Management in writing of its intent to:

- (i) Source separate food waste and organic material from other items of Contracted Processable Waste; and
- (ii) Transport the source-separated food waste and organic material to the Okeechobee Landfill.

As expeditiously as is practicable but in any event within one hundred eighty (180) days after issuance of such notice, Waste Management will promptly restart operations at the permitted composting facility and process the waste at rates matching the current disposal rate at the Okeechobee Landfill for Contracted Processable Waste. Waste Management will perform such services through the Disposal Agreement End Date. Waste Management’s commitments under this Section 2.6.3 are contingent upon satisfaction of both the Vertical Expansion Condition and Horizontal Expansion Condition by December 31, 2027.

2.7. Assignment to Authority or County. Waste Management agrees that County may assign any commitment, obligation, or benefit identified in this Agreement to the Authority and any commitment, obligation, or benefit expressly provided in this Agreement to the Authority will be provided to County in the event the Authority dissolves, winds down, or otherwise ceases to operate or exist.

2.8. Diversion Costs. If the Development Ordinances are approved on January 28, 2025, but the Vertical Expansion Condition has not been satisfied by July 1, 2025, solid waste delivered by or on behalf of County, whether such waste was delivered from within the unincorporated areas of Broward County or within incorporated areas that are under contract with County for solid waste disposal services, may, for operational reasons, need to be diverted to the Okeechobee Landfill. If such diversion becomes necessary and the delay in obtaining satisfaction of the Vertical Expansion Condition is not caused by a legal or administrative challenge filed by a Broward County municipality or community, Waste Management will take reasonable steps to delay the diversion and will reimburse or absorb the costs of such diversion, including additional transportation costs incurred by County (or incurred by any municipality that is a party to the above-referenced contract), for a period of one hundred twenty (120) days after such diversion commences.

2.9. Contingency Disposal Services.

2.9.1. *Capacity shortfall*. If County's solid waste disposal contractor (or its successor or assignee) ceases performance pursuant to the Disposal Agreement for any of the following reasons, then, upon County's written request as specified below, Waste Management will provide solid waste disposal services to County, subject to all of the same terms and conditions of the Global Amendment and the Capacity Schedule ("Contingency Disposal Services"): (i) a material breach by County's solid waste disposal contractor (or its successor or assignee); (ii) the incapacity or inoperability of the Wheelabrator South Broward waste-to-energy facility located at 4400 South State Road 7, Fort Lauderdale, Florida 33314; or (iii) any force majeure event.

2.9.2. *Performance*. Waste Management will begin providing Contingency Disposal Services: (i) as soon as commercially reasonable to establish the required operational capacity after issuance of a written request for Contingency Disposal Services by the County Administrator, and for the duration specified in such request; and (ii) subject to satisfaction of both the Vertical Expansion Condition and the Horizontal Expansion Condition.

2.9.3. *Effect on binding commitments*. If the necessary conditions of Sections 2.9.1 and 2.9.2 are satisfied, each of Waste Management's commitments in this Agreement that would otherwise continue through the Disposal Agreement End Date (but for any early termination thereof as a result of either or both such conditions) will continue through the date that would have been the Disposal Agreement End Date including through any renewals, as contemplated in the Disposal Agreement (but not for any period beyond 2038), that were exercised prior to the date notice in Section 2.9.2 was provided.

2.10. Coconut Creek Settlement Agreement. Waste Management warrants and represents that nothing contained in this Agreement conflicts with any of Waste Management's applicable contractual obligations to the City of Coconut Creek as set forth in the 2015 settlement agreement between those entities and agrees to fully comply with all such contractual obligations (this provision does not make County a third-party beneficiary of the referenced settlement agreement).

2.11. Cumulative Effect. Waste Management acknowledges that the commitments contained in this Agreement are cumulative, supplemental, and in addition to any commitments made, or contractual obligations entered into, by Waste Management to benefit the public (through County and benefitting municipalities).

2.12. Contractual Remedies; Severability. The obligations contained in this section survive the expiration or earlier termination of this Agreement.

2.12.1. *Voluntary relinquishment*. Waste Management acknowledges County's reliance on the commitments made voluntarily by Waste Management that have been incorporated into this Agreement and into the Restrictive Covenants. Accordingly, Waste Management agrees that, if the Restrictive Covenants are not recorded, or if this entire Agreement is invalidated by one of more final, legal decisions (i.e., through the final adjudication of all filed appeals), or if there is suspension of performance pursuant to Section 2.12.3 below, Waste Management will relinquish its rights to, and within sixty (60) days after such legal decision(s), permanently (or, for a suspension, during the period of suspension) cease all use of, any portion of the Expanded Landfill not lawfully used for solid waste disposal purposes as of January 27, 2025 (whether the expanded portion consists of the Horizontal Expansion Site or consists of disposal above 225 feet in the Existing Landfill). Upon the written request of Waste Management, any application of this "Voluntary Relinquishment" section may be waived by majority vote of the Board. The Parties agree that, if voluntary relinquishment is required pursuant to this section, any claims or defenses in any litigation between the Parties filed after the Effective Date and based upon, relating to, or arising from this Agreement or any of the Development Ordinances will be governed by the zoning, land use, and development status of the Expanded Landfill as it existed on January 27, 2025.

2.12.2. *Severability*. Subject to the sections immediately below, if any part, term, or provision of this Agreement is determined by any court of competent jurisdiction, through the final adjudication of all filed appeal(s), to be unenforceable, illegal, in conflict with any law, or otherwise invalid ("Invalidation"), that part will be deemed severed from this Agreement and the balance of this Agreement will remain in full force and effect. In the event of any such Invalidation, the Parties (or Waste Management's successors or assigns if any transfer or assignment has occurred), will continue to perform each of their respective remaining commitments and obligations and such remaining commitments and obligations may be enforced as if the Agreement did not contain the part, term, or provision that was invalidated.

2.12.3. *Exceptions to Severability*. To ensure the protection of the public, to advance of the public interest, and to provide the Parties, to the greatest extent possible, with the intended material benefits and protections provided by this Agreement, Section 2.12.2 shall not apply to the potential occurrences addressed in Section 2.12.3.

If Invalidation occurs relating to a material provision or condition of this Agreement as identified in this section below, the below-identified Party will have the right to suspend the Parties' performance under this Agreement for a period of up to two (2) years. If the

applicable Party successfully cures the issue that resulted in the Invalidation, the suspension period of this Agreement shall end and the Parties' obligations will recommence as if the Invalidation had not occurred.

2.12.3.1. *County Suspension.* If Invalidation of any of the following material provisions of this Agreement occurs or Invalidation of the corresponding provision(s) in the Restrictive Covenants occurs, County (through the County Administrator) will have the right to suspend in which event the Parties acknowledge the applicability of the above "Voluntary Relinquishment" section (and the impact on any claims or defenses): (i) the Host Charge and Section 2.12.5 below, (ii) "Exclusion of Certain Wastes" section, (iii) the Class III Waste Commitment, or (iv) the Transfer Station Commitment.

2.12.3.2. *Waste Management Suspension.* If Invalidation of both the Horizontal Expansion Condition and the Vertical Expansion Condition occurs, Waste Management will have the right to suspend the Agreement in which event the Parties acknowledge the applicability of the above "Voluntary Relinquishment" section (and the impact on any claims and defenses).

2.12.3.3. *Continuing Obligations Notwithstanding Any Suspension; Invalidation of One Expansion Condition.* Notwithstanding a Party's exercise of a suspension right under Sections 2.12.3.1 or 2.12.3.2 above, Waste Management will continue to perform the following commitments (except to the extent such commitment was invalidated) for thirty (30) months after notice of suspension was provided: (i) the Increased Disposal Capacity Commitment, (ii) the Class III Waste Commitment, and (iii) the Transfer Station Commitment, subject to County's continuing fulfillment of its commitment as stated in Section 3.3. At the end of the applicable thirty (30) month period, County's commitment in Section 3.3 will be suspended. If Invalidation of only one of either the Horizontal Expansion Condition or the Vertical Expansion Condition occurs, Waste Management shall not have the right to suspend performance and the Agreement will remain in effect as though the invalidated condition had not been initially satisfied (with the Parties' respective rights and obligations adjusted accordingly).

2.12.3.4. *Termination after suspension period.* Upon the conclusion of the thirty (30) month period referenced above, either Party may thereafter terminate the Agreement with thirty (30) days advance written notice to the other, with the Parties having no further obligations hereunder except for such provisions which otherwise survive termination. Upon termination, the Parties acknowledge the voluntary relinquishment of their rights and statuses in accordance with Section 2.12.1 and its impact on any claims and defenses as stated in that section will apply.

2.12.4. *Automatic Reinstatement.* If Invalidation of either or both of the Horizontal Expansion Condition and/or the Vertical Expansion Condition occur(s) but one or both of those conditions is subsequently satisfied (e.g., Invalidation occurs due to a technical defect that is subsequently cured, etc.), any suspension of the applicable right or obligation shall

automatically end and the Agreement in full will recommence as if the condition was satisfied on the date the Invalidation was cured.

2.12.5. *Invalidation of Payment or Credit Obligation.* If Invalidation of any Waste Management obligation to pay County (or obligation to provide County a credit) under this Agreement occurs, Waste Management (or its successors or assigns if any transfer or assignment has occurred), will provide County a payment or credit (at the County Administrator's election) equal to ten (10) times the value to County of the invalidated payment obligation for the previous year ("Stipulated Amount"). If Invalidation occurs before Waste Management has made at least one full year of payments (or provided any applicable credit for a full year), then the Stipulated Amount will be equal to ten (10) times the estimated value to County for the first full year of the payment obligation. If County elects to receive a payment, such payment will be made to County within thirty (30) days of election. If County elects to receive a credit, County may use such credit, at the County Administrator's discretion, to satisfy in full or in part any obligation County has or may incur to Waste Management (or its applicable successors or assigns). The purpose of the Stipulated Payment is to allow County to obtain, to the greatest extent practicable as determined by the Parties, the full benefit of Waste Management's commitments and obligations, which are designed to address potential negative externalities and impacts, whether known or currently unknown, from the proposed vertical and/or horizontal expansion over the entire remaining operating life of the Expanded Landfill. Waste Management shall not be required to pay the Stipulated Amount unless the underlying payment would have been required but for the Invalidation (i.e., the payment of the Stipulated Amount will be due only after any conditions precedent to such payment have been satisfied, whether they are satisfied before or after such judicial determination).

If the Stipulated Amount is paid because Invalidation of the Host Charge occurs, and later there is an Invalidation of either or both the Horizontal Expansion Condition and the Vertical Expansion Condition such that Waste Management is prevented from using (or continuing to use) for waste disposal the airspace created by the Vertical Expansion Condition and/or the Horizontal Expansion Site, County will refund a *pro rata* portion of the Stipulated Amount within ninety (90) days after the final adjudication of all appeals (e.g., if the Stipulated Amount was based on Invalidation of the entirety of the Host Charge and, subsequently Invalidation of the Horizontal Expansion Condition occurs, the refund will be based on the portion of the Stipulated Amount that was allocated for the Horizontal Expansion Condition, etc.). Any refund paid by County will decrease by ten percent (10%) for each twelve (12) month period that has passed after the later of: (i) the date the first of either the Horizontal Expansion Condition or Vertical Expansion Condition were satisfied if both are subsequently invalidated; or (ii) if Invalidation occurs to only one of either the Horizontal Expansion Condition or Vertical Expansion Condition, the date that condition was first satisfied.

2.13. Successors in Interest. Waste Management agrees that the commitments and obligations contained in this Agreement, including but not limited to those contained in this Article 2, are binding on Waste Management, its successors, and its assigns. Subject to the "Assignment and Binding Effect" section of this Agreement, Waste Management agrees that, if it chooses to assign

this Agreement to any successor(s) in interest, such assignment will include a provision pursuant to which such assignee(s) or successor(s) assumes all of Waste Management's obligations and commitments hereunder. Notwithstanding any assignment, Waste Management must fulfill the obligations and commitments under this Agreement if any assignee or successor fails to do so.

ARTICLE 3. COUNTY OBLIGATIONS

3.1. Use of Proceeds and Benefits. County will, as determined in County's sole and absolute discretion, use the proceeds or benefits provided by Waste Management under this Agreement and/or under the Restrictive Covenants, including Host Charge funds received, to address the potential negative externalities and impacts of the proposed additional development and expanded use of the Existing Landfill and to benefit County's residents and businesses in connection with solid waste disposal including, without limitation, to:

- (i) Offset the costs of recycling and solid waste management;
- (ii) Enhance litter control programs;
- (iii) Expand public education efforts for solid waste management, recyclable materials management, hazardous waste management, and litter control;
- (iv) If necessary, acquire property and interests in property adjacent to or in reasonable proximity to the Existing Landfill and Expanded Landfill upon a determination by County that such acquisition will serve beautification, environmental, buffering, or recreational purposes such as will ameliorate the impact of the Expanded Landfill;
- (v) Administer and implement regional solid waste planning; and
- (vi) Allocate funds received in any fiscal year to a reserve fund designated for use for the above purposes in future fiscal years.

3.2. Additional Uses. County may also, as determined in County's sole and absolute discretion, use some or all the proceeds or benefits provided by Waste Management under this Agreement to:

- (i) Monitor or address potential environmental impacts of the Existing Landfill and Expanded Landfill;
- (ii) Offset impacts to the County-owned landfill and other elements of the current system for recycling and disposal of solid waste within Broward County;
- (iii) Repair damage to roads and highways affected by the presence and use of the Existing Landfill and Expanded Landfill;
- (iv) Offset costs related to remediation and monitoring of closed or abandoned facilities located within the Existing Landfill and Expanded Landfill now or in the future; and

(v) Offset potential costs of infrastructure improvements necessitated by the presence and use of the Existing Landfill and Expanded Landfill.

3.3. Commitment of Excess Waste.

3.3.1. *Disposal of excess waste.* Up to the amount specified in the Increased Disposal Capacity Commitment in Section 2.5.1, County agrees that any Contracted Processable Waste that is not directed to a facility described in in Section 3.3.2 will be directed for disposal at: the Existing Landfill or Expanded Landfill; the Okeechobee Landfill; or, if the foregoing are both operationally unavailable, such other Waste Management disposal facility as may be approved by County and Waste Management (“County’s Alternate Facility Commitment”). County’s Alternate Facility Commitment is subject to, and as permitted by, County’s contractual obligations in the Disposal Agreement (and further subject to the rights and obligations of the municipalities participating therein).

3.3.2. *Exemptions.* County’s Alternate Facility Commitment will not apply to any Contracted Processable Waste that is: (i) recycled or composted at any facility; (ii) processed at the Wheelabrator South Broward waste-to-energy facility (4400 South State Road 7, Fort Lauderdale, FL 33314); or (iii) processed at any other waste-to-energy facility within Broward County or a neighboring county.

3.3.3. *Conditions required for continuing effect.* County’s Alternate Facility Commitment will remain in effect only if all the following conditions continue to be met: (i) the Disposal Agreement has not expired or terminated; (ii) Waste Management’s commitments, as described in this Agreement and the Restrictive Covenants, remain in full force and effect; (iii) Waste Management is in full compliance with each material commitment; and (iv) Waste Management continues to dispose of Contracted Processable Waste subject to all of the terms and conditions of the Global Amendment and the Capacity Schedule, as applicable.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. This Agreement begins on the date it is fully executed by the Parties (“Effective Date”) and continues through the last day on which any performance hereunder by either Party is still required (“Term”), unless otherwise terminated as provided in this Agreement.

4.2. Time of Performance. The terms “annually” or “on an annual basis” mean each anniversary of the Effective Date and the term “year” (or any variation of the term “year”) will be calculated based on the Effective Date, unless: (i) the context requires otherwise, in which case the specific provision will govern; or (ii) the provision includes a commitment that Waste Management must fulfill through the Disposal Agreement End Date, in which case Waste Management’s performance will coincide with the anniversary of the Disposal Agreement’s renewal(s).

4.3. Time of the Essence. Time is of the essence for each Party’s performance of their respective duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1. Representation of Authority. Waste Management represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Waste Management, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Waste Management has with any third party or violates applicable federal, state, and local laws, ordinances, and regulations. Waste Management further represents and warrants that execution of this Agreement is within Waste Management's legal powers, and everyone executing this Agreement on behalf of Waste Management is duly authorized by all necessary and appropriate action to do so on behalf of Waste Management and does so with full legal authority.

5.2. Claims Against Waste Management. Waste Management represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Waste Management, threatened against or affecting Waste Management, the outcome of which may (a) affect the validity or enforceability of any provision contained in this Agreement, or (b) materially and adversely affect the authority or ability of Waste Management to perform its obligations under this Agreement.

ARTICLE 6. INDEMNIFICATION AND ENFORCEMENT

6.1. Indemnification Obligations. Waste Management will fully indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement (collectively, a "Claim") to the extent caused by (a) a material breach of this Agreement by Waste Management or (b) any intentionally wrongful, reckless, or negligent act or omission of Waste Management, its officers, employees, or agents, arising from or relating to this Agreement. Notwithstanding the foregoing, Waste Management has no obligation to indemnify, hold harmless, or defend an Indemnified Party for any Claim to the extent such Claim arises arising from an Indemnified Party's own (a) material breach of this Agreement or (b) intentionally wrongful, reckless, or negligent act or omission. If a Claim is brought against an Indemnified Party, Waste Management will, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party.

6.2. Defense of Voluntarily Undertaken Commitments. Recognizing that the validity and enforceability of the commitments made voluntarily by Waste Management benefit both Waste Management and the public (through County and benefitting municipalities), Waste Management agrees to: (i) refrain from challenging the validity and/or enforceability of any commitment stated in this Agreement, the Restrictive Covenants, or the Commitment Letter; (ii) defend the validity and/or enforceability of each and every such commitment against any legal challenge raised or asserted by any person or entity not a party to this Agreement, regardless of whether an Indemnified Party is named as a defendant; and (iii) seek to intervene into any legal action filed against County alleging such invalidity or unenforceability for purposes of assisting County in defending the validity and enforceability of the challenged commitment(s).

6.3. Equitable Remedies. Waste Management agrees that each of its commitments stated in this Agreement, the Restrictive Covenants, or the Commitment Letter is enforceable through specific performance or injunction, as applicable.

6.4. Duration. The obligations of this article will survive the expiration or earlier termination of this Agreement.

ARTICLE 7. MISCELLANEOUS

7.1. Retention of Records and Trade Secrets. Waste Management and all of Waste Management's Subcontractors (if applicable pursuant to Section 2.2.5.1) who possess any of the below-described documents, records, or written information related to calculation of the Host Charge will preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all books, records, accounts, supporting documents, statistical records, and any other documents pertinent to the Host Charge described in Section 2.2 of this Agreement ("Records") for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Subject to the requirements of Florida public records laws, Waste Management may redact portions of the Records prior to submitting them to County solely to protect the confidentiality of: (i) non-public pricing specific to individual Waste Management customers, (ii) the non-public identities of such customers, or (iii) other non-public details unrelated to the Host Charge that have independent economic value to Waste Management. If County reasonably determines that the redacted portions are necessary for auditing the Host Charge, Waste Management will promptly provide an unredacted version of such Records upon request. This Section 7.1 will survive any dispute or litigation between the Parties, and Waste Management expressly acknowledges and agrees to be bound by this Section 7.1 throughout the course of any dispute or litigation with County. Waste Management will make all Records available electronically in common file formats or via remote access if, and to the extent, requested by County.

Waste Management must separately submit and conspicuously label as "RESTRICTED MATERIAL – DO NOT PRODUCE" any Records (a) that Waste Management contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Waste Management asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, "Restricted Material"). In addition, Waste Management must, simultaneous with the submission or provision of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Waste Management must promptly identify the specific applicable statutory section that protects specific, individual Records. If a third party submits a request to County for Records designated by Waste Management as Restricted Material, County will refrain from disclosing such Records unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Waste Management, or the claimed exemption is waived. Any failure by Waste Management to strictly comply with the requirements of this section will

constitute Waste Management's waiver of County's obligation to treat the Records as Restricted Material. Waste Management must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

Waste Management will ensure that the requirements of this section and Section 2.2.5.1, above, are included in any and all agreements with Subcontractors, if applicable as per Section 2.2.5.1.

The obligations of this Section 7.1 begin upon the Effective Date and will remain in effect for five (5) years after the entire remaining operating life of the Existing Landfill and Expanded Landfill.

7.2. Relationship of Parties. Nothing in this Agreement will constitute or create a partnership, joint venture, or any other relationship between the Parties. Neither Waste Management nor County nor any of their respective agents will act as officers, employees, or agents of the other Party. Neither Party will have the right to bind the other Party to any obligation not expressly undertaken by such Party under this Agreement.

7.3. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law will have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement and will not be attributable in any manner to County as a Party to this Agreement.

7.4. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor will anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

7.5. Third-Party Beneficiaries. Neither Waste Management nor County intends to primarily or directly benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party will be entitled to assert a right or claim against either of them based upon this Agreement.

7.6. Notices. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and will be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County

Attn: Kevin Kelleher, Assistant County Administrator
Notosha Austin, Director, Solid Waste and Recycling Services
115 South Andrews Avenue, Room 409, Fort Lauderdale, Florida 33301
Email address: kkelleher@broward.org; naustin@broward.org

With copy to:

County Attorney's Office

Attn: Andrew Meyers, County Attorney
Nathaniel Klitsberg, Deputy County Attorney
Matthew Haber, Senior Assistant County Attorney
115 South Andrews Avenue, Room 423, Fort Lauderdale, Florida 33301
Email address: ameyers@broward.org; nklitsberg@broward.org; mhaber@broward.org

FOR WASTE MANAGEMENT:

Waste Management Inc. of Florida

Attn: David Myhan, President
1800 N. Military Trail, Suite 201, Boca Raton, Florida 33431
Email address: dmyhan@wm.com

7.7. Assignment and Binding Effect.

7.7.1. *Assignment limitations.* Waste Management will not assign or transfer this Agreement, or any right or interest in it, without the prior written consent of County, which consent shall not be unreasonably withheld. Any assignment or transfer in violation of this section will be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.

7.7.2. *Conditions on assignment.* In the event County consents to an assignment, Waste Management agrees to: (i) assign this Agreement to any successor(s) in interest; (ii) ensure that such assignment includes a provision whereby the assignee expressly assumes all of Waste Management's obligations and commitments under this Agreement; and (iii) pay any fees reasonably incurred by County in conducting the due diligence required by County as a condition of approval for such assignment.

7.8. Compliance with Laws. Waste Management must comply with all applicable federal, state, and local laws, ordinances, and regulations, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

7.9. Joint Preparation. This Agreement has been jointly prepared by the Parties and will not be construed more strictly against either Party.

7.10. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement will include any other gender, and the singular will include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to this Agreement as a whole and not to any sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County will require approval in writing, unless otherwise expressly stated.

7.11. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section of this Agreement will prevail and be given effect.

7.12. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

7.13. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Waste Management.

7.14. Incorporation by Reference; Anti-Merger; Conflicts. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement. In addition, the Parties hereby acknowledge and agree that neither the delivery of any document, including, without limitation, the Commitment Letter, nor the recording of the Restrictive Covenants described in this Agreement, will eliminate or otherwise modify any obligation contained in this Agreement, Restrictive Covenants, or the Commitment Letter, all of which obligations will remain in full force and effect. Any conflict between any provision of this Agreement, the Commitment Letter, and the Restrictive Covenants will be resolved by enforcing the provision deemed most beneficial to the public (through County and benefiting municipalities).

7.15. Anti-Human Trafficking. By execution of this Agreement by the undersigned authorized representative of Waste Management, Waste Management hereby attests under penalty of perjury that Waste Management does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes; under penalties of perjury, the undersigned authorized

representative of Waste Management declares that they have read the foregoing statement and that the facts stated in it are true.

7.16. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which will be deemed to be an original, and all of which, taken together, will constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the [redacted] day of [redacted], 20[redacted]; and Waste Management, signing by and through its duly authorized representative.

COUNTY

ATTEST:

Broward County, by and through
its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
_____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Attorney's Name (Date)
Senior/Assistant County Attorney

By _____
Attorney's Name (Date)
Deputy County Attorney

MH/tb
WM Monarch Landfill Impacts.doc
1/16/2025
#CAO!1137716

**AGREEMENT BETWEEN BROWARD COUNTY AND WASTE MANAGEMENT INC.
OF FLORIDA TO ADDRESS IMPACTS OF FURTHER DEVELOPMENT OF THE
MONARCH HILL LANDFILL**

WASTE MANAGEMENT

WASTE MANAGEMENT INC. OF FLORIDA

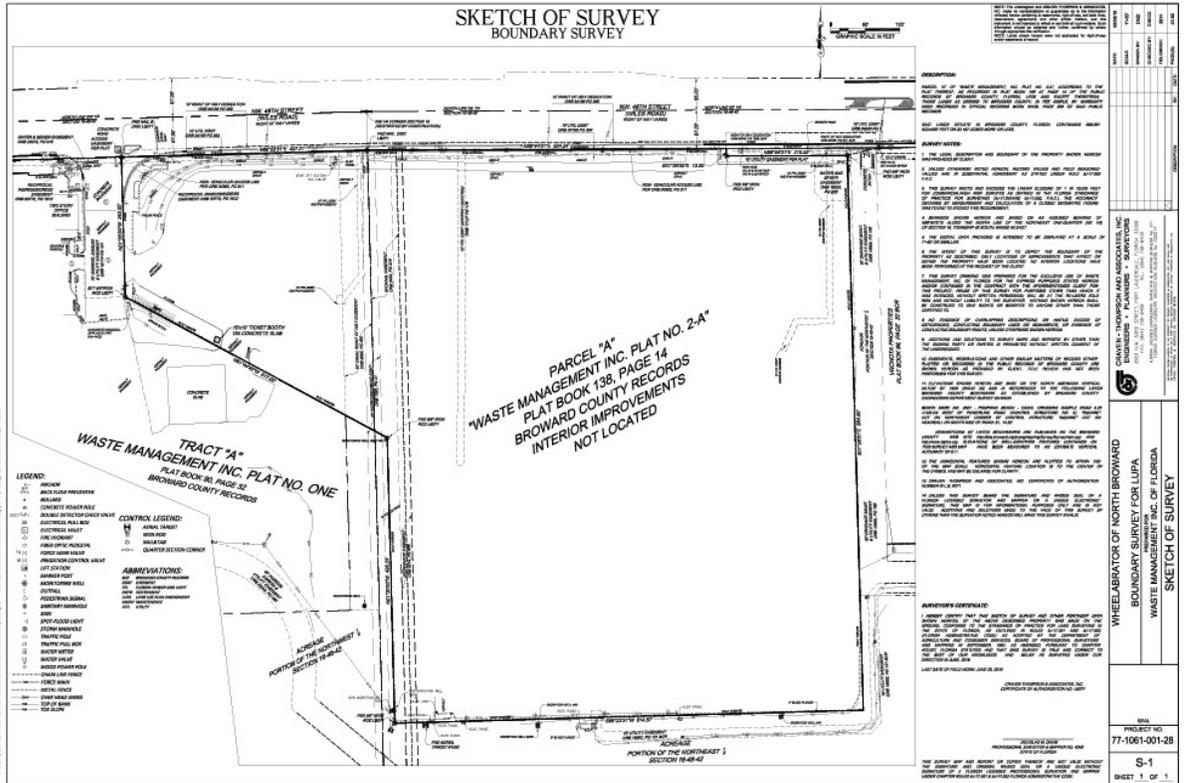
By: _____

Authorized Signer

Print Name and Title

_____ day of _____, 20____

EXHIBIT A



LAW OFFICES
**DOUMAR, ALLSWORTH, LAYSTROM,
VOIGT, ADAIR & DISHOWITZ, LLP**

JOHN H. ADAIR, III, P.A.
EMERSON ALLSWORTH, P.A.
E. SCOTT ALLSWORTH, P.A.
MARK E. ALLSWORTH, P.A.
BENJAMIN R. DISHOWITZ, P.A.
C. WILLIAM LAYSTROM, JR., P.A.

1177 SOUTHEAST THIRD AVENUE
FORT LAUDERDALE, FLORIDA 33316-1109
DIRECT (954) 762-3400
TELEFAX (954) 525-3423
WEBSITE: SFLALAW.COM

WILLIAM J. LAYSTROM, P.A.
JOHN D. VOIGT, P.A.
OF COUNSEL
SCHERIL MURRAY POWELL, P.A.
JODIE M. SIEGEL, P.A.

January 14, 2025

Honorable Beam Furr and Broward County Commissioners
BROWARD COUNTY
115 S. Andrews Avenue
Ft. Lauderdale, Florida 33301

Re: Monarch Hill Land Use Plan Amendments and Proposed Zoning Code Modification to Permit Additional Landfill Height – Waste Management’s Voluntarily-Undertaken Commitments in the Event of County Commission Approval on January 28, 2025

Dear Mayor and County Commissioners,

We appreciate the opportunity to discuss the upcoming Monarch Hill Land Use Plan Amendments and related solid waste system issues through the public hearing process. In order to consider a more global solution to the disposal of construction and demolition debris and Class III waste (*i.e.*, bulky waste, yard waste, *etc.*), Waste Management Inc. of Florida (“Waste Management”) has asked me to communicate to you, on behalf of itself, its successors and assigns, that Waste Management will, as further specified and conditioned below, undertake the following voluntary commitments to address concerns voiced by the County regarding the potential impacts of the proposed vertical and horizontal landfill expansions:

That if the County approves the pending Land Use Plan Amendment for a 24.2-acre +/- parcel located at 2600 Wiles Road, Pompano Beach, Florida 33073 (the “Property”), and provides any other County-required approvals, and Waste Management is able to obtain all necessary licenses and permits (including, if and as required, a solid waste permit) so that the Property may be used as a landfill (“Horizontal Expansion Condition”); and/or (as further specified below)

That if the County takes all required County actions to allow a maximum height for landfills (in the zoning category addressed by the applicable ordinance) to be 325 feet, and Waste Management is able to obtain all necessary licenses and permits to use the Monarch Hill landfill (including the Property, if the Horizontal Expansion Condition is met) at a height of 325 feet (“Vertical Expansion Condition”);

Then Waste Management will undertake the following voluntary actions (unless this letter commits to taking action if only one but not the other condition is met, or commits to taking some action based on some other circumstance specified in this letter, Waste Management’s commitment

requires the meeting of both conditions; and all voluntary commitments of Waste Management stated in this letter shall also be commitments of Waste Management's successors and assigns, if any):

1. **Upon the occurrence of both the Horizontal Expansion Condition and Vertical Expansion Condition, Waste Management will agree to the following:**

- a. To no longer accept municipal solid waste [Household Waste and Commercial solid waste (as defined in 62-701.200 (49) and 62-701.200(22), F.A.C., respectively, hereinafter "Municipal Solid Waste")] for disposal in any portion of the Monarch Hill facility (including the Property) after the expiration of the present term of the Pompano Beach disposal contract on 9/30/2027 (this commitment shall remain in effect for the entire remaining useful life of the entire Monarch Hill landfill). Consistent with the 2015 agreement between Coconut Creek and Waste Management (the "2015 Coconut Creek Agreement"), Municipal Solid Waste will only be accepted during a declared State of Emergency. Additionally, it may be accepted if the Broward County Commission (or County Administrator in connection with an exigency) makes an express finding that it is in the best interest of the public for the temporary disposal of Municipal Solid Waste (and only for the duration that the finding remains in effect and only to the extent not inconsistent with any applicable contractual obligations to Coconut Creek under the 2015 Coconut Creek Agreement). Notwithstanding the above, if only the Horizontal Expansion Condition is met, Waste Management will not accept Municipal Solid Waste for disposal on the Property (but may still deposit Municipal Solid Waste into the Existing Landfill at or below 225 feet, subject to any restrictions under the 2015 Coconut Creek Agreement); and if only the Vertical Expansion Condition is met, Waste Management will not accept Municipal Solid Waste for disposal above 225 feet in height in any part of the Monarch Hill landfill (the above-referenced "emergency" and "exigency" exceptions are applicable to these commitments as well).
- b. To pay or assume responsibility for the cost to transport 35,000 tons per year of the County's Contracted Processable Waste as defined under the 2015 Global Amendment among, *inter alia*, Broward County, Waste Management and Wheelabrator Environmental Systems Inc. ("Wheelabrator") (hereinafter "Global Amendment") to alternate waste disposal site(s) (in lieu of Monarch Hill) of Waste Management's choosing from the date Municipal Solid Waste is diverted away from the Monarch Hill facility (per Section 1.a.) through the final renewal term of Broward County's waste disposal agreement with Wheelabrator (the "Wheelabrator Contract") including any future renewals thereof which may continue through part of 2038 ("Wheelabrator Contract Expiration Date"); Waste Management's voluntary commitments that reference or relate to the Wheelabrator Contract shall remain applicable even if Wheelabrator assigns any or all of its interest under such contract. If in any year the County delivers less than 35,000 tons of Contracted Processable Waste, Waste Management agrees to pay or assume

responsibility for the cost in the following year for transportation of the additional amount equal to the prior year's shortfall.

- c. To pay a per ton "Host Charge" to Broward County for every ton of revenue-generating waste (regardless of the amount of revenue received by Waste Management) accepted for disposal at the Monarch Hill landfill facility as follows: For Construction and Demolition debris, industrial solid waste, ash residue, bottom ash, fly ash, Class III waste (*e.g.*, bulky waste, yard waste, *etc.*), and any type(s) of waste not subject to the \$6.00 per ton change addressed below, Waste Management will pay the County \$3.50 per ton of waste originating from within Broward County that is accepted for disposal at the Monarch Hill facility (any part of the landfill at any height including the Property). For Municipal Solid Waste from Broward County and for waste of any nature generated, originated, or shipped from outside of Broward County, Waste Management will pay the County \$6.00 per ton of waste accepted for disposal in any part of the Monarch Hill facility including the Property (at any height). The only waste that is excluded from Waste Management's obligation to pay the Host Charge will be: waste accepted into the Monarch Hill landfill facility from which Waste Management does not generate any revenue; and sludge, grit, and screenings from a wastewater treatment plant that are delivered by Broward County or delivered on County's behalf.
 - (i) Waste Management will initiate these Host Charge payments at 50% value after the issuance of a solid waste permit (or other applicable permit or approval that would permit the additional disposal in the applicable expansion area) for either the Horizontal Expansion or the Vertical Expansion and will add the second 50% (of the aforementioned Host Charge) after the issuance of a solid waste permit (or other applicable permit or approval that would permit the additional disposal in the applicable expansion area) for the additional area (*i.e.*, 100% would be required after both the Horizontal Expansion Condition and Vertical Expansion Condition are met). Waste Management will work expeditiously to seek all approvals to permit both areas created by the Horizontal Expansion and Vertical Expansion to be used for waste disposal without delay so as to reach both 50% and 100% of the Host Charge payment value as quickly as possible.
 - (ii) The Host Charge remains in effect for the full duration of the landfill operating life for waste accepted for disposal at the Monarch Hill facility, and once Waste Management is obligated to pay any part of the Host Charge Waste Management will adjust the Host Charge annually on January 1 based upon the change in the Consumer Price Index as further specified in the Future Contract defined below (however, the first annual January adjustment shall be on a pro rata basis if Host Charge payments have been made for less than a year).
 - (iii) At the County's option (to be exercised in writing by the County Administrator), the County may choose to receive the Host Charge,

instead of as a payment, in the form of a credit against costs for services purchased from Waste Management.

- (iv) No portion of the Host Charge will be included on any bill as a line item (itemized) charge sent to Waste Management's customers, nor will any portion of the Host Charge be included in any express charge addressing governmental fees, taxes, or other costs.
 - (v) The County shall have the right to audit matters relating to the Host Charge, including to verify the tonnages subject to the Host Charge and the tonnages exempted from the Host Charge at the Monarch Hill facility. Waste Management will be required to provide County's auditor(s) with access to records and data containing sufficient detail to establish Waste Management's full payment of the Host Charge, including records and data necessary to verify the types and amounts of tonnage of all waste accepted, tonnages and types of revenue-generating waste accepted, related scale and payment records, as well as surveys of the Monarch Hill facility and related GPS records. The audit report shall generally be limited to reporting to County the verified categories of, tonnage amounts of, and county of origin of the waste needed to calculate the Host Charge payments. County's auditor(s) shall also be allowed to conduct spot inspections of the Monarch Hill facility, without prior notice, no more often than once per month.
 - (vi) Waste Management understands that the County intends to use the Host Charge payments, as determined by the County, to address potential negative externalities and impacts of the landfill expansion, including any prudent monitoring or maintenance of reserves in connection therewith, or will otherwise be used by the County for other solid waste management, disposal, recycling, or education uses.
- d. To, for the full remaining useful life of the Monarch Hill landfill, limit the percentage of waste accepted for disposal at the Monarch Hill facility (inclusive of the Property) from outside of Broward County to no more than 20% of the total incoming volume on an annual basis (which is the approximate percentage currently accepted for disposal from outside Broward County). The 20% cap may be exceeded upon receipt of written notice from the County Administrator to Waste Management: (i) to dispose of out-of-county waste resulting from a declared emergency; or (ii) to accept waste from any Florida county in which waste from Broward County is disposed (in order to enable any required waste disposal reciprocity).
- e. Through the Wheelabrator Contract Expiration Date, to continue (Waste Management is currently providing this service, and will continue to do so consistent with the terms of the contract document to be entered concurrently with any approval of the applicable ordinances (the "Future Contract")) to provide the use of its transfer stations located within Broward County (currently Davie, Reuter and Deerfield, to the extent they remain in existence, and together with any

additions to the transfer station network), at no charge to Wheelabrator, Broward County and/or the municipalities contracting with Broward County regarding Contracted Processable Waste. While the use of its transfer stations will be provided at no cost, nothing in this letter obligates Waste Management to pay for disposal costs or transportation costs (except as otherwise stated in Section 1.b. or regarding the potential diversion of waste as referenced below). The estimated annual value of this transfer station use is between \$2.0 million and \$2.5 million per year based upon recent waste volumes. This voluntary commitment to provide free access to Waste Management's transfer stations (whether utilized or not) is conditioned upon the County's agreement that its Contracted Processable Waste (other than Contracted Processable Waste processed at the Wheelabrator South Broward Waste-to-Energy facility or some other waste-to-energy facility in Broward County or in a neighboring county, or recycled or composted at any facility) shall be sent for disposal at the Monarch Hill facility, the Okeechobee Landfill, or, if both of the foregoing are operationally unavailable, such other Waste Management disposal facility as may be approved by County and Waste Management, upon the terms and conditions further specified in the Future Contract. Should the County decide to utilize a transfer station that is not within Waste Management's transfer station network in order to transfer the County's Contracted Processable Waste to the Okeechobee Landfill or to another Waste Management disposal facility mutually agreed upon by County and Waste Management, then Waste Management agrees to reduce the tipping fee (or to provide a credit, as further addressed in the Future Contract) at that disposal facility by \$8.00 per ton (hereinafter the "Out-of-Network Transfer Station Credit"). Beginning January 1, 2026, the Out-of-Network Transfer Station Credit will be increased annually based upon the change in the Consumer Price Index as further specified in the Future Contract.

- f. As will be further specified in the Future Contract, to make a contribution to the Broward Solid Waste Authority (SWA) recycling education program over a 10-year period in the total amount of \$1,150,000 if the Horizontal Expansion Condition is met, and to make an equal contribution if the Vertical Expansion Condition is met.
- g. To, through the Wheelabrator Contract Expiration Date, use the below-described methane recovery system to collect methane generated by the Broward County Municipal Solid Waste delivered to Waste Management's Okeechobee Landfill in the same manner as solid waste from other counties (at no cost to Broward County apart from the standard disposal rate). To address concerns with greenhouse gas emissions, Waste Management is currently constructing a state-of-the-art renewable energy recovery facility at the Okeechobee Landfill. The Okeechobee Landfill is the disposal facility where excess Municipal Solid Waste that cannot be processed at the Wheelabrator South Broward Waste to Energy Facility is sent for disposal. This new facility at the Okeechobee Landfill will capture the methane gas generated from the decomposition of waste, purify that methane to pipeline-quality gas, whereupon it will be pressurized and injected into the gas utility pipeline. Waste Management will then remove the gas from the utility pipelines at

each of its hauling companies where it will be used to fuel refuse collection vehicles, thus completing the recycling and circularity loop.

- h. Should Broward County or SWA notify Waste Management by December 31, 2028, that it intends to source separate and transport food waste and organics to the Okeechobee Landfill site in the future, to restart (without unreasonable delay) the permitted composting facility at Okeechobee Landfill and compost the Broward County (and municipalities contracting with Broward County) organic and food waste at no extra cost to the then current disposal rates (through the Wheelabrator Contract Expiration Date). The Broward County organic and food waste disposal rate shall not exceed the rate charged to Broward County for municipal solid waste disposal at the Okeechobee Landfill.
- i. If requested in writing by Broward County, and through the Wheelabrator Contract Expiration Date, to increase the capacity commitment (in Section III.F.5 of the Global Amendment) for Contracted Processable Waste at a disposal facility by 200,000 tons per year (from 575,000 to 775,000 tons per year). This increased capacity commitment by Waste Management is conditioned upon the County's agreement that the Contracted Processable Waste (except for such waste as processed at the Wheelabrator South Broward Waste-to-Energy facility or some other waste-to-energy facility in Broward County or a neighboring county, or recycled or composted at any facility) shall be sent for disposal at one of Waste Management's disposal facilities, upon the terms and conditions further specified in the Future Contract. In addition, Waste Management will continue to provide the County with sufficient disposal capacity to meet its Class III waste needs through the Wheelabrator Contract Expiration Date, as further detailed in the Future Contract.
- j. Should the County decide to install a wastewater sludge dryer in the vicinity of the Monarch Hill facility, to work cooperatively with the County to deliver, on commercially reasonable terms, through the Wheelabrator Contract Expiration Date, methane gas generated at the Monarch Hill facility to the envisioned dryer facility, provided that the infrastructure and equipment required to transport the methane gas to the dryer facility shall be paid for by the County. This concept as envisioned would provide renewable energy, which would otherwise be flared or underutilized, to help provide a solution to the County's wastewater sludge disposal.
- k. To provide Broward County an option to purchase the Property for Fair Market Value, on the terms and subject to the timing and other conditions stated in the Future Contract.
- l. If Wheelabrator, or any successor or assignee or Wheelabrator, ceases performance under the Wheelabrator Contract (i) due to material breach by Wheelabrator (or such successor or assignee) or (ii) due to any incapacity of the Wheelabrator South Broward Waste-to-Energy Facility or during any force majeure event, then, upon

the written request of the County Administrator, and for the duration specified in such request, Waste Management will provide waste disposal services to Broward County, and to the municipalities that have contracted with the County, through the date that would have otherwise been the Wheelabrator Contract Expiration Date but for any contractual termination as a result of any of the above-referenced occurrence(s) (“Contingency Disposal Services”). Waste Management will provide the Contingency Disposal Services subject to the terms as further set forth in the Future Contract. All of Waste Management’s commitments stated in this letter that would otherwise continue through the Wheelabrator Contract Expiration Date will continue throughout the performance of the Contingency Disposal Services. Waste Management agrees to begin providing these disposal services after the commercially reasonable period necessary to establish operations.

2. **Should either the Horizontal Expansion Condition or the Vertical Expansion Condition occur, but not both, then Waste Management agrees as follows:**

- a. To exclude the applicable waste, as provided for and consistent with Section 1.a. above;
- b. To pay the applicable Host Charge, as provided for and consistent with Section 1.c. above;
- c. To make the contribution as provided for and consistent with Section 1.f.; and
- d. To meet the voluntary commitment described in Section 1.g. above.

Nothing in this letter (or in the DRC or Future Contract) shall obligate Waste Management to take any action that violates the 2015 Coconut Creek Agreement; Waste Management hereby reaffirms its commitment to comply in full with all obligations it has undertaken under that agreement.

Waste Management acknowledges that:

1. Where the County, pursuant to this letter or the Future Contract, is committing to provide waste to Waste Management in exchange for Waste Management committing to provide capacity for the disposal of such waste:
 - a. The County’s commitment does not apply to any waste that is going to be recycled or composted at any facility or processed at the Wheelabrator South Broward waste-to-energy facility or any other waste-to-energy facility in Broward County or a neighboring county;
 - b. The obligation to provide such waste is subject to and as permitted by the County’s contractual obligations to Wheelabrator (as same may be assigned by Wheelabrator) pursuant to the applicable disposal agreement (and further subject to the rights and obligations of the municipalities participating therein); and
 - c. Any obligation to provide such waste is otherwise subject to the terms and conditions of the Future Contract; and

2. Where Waste Management, pursuant to this letter or the Future Contract, agrees to provide capacity for disposal of waste of any kind, Waste Management will provide such capacity at the rates and on the material terms as stated in the Future Contract, and that such capacity is for the benefit of County and those municipalities contracting with County for waste disposal.

If both the vertical expansion and horizontal expansion are approved at the January 28, 2025, County Commission meeting, Waste Management will commence permitting activities and work diligently to expedite its receipt of solid waste permit(s) and any other required approvals to increase the height and utilize the Property as a landfill. If the required permit licenses/qualifications for the vertical expansion have not been issued by July 1, 2025, then Waste Management anticipates that, for operational reasons, it will begin diverting Broward County waste to the Okeechobee Landfill on or about July 1, 2025. If a permit or other required approval for the vertical expansion is not issued by July 1, 2025, for reasons other than, in whole or in part, the filing of a legal or administrative challenge by a Broward city or community, then Waste Management will work, to the extent it may be operationally achievable, to delay such diversion and, if it cannot be delayed for at least one hundred twenty (120) days, will absorb or reimburse the increased transportation costs caused by such diversion for a period of one hundred twenty (120) days.

Waste Management commits to taking all prudent actions to seek the expeditious receipt of all approvals (including licenses and permits) necessary to effectuate both referenced expansions and acknowledges that, despite any approval of the applicable ordinance by the County Commission, the effectiveness of such ordinances will be subject to recording a Declaration of Restrictive Covenant ("DRC") applicable to the entirety of the Monarch Hill landfill (inclusive of the Property) so that it runs with the land and is binding on any and all of Waste Management's successors and assigns, and further subject to execution of the Future Contract (also to be binding upon such successors and assigns) which is intended to further memorialize and ensure enforceability of these voluntary commitments. If the DRC and/or Future Contract has not been executed by Waste Management and returned to the County in time for such executed document(s) to be before the County Commission for its January 28, 2025, meeting, the final language of the DRC and Future Contract shall be consistent with the terms of this letter and is subject to the approval of the County Attorney's Office and counsel for Waste Management.

Waste Management acknowledges that the County's consideration of these voluntary commitments as part of its deliberation in no way obligates the County to take any legislative quasi-judicial, or administrative action(s), including action constituting or relating to the approval of any land use plan amendment or any zoning code text amendment. Further, Waste Management acknowledges that the County has not stated that it will refuse to approve or otherwise take any such above-referenced action if these voluntary commitments are not made. Instead, these voluntary commitments are being undertaken by Waste Management to address concerns raised by the County regarding the potential negative externalities and impacts, including contingent and unknown negative externalities and impacts, with the intent that the County Commission may rely on them as part of its decision-making process regarding whether to approve the applicable agenda items on January 28, 2025. If, for any reason, any or all of the above-mentioned approvals do not

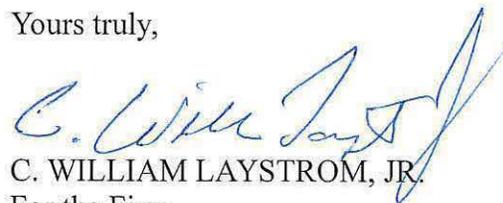
become effective, Waste Management may choose to seek such approvals in the future with or without expressing a willingness to undertake any voluntary commitments.

Because the validity and enforceability of Waste Management's voluntary commitments provide a benefit to both Waste Management and the public (through the County and affected municipalities), Waste Management acknowledges that the required Future Contract will commit Waste Management to (i) refrain from taking any action to allege that any or all of these voluntary commitments are in any way invalid or unenforceable; (ii) defend the validity and enforceability of each such voluntary commitment against any legal challenge raised against Waste Management by any individual or entity; and (iii) seek to intervene into any legal action filed against County alleging such invalidity or unenforceability for purposes of assisting County in defending the validity and enforceability of the challenged commitment(s). Waste Management acknowledges that the required Future Contract will contain other enforcement mechanisms, including a stipulation that any voluntary commitment may be judicially enforced through the remedies of specific performance or injunction, as applicable.

Because the County is relying upon Waste Management's voluntary commitments as part of its decision-making process, if for whatever reason, the DRC described in this letter is not recorded, or if the Future Contract is not signed by Waste Management and the County by March 31, 2025, Waste Management acknowledges that the land use plan amendments and zoning code text amendment will either not become effective or will cease being effective, thereby returning the status of all parts of the Monarch Hill landfill facility and the Property to that which existed on January 27, 2025.

Waste Management has worked with the County to develop both the proposed Future Contract and proposed DRC for the County Commission's consideration on January 28, 2025, in connection with its consideration of the applicable ordinances. Both the Future Contract and the proposed DRC contain language that supplements and further details the voluntary commitments communicated in this letter and address certain commitments by Waste Management based on current services being performed by Waste Management and which will continue to be performed (subject to the conditions stated in those documents) prior to the meeting of either the Vertical Expansion Condition or the Horizontal Expansion Condition. In the interest of brevity, some of that language is omitted from this letter, but by this reference thereto Waste Management represents that the commitments it is voluntarily undertaking include those stated in the Future Contract and DRC as though they were fully restated herein.

Yours truly,



C. WILLIAM LAYSTROM, JR.

For the Firm

CWL:lv

cc: County Administrator Monica Cepero
Assistant County Administrator Kevin Kelleher
County Attorney Andrew J. Meyers