

**INTERLOCAL AGREEMENT FOR SOLID WASTE DISPOSAL AND RECYCLABLE MATERIALS  
PROCESSING AUTHORITY OF BROWARD COUNTY, FLORIDA**

This Agreement (“Agreement”), dated for convenience on [\_\_\_, 2022] (“Effective Date”), is among Broward County, a political subdivision of the State of Florida (“County”), and \_\_\_\_\_ (each, individually, a “Municipal Party” and collectively, the “Municipal Parties”) (collectively, the “Parties” and each individually a “Party”).

**ARTICLE 1. RECITALS AND FINDINGS OF FACT**

1.1 Mission Statement. To protect the long-term public health, safety, and welfare of the residents of the Municipal Parties and County, the Parties commit to working together collaboratively through the creation of an independent legal entity known as the “Broward County Solid Waste Disposal and Recyclable Materials Processing Authority” (the “Authority”), the purpose of which is to develop and implement a long-term, environmentally sustainable, transparent, innovative, and economically efficient plan and approach to disposal, reduction, recycling, and reuse of waste generated in Broward County.

1.2 Goals of the Authority. The Authority will (a) encourage recycling, reduction, and reuse, diverting Authority Solid Waste (defined below) from landfills, seeking to ultimately reach zero waste, (b) support regional solutions with other counties with priority being given to the needs and goals of the Parties, (c) conduct comprehensive public education campaigns, and (d) engage in and/or support research and development into disposal, reduction, recycling, reuse, and utilization of the latest technology to create a sustainable and resilient Authority Solid Waste disposal and Recyclable Materials (defined below) processing system. The Authority may offer the Parties collection and hauling services for Authority Solid Waste and Recyclable Materials; however, ultimate responsibility for providing such services shall remain with each local government in Broward County.

1.3 Reservation of Powers. The Parties, individually and collectively, find that no municipal or County powers or functions are being transferred by this Agreement or by the creation of the Authority as a separate legal entity as described in Section 163.01, Florida Statutes. Each Party retains ultimate responsibility within its jurisdiction for supervising waste and recycling as provided by applicable law. Consequently, the Parties find that the Authority serves a limited government function: to operate the System (defined below). The Parties further find that the Authority is not a mere instrumentality of County or of the Municipal Parties. Except for such matters expressly stated in this Agreement, neither County nor the Municipal Parties shall maintain operational control hindering the Authority’s status as an independent and separate legal entity.

1.4 Other Critical Operations Not Addressed by this Agreement. The continuation of this Agreement is contingent on a Master Plan (defined below) being ratified by the Authority and on approval of an amendment to this Agreement by the Parties, as detailed below. The purpose of the Master Plan and the contemplated amendment to this Agreement is to: (a) provide further specificity regarding the Authority’s operations that the Parties have elected to address after the

Effective Date, and (b) resolve other critical issues related to the Authority's creation and reflect such consensus as may exist or be formed concerning operations and related responsibilities, liabilities, or other commitments once the Parties determine the precise operations that will be undertaken, and facilities that will be owned, by the Authority.

## ARTICLE 2. DEFINITIONS

2.1 **Authority** means the independent, separate legal entity created by this Agreement.

2.2 **Authority Solid Waste** means garbage, rubbish, trash, refuse, or other discarded material resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Unless excluded by the Master Plan, this term includes tropical storm debris, hurricane debris, all other storm debris, yard waste, bulk trash, white goods (including, without limitation, large household appliances, refrigerators, stoves, washing machines, drying machines, microwave ovens, and water heaters), and construction and demolition debris. The term does not include the following: solid waste from industrial, agricultural, or mining operations (other than construction and demolition debris); sludges; solids or dissolved materials in domestic sewage, or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants; any nuclear source or byproduct materials regulated under Chapter 404, Florida Statutes, or under the Federal Atomic Energy Act of 1954, as amended; Recovered Materials; Hazardous Materials; or any waste deemed unacceptable in the Master Plan.

2.3 **Broward Tonnage** means the total amount of System Waste generated within each Municipal Party's jurisdiction and the unincorporated areas of Broward County. When accurate data for System Waste is not available, the Governing Board may by majority vote elect to approximate the total amount of System Waste by using population figures based on the most recent Bureau of Economic and Business Research – University of Florida report or any other reasonable source of population data it deems appropriate.

2.4 **Executive Committee** means the body described in [Section 6.3] comprised of members of the Governing Board and granted the powers described in [Section 8.3].

2.5 **Governing Board** means the primary governing body of the Authority as described in [Section 6.2] and granted the powers described in [Sections 8.1 and 8.2].

2.6 **Hauler** means a person or entity engaged in the collection, transportation, or delivery of System Waste pursuant to an agreement with, or authorization granted by, any Party or the Authority.

2.7 **Hazardous Materials** means any waste, debris, substance, constituent, object, or material that: (a) is determined to be hazardous, toxic, corrosive, reactive, ignitable, explosive, radioactive, infectious, carcinogenic, teratogenic, or mutagenic (collectively, "Hazardous")

pursuant to the Broward County Charter, Chapter 27 of the Broward County Code of Ordinances, Chapter 403, Florida Statutes, Fla. Admin. Code Chapter 62-730, Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et seq., Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601, et seq., Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., 40 C.F.R. Parts 239 through 374, 40 C.F.R. Parts 700 through 799, 49 C.F.R. § 172.101, or any rule or regulation promulgated pursuant to the foregoing authorities; (b) is classified as “universal waste” pursuant to 40 C.F.R. Part 273; (c) is otherwise determined to be Hazardous or prohibited by state or federal law; (d) is determined to be Hazardous at any time by the United States Environmental Protection Agency; (e) may cause damage to a Authority Solid Waste, Recyclable Materials, or Recovered Materials facility accepting the Hazardous Substance; or (f) otherwise poses a threat to public health or safety.

2.8 **Master Plan** means the Master Plan of Operations document required to be adopted by the Authority for strategic and operational planning purposes, as well as describing the Authority’s operations in detail and providing the comprehensive planning framework and strategic direction to manage System Waste, across Broward County, consistent with the Parties’ responsibilities under applicable law.

2.9 **Recovered Materials** means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered Materials, as described in this Agreement, are not included within the definition of Authority Solid Waste.

2.10 **Recyclable Materials** means those materials that are capable of being recycled and that would otherwise be processed or disposed of as Authority Solid Waste.

2.11 **System** means the collective arrangement of infrastructure and facilities overseen, owned, operated, acquired, or contracted for by the Authority and provided for in the Master Plan to manage System Waste.

2.12 **System Waste** means Authority Solid Waste, Recovered Materials, and Recyclable Materials collectively generated in any of the Parties’ jurisdictions that has been identified as acceptable in the Master Plan. This term does not include Hazardous Materials or any waste deemed unacceptable in the Master Plan.

### ARTICLE 3. FORMATION

3.1 By this Agreement, the Parties are coordinating a joint management program for System Waste through the Authority, created as an independent and separate legal entity pursuant to, and consistent with, Sections 163.01, 189.4041, 403.706(11), (12), (15), and (19), and 403.713, Florida Statutes.

3.2 The Authority will have the power and duty to establish, operate, and maintain the System. This Agreement does not divest any Party of its ultimate authority or obligation to supervise the provision of services related to System Waste generated within its jurisdiction; none of the powers granted the Authority constitutes a transfer of powers or functions as addressed under the Florida Constitution.

3.3 Deadline to Adopt Initial Master Plan and Facilities Amendment. The Authority, through its Governing Board, must: (a) adopt a Master Plan pursuant to the requirements of [Article 7], and (b) approve a proposed amendment to this Agreement (the “Facilities Amendment”) that must subsequently be adopted by the Parties and that meets the procedural and substantive requirements of this section (the requirements under both subparts (a) and (b) are collectively “Formation Conditions”). If the Formation Conditions are not met within eighteen (18) months, unless extended pursuant to subsection [3.3.1], after the Effective Date, this Agreement automatically terminates, and upon such automatic termination the Parties will only owe such duties to one another as expressly survive termination of this Agreement.

3.3.1 Extension. The Executive Committee may, by majority vote, extend the adoption deadline to meet the Formation Conditions for up to an additional aggregate total of six (6) months. If the Executive Committee has no further extension of the deadline available to it, the Governing Board may, by majority vote, further extend the adoption deadline by up to an additional twelve (12) months beyond the initial six (6) month extension. In no circumstance will the deadline to meet the Formation Conditions, as extended, be more than thirty-six (36) months after the Effective Date.

3.3.2 Withdrawal. After the Governing Board approves the Facilities Amendment, the Authority shall provide written notice to each Municipal Party and the County. After receiving the Authority’s notice, each Municipal Party’s elected body shall have ninety (90) days to adopt a resolution approving the Facilities Amendment. A Municipal Party’s failure to adopt and deliver to the Authority a resolution approving the Facilities Amendment within the ninety (90) day period will be deemed that Party’s withdrawal from this Agreement. Except for provisions that survive expiration or termination of this Agreement, a Party that withdraws from this Agreement pursuant to this section will have no further rights, duties, or obligations hereunder, including, without limitation, that such Party will not have any representative on the Governing Board or Executive Committee. Notwithstanding the foregoing, any Party that withdraws pursuant to this section will not be prevented from rejoining at a later date pursuant to [Section 5.2].

3.3.3 Facilities Amendment; Required Contents. The Facilities Amendment must provide for the following:

3.3.3.1 A procedure and terms by which County may utilize facilities operated as part of the System (if any) that the Authority may own relating to the disposal of Authority Solid Waste if: (a) the Authority is no longer using the facility or has substantially reduced usage of the facility, resulting in a reduction of disposal capacity in Broward County, (b) such capacity is deemed necessary by County to

fulfill its obligations under Section 403.706(1), Florida Statutes, and (c) County intends to operate such facility; and

3.3.3.2 A process to effectuate the orderly transfer of services being performed by the Authority and the transfer of assets of the Authority to a successor entity, or to County if County chooses to perform those services, if this Agreement is terminated or expires or if the Authority is dissolved (collectively “Wind Down”), including detailed processes addressing:

3.3.3.2.1 The disposition and/or transfer of reserve funds collected by the Authority associated with the assets being transferred;

3.3.3.2.2 How liabilities of the Authority, including debt obligations associated with assets being transferred, will be satisfied;

3.3.3.2.3 Whether or how County may acquire assets of the Authority that County intends to continue operating on behalf of the residents of Broward County; and

3.3.3.2.4 How the costs of a capital expansion for County-owned facilities will be allocated among the Parties (which may include, among other things, County paying the full cost, the Municipal Parties paying the full cost, or some sharing of costs between County and the Municipal Parties).

Notwithstanding anything in this Agreement to the contrary, including, without limitation, Article 16, for the Facilities Amendment to be effective, it must be approved by the elected bodies of: (a) Municipal Parties representing at least eighty percent (80%) of the total population of the Municipal Parties, and (b) County; provided, however, if the Facilities Amendment is approved by all municipal parties but not the County, the Facilities Amendment will be deemed approved, subject to a veto by the County, which veto shall require at least six County Commissioners voting in favor of the veto.

3.3.4 The Facilities Amendment must be adopted by the elected bodies of the Parties described above for the Formation Conditions to be met. Condition on Exercise of Powers. Until the Formation Conditions are met, the Authority may not exercise any of the powers granted in the following sections of this Agreement:

3.3.4.1 Section 8.1.3 (Establishment of rates, fees, and other charges);

3.3.4.2 Section 8.1.4 (Recyclable Materials and Recovered Materials processing);

3.3.4.3 Section 8.1.5 (Recyclable Materials and Recovered Materials facilities and programs);

3.3.4.4 Section 8.1.7 (Collection and transportation services);

3.3.4.5 Section 8.1.8 (Authority Solid Waste disposal); or

3.3.4.6 Section 8.1.12 (Issuance of bonds).

#### **ARTICLE 4. DURATION**

4.1 Initial Term. This Agreement begins on the Effective Date and continues for a period that ends forty (40) years after the Effective Date (“Initial Term”). The Agreement will not be effective unless executed on or before the Effective Date by: (a) Municipal Parties representing seventy-five percent (75%) of the population of Broward County and (b) County. Subject to [Articles 3 and 17], no Party may terminate or otherwise withdraw from this Agreement during the Initial Term.

4.2 Extension Terms. This Agreement may be extended for up to two (2) consecutive ten (10) year terms (each an “Extension Term,” and together with the Initial Term, the “Term”) by the approval of the Parties’ elected bodies as set forth below:

4.2.1 No later than five (5) years before the end of the then-current Term, the Governing Board must determine, based on the projected funding needs of the Authority, the percentage of Broward Tonnage and number of municipal parties necessary to extend this Agreement. Notwithstanding the foregoing, no Extension Term may be exercised unless the elected bodies of Municipal Parties representing at least fifty percent (50%) of the Broward Tonnage plus County agree to exercise the Extension Term;; provided, however, if the Extension Term is approved by all municipal parties but not the County, the Extension Term will be deemed approved, subject to a veto by the County, which veto shall require at least six County Commissioners voting in favor of the veto.

4.2.2 Except for the provisions of this Agreement that survive termination of this Agreement, or that survive a Party’s withdrawal from this Agreement, only those Parties whose elected bodies approve an Extension Term will be bound to this Agreement during such Extension Term.

4.2.3 If the Parties fail to extend this Agreement pursuant to [Section 4.2.1], this Agreement will expire at the end of the then-current Term.

#### **ARTICLE 5. MEMBERSHIP ELIGIBILITY AND OBLIGATIONS**

5.1 Eligibility for Membership. County and each municipality located within Broward County are eligible to be Parties to this Agreement and thereby be members of the Authority.

5.2 Subsequent Joinder by Municipalities. After the Effective Date, any eligible municipality that is not already a Party may become a Party by agreeing to this Agreement, the Master Plan, and any additional terms and conditions established by the Authority, including, without limitation, payment of all amounts as may be required by the Governing Board.

5.3 Dissolution or Merger of Municipal Parties. Any Municipal Party that becomes unincorporated will lose its representative on the Governing Board. The tonnage attributed to

any such former Municipal Party will be transferred to County for the purposes of calculating Broward Tonnage in relation to voting. Municipal Parties that merge will retain only a single representative on the Governing Board and the tonnage attributed to the merged Municipal Party will be the combined tonnage of the merging Municipal Parties for the purposes of calculating Broward Tonnage in relation to voting.

5.4 Ongoing Contributions of Parties Prior to Special Assessment. Until the Authority is able to fund its budget, each Party must contribute funding on a pro rata basis, based on population, to pay the Authority's expenses. Such expenses shall not exceed an aggregate yearly maximum amount of [two million dollars (\$2,000,000)]. The Authority will invoice each Party that Party's yearly funding obligation, on a quarterly or other basis, payable in advance.

5.5 System Waste Segregation Programs. After the effective date of the applicable minimum standards in any policy or program established by the Authority, the Parties must not enact or permit to continue any program for segregating new or used materials at the point of generation for reuse or recycling that fails to meet the minimum standards in the policy or program established by the Authority, unless expressly excepted by the Authority.

5.6 Cooperation. Each Party agrees to cooperate fully with the Authority and to deliver such further information and to take such other actions as may be reasonably requested by the Authority to carry out the intent and purposes of this Agreement, including, without limitation:

5.6.1 Providing Hauler information, including, without limitation, Hauler name and address; make, body type, and motor vehicle registration number of each vehicle used; area of collection; and status as municipal vehicle operator or contract hauler, and data received pursuant to [Section 11.4] as a result of hauling;

5.6.2 Adopting such regulations, executing such agreements, providing such information, and doing such work as may be required by federal, state, or local agencies as part of any application for financial assistance; and

5.6.3 Performing such other acts as may be required by the Authority in furtherance of its operation of the System.

The Authority must pay all reasonable out-of-pocket costs associated with this Section 5.6.

## **ARTICLE 6. GOVERNANCE**

6.1 The Authority will be overseen and managed by a Governing Board, Executive Committee, and Executive Director, which are hereby established and comprised with such powers and authority as set forth herein.

6.2 Governing Board.

6.2.1 Membership. Each Party must appoint one (1) of its elected officials to serve as a member of the Governing Board, which appointee serves at the pleasure of the

appointing Party. The appointment by each Party will be made according to such rules and procedures as may be adopted by the appointing Party. Should a representative on the Governing Board cease to be a duly qualified elected official of the appointing Party or have more than two (2) consecutive absences from meetings of the Governing Board that are not excused (by majority vote of the Governing Board or pursuant to adopted policy), the appointing Party must promptly appoint a replacement member that meets the foregoing requirements.

6.2.2 Meetings. The Governing Board must meet at least twice per year, at such dates and times as determined by the Chair of the Governing Board, to conduct the business of the Authority.

6.2.3 Approvals. Subject to Sections [6.8 and 7.1], the Governing Board may take official action only if there is a quorum; the action is supported by an affirmative vote of a majority of the representatives present that are eligible to vote; and the action is also supported by the affirmative vote of members representing a majority of the Broward Tonnage.

### 6.3 Executive Committee.

6.3.1 Membership. An Executive Committee is to be established, composed of eleven (11) members of the Governing Board as follows:

6.3.1.1 One (1) County representative on the Governing Board.

6.3.1.2 Ten (10) members from Municipal Parties, who will be selected as follows:

6.3.1.2.1 Large Municipalities. Five (5) members representing the largest third (1/3) of Municipal Parties by population, selected by majority vote of the members of the Governing Board representing those Municipal Parties.

6.3.1.2.2 Medium Municipalities. Three (3) members representing the middle third (1/3) of Municipal Parties by population, selected by majority vote of the members of the Governing Board representing those Municipal Parties.

6.3.1.2.3 Small Municipalities. Two (2) members representing the smallest third (1/3) of Municipal Parties by population, selected by majority vote of the members of the Governing Board representing those Municipal Parties.

6.3.1.2.4 If the number of Municipal Parties is not evenly divisible by three (3), then: (a) if there is a single additional Municipal Party, it will be placed in the Small Municipalities group, or (b) if there are two (2)

additional Municipal Parties, one (1) will be placed in the Medium Municipalities group and the other will be placed in the Small Municipalities group.

6.3.1.3 Population figures to assign Municipal Parties into each of the categories for purposes of selecting members of the Executive Committee will be based on the most recent Bureau of Economic and Business Research – University of Florida report, with such assignments adjusted on January 1, 2030, and every ten (10) years thereafter, and when any municipality joins this Agreement after the Effective Date.

6.3.1.4 Terms of service on Executive Committee. Executive Committee members serve a two (2) year term. Should a member of the Executive Committee cease to be a member of the Governing Board, a successor must be appointed using the same procedures as provided in Section [6.3.1], which successor will serve for the remaining term of the original appointment.

6.3.1.5 Members of the Executive Committee may be removed at any time by majority vote of the applicable portion of the Governing Board (Large Municipalities, Medium Municipalities, or Small Municipalities, as applicable) that selected them.

6.3.1.6 Any decision of the Executive Committee may be overturned by an affirmative vote of (a) at least two-thirds (2/3) of the members of the Governing Board representing Municipal Parties, and (b) the County's representative on the Governing Board. If the initial vote to overturn an Executive Committee decision consists of at least ninety (90%) of the population of the Municipal Parties in favor of overturning such decision, then a second vote will be taken which will require an unanimous vote of the Municipal Parties' representatives to the Governing Board present, regardless of the County representative's vote, to overturn the Executive Committee's decision. Notwithstanding the foregoing, the Governing Board may not overturn any decision of the Executive Committee concerning the appointment, removal, or compensation of the Executive Director.

### 6.3.2 Alternate Members.

6.3.2.1 There must be one (1) alternate member from each of the three (3) municipal categories, selected in the same manner as the primary members. There must be one (1) alternate member from County, appointed by County.

6.3.2.2 Alternate members may only vote when a primary member of the Executive Committee in the applicable category is absent from a meeting. Alternates may attend and participate during discussion in all meetings.

6.3.2.3 Alternates will count towards quorum only when they are serving as voting members.

6.3.3 Meetings. The Executive Committee will meet regularly at such dates and times as may be necessary to conduct the business of the Authority. Meetings may be scheduled by the Executive Committee and pursuant to such rules of procedure as may be adopted by the Executive Committee; such rules will include a process for the Executive Director to request a meeting.

6.3.4 Approvals. Except as specifically provided in this Agreement, approval of an action or recommendation will require a quorum and a majority vote of its members present at a meeting and eligible to vote.

6.4 Technical Advisory Committee ("TAC"). A Technical Advisory Committee is established and will be composed of representatives from each Party. The role of the TAC, and any TAC subcommittee, is to provide technical advice, guidance, recommendations, and counsel to the Governing Board, Executive Committee, and/or Executive Director on technical matters relevant to the System, including environmental issues and educational programs, and to provide a forum for the exchange of ideas among Party representatives, the public, and the private sector.

6.4.1 Membership. Each Party may appoint a representative with technical or professional knowledge and/or experience in the solid waste industry, environmental sciences, sustainability, or another related profession, to the TAC from that Party's solid waste, environmental management, public works, utilities, or similar department. In addition to the regular TAC representative, each Party may also designate a similarly qualified alternate representative. Alternate representatives may attend and participate in the TAC meetings or TAC subcommittee meetings but may only be counted toward a quorum or vote in the absence of the appointed representative for which they serve as alternate. TAC representatives and alternates will serve at the pleasure of their appointing Party.

6.4.2 Meetings. Regular meetings of the TAC will be held in accordance with a schedule approved by the TAC, or as directed by the Governing Board, Executive Committee, or Executive Director.

6.4.3 Approvals. Except as specifically provided in this Agreement, action by the TAC will require a quorum and approval by a majority of the representatives present at the meeting and eligible to vote.

6.4.4 The TAC may establish subcommittees as it deems appropriate.

6.5 Meeting Procedure. The following apply to the Governing Board, Executive Committee, and the TAC:

6.5.1 Quorum. A quorum will be a majority of the total appointed members, provided that the members comprising the quorum must represent at least one-half (1/2) of the Broward Tonnage. Unless authorized by the Governing Board, the Executive Committee, or the TAC, as applicable, a quorum is determined on the basis of physical attendance. If there is a quorum, all members may vote regardless of whether they are attending the meeting physically or via remote conferencing technology.

6.5.2 Chair and Vice Chair. On an annual basis, the membership of each body must select from among its members a chair and a vice chair, who serves as the chair when the chair is not present.

6.5.3 Rules of Procedure. Each body may adopt rules of procedure to conduct its business. In the absence of any specifically adopted rules, the body will use Robert's Rules of Order; provided, however, if there is a conflict between this Agreement and Robert's Rules of Order, this Agreement governs.

6.5.4 Meetings Open to the Public. Meetings of the Governing Board, Executive Committee, and TAC shall be open to the public in accordance with Florida's Government-in-the-Sunshine Law, Section 286.011, Florida Statutes, excluding meetings that are statutorily exempt pursuant to applicable law.

6.6 Ethics and Required Abstentions.

6.6.1 Ethics Compliance. In their roles with the Authority, each member of the Governing Board and the Executive Committee will be treated as "Covered Individuals" within the meaning of Section 1-19 of the Broward County Code of Ordinances and must comply with all state and County laws and requirements pertaining to conflicts of interest, ethics, and lobbying. For purposes of the prohibition on lobbying under Section 1-19(c)(2) of the Broward County Code of Ordinances, the Executive Director and TAC will also be treated as "Covered Individuals." The Governing Board may adopt additional requirements for itself, the Executive Director, the Executive Committee, the TAC, and any employees of the Authority.

6.6.2 No member of the Governing Board or Executive Committee will participate in discussion or vote on any item that relates to an agreement or contract in which the member's respective appointing body (Municipal Party or County) is a party. This provision is limited only to agreements or contracts with four (4) Parties or fewer, applies to the meeting of the Governing Board or Executive Committee, and does not prohibit the recused member from voting on the agreement or contract as part of when such agreement or contract comes before their Party's elected body.

6.7 Executive Director.

6.7.1 The role of Executive Director is hereby established with such specific duties and responsibilities as described in Section [8.4].

6.7.2 The Executive Director must be an employee of the Authority, not simultaneously: (a) employed by any Party; (b) serving on the elected body of any Party; or (c) contracted to lobby on behalf of any Party.

6.7.3 The Executive Committee may appoint or remove the Executive Director by majority vote.

6.8 Major Decisions. Notwithstanding anything to the contrary in this Agreement, the Authority may not take any of the following actions without the approval of at least: (a) two-thirds (2/3) of the representatives of the Governing Board voting; and (b) representatives of the Governing Board voting that account for two-thirds (2/3) of the Broward Tonnage:

6.8.1 The distribution of cash or property with a value of more than two million dollars (\$2,000,000) to a Party, either in whole or in aggregate related to a single matter within one (1) year;

6.8.2 The sale, distribution, or transfer of any real property interest with a value of more than two million dollars (\$2,000,000);

6.8.3 The issuance of bonds or the approval of a bank loan with a value of more than two million dollars (\$2,000,000);

6.8.4 The recommendation to remove the Executive Director, subject to Executive Committee approval;

6.8.5 Approval of all special assessments;

6.8.6 The initiation or settlement of any legal action with an estimated value of more than two million dollars (\$2,000,000); or

6.8.7 Assignment by the Authority of its rights and obligations under this Agreement.

## **ARTICLE 7. OBLIGATIONS OF THE AUTHORITY AND MASTER PLAN**

7.1 Master Plan. The Authority must adopt a Master Plan, which describes, among other things, the operations of the Authority in sufficient detail to fund and implement the System and any related facilities or programs and to allow the Authority to plan for financing, investments, and improvements related to the System.

7.1.1 Contents. A Master Plan must provide for, at a minimum, the following:

7.1.1.1 Revenues necessary to operate the Authority, including the amount of, and methodology to calculate, reserve funds needed to cover any and all applicable costs for closure, long-term care, perpetual maintenance, and potential remediation related to the System and its components;

7.1.1.2 Storage, separation, processing, recycling, recovery, reuse, and identification of the number of diversion sites and disposal sites for System Waste needed for System operations, as may be appropriate;

7.1.1.3 Diversion plans for: (a) any Hazardous Materials that have impermissibly entered the System; and (b) any System Waste for which diversion is appropriate under applicable law;

7.1.1.4 Strategies, services, and programs to address Authority Solid Waste reduction as well as Recyclable Materials and Recovered Materials processing, and appropriate public education regarding same;

7.1.1.5 Alternative and contingency facilities, consistent with this Agreement;

7.1.1.6 Whether certain disposal methods will be prohibited at Authority-owned facilities for the purposes of protecting underground sources of drinking water;

7.1.1.7 Additional goals identified by the Governing Board not inconsistent with applicable law, this Agreement, or with County's exercise of its statutorily granted powers and obligations; and

7.1.1.8 Strategies to fulfill the obligations of the Authority related to System Waste delivered to the System, consistent with the powers and limitations of this Agreement.

## 7.1.2 Procedure to Adopt and Amend Master Plan.

7.1.2.1 Adoption of Master Plan and Significant Amendments. A Master Plan will not be effective unless approved by: (a) members of the Governing Board representing Municipal Parties that comprise at least two-thirds (2/3) of the total population of the Municipal Parties, and (b) County's representative to the Governing Board; provided, however, if the Mast Plan is approved by all municipal parties but not the County, the Master Plan will be deemed approved, subject to a veto by the County, which veto shall require at least six County Commissioners voting in favor of the veto. All proposed amendments to the Master Plan that concern any of the following (collectively, "Significant Amendments") will be subject to the same requirements for approval (set forth in the preceding sentence) as a Master Plan to be effective:

7.1.2.1.1 Addition or removal of any category of waste or material (e.g., yard waste, bulk trash, white goods, etc.) from the Authority's jurisdiction or operations;

7.1.2.1.2 Closure of any "solid waste disposal facility," as defined in Section 403.703, Florida Statutes (2022), owned or operated by the Authority;

7.1.2.1.3 County's obligations under Section 403.706(1), Florida Statutes.

7.1.2.3 Adoption of Other Amendments to Master Plan. Amendments to the Master Plan that are not Significant Amendments must be adopted by the Governing Board subject to the provisions of Section [6.2.3]. If at least [one third (1/3)] of the Governing Board members present agree that a proposed amendment to the Master Plan constitutes a Significant Amendment, it shall be treated as a Significant Amendment and may only be adopted subject to the provisions of Section [7.1.2.1].

7.1.3 Notwithstanding anything in this Agreement to the contrary, no proposed amendment to the Master Plan that directly or indirectly (a) creates any additional liability or obligation of any Party, (b) disproportionately removes a right of any Party, or (c) has a disproportionate adverse effect on any Party, will be effective without the affirmative vote of the impacted Party's (or Parties') representative(s) on the Governing Board. In the event of a conflict between the Master Plan and this Agreement, this Agreement will prevail.

7.2 Obligation to Perform. The Authority must implement the various material strategies, services, programs, and goals described in the adopted Master Plan, as may be amended.

7.3 Obligation to Direct the Flow of System Waste. The Authority is obligated to accept all System Waste committed by the Parties, pursuant to [Section 11.1], and must cause such System Waste to be directed from the designated System receiving facilities and delivered to appropriate sites for processing or disposal in compliance with the Master Plan and applicable law.

7.4 Obligation to Maintain Reserves. The Authority must ensure adequate reserve funds are collected and maintained to cover applicable costs for closure, long-term care, perpetual maintenance, and potential environmental and other remediation related to the System. The amount of reserve funds and methodology to calculate same must be included in the Master Plan.

## **ARTICLE 8. POWERS OF THE AUTHORITY**

8.1 The Authority has the following general powers, which are granted to the Governing Board unless otherwise expressly provided for in this Agreement:

8.1.1 Develop, adopt, and implement a Master Plan consistent with the powers of the Authority and consistent with the terms and conditions stated in this Agreement.

8.1.2 Develop an annual revenue and expense budget sufficient for the operation of the Authority.

8.1.3 Establish such rates, fees, and other charges and revenue sources allowed by law, including, without limitation, special assessments and tipping fees, to sufficiently fund

and operate the System, which fees must be applied uniformly to each Party, will be set at no higher an amount than is reasonably required to accomplish the authorized purposes of the Authority. Notwithstanding the foregoing, the Authority may establish different rates, fees, or other charges for Parties that join the Authority after the Effective Date and may provide reasonable credits against any such rates, fees, or other charges for Parties that have made extraordinary contributions of funds, real property, other assets, services, or in-kind contributions to the Authority.

8.1.4 Provide for the processing of Recyclable Materials and Recovered Materials generated in each Party's jurisdiction.

8.1.5 Develop, implement, operate, and manage facilities and programs concerning the processing of Recyclable Materials and Recovered Materials and to make same available to each Party on uniform terms. Nothing herein will prevent any Party from developing, implementing, operating, or managing programs concerning the processing of Recyclable Materials or Recovered Materials that do not conflict with the minimum standards set by the Authority. Notwithstanding the foregoing, the Authority may establish different terms for Parties that join the Authority after the Effective Date.

8.1.6 Set minimum standards for System Waste segregation or source separation programs at the point of generation or collection.

8.1.7 Operate services for the collection and transportation of System Waste or other types of waste identified in the Master Plan for collection or transport and if the Authority chooses to operate such services, make said optional services available to each Party.

8.1.8 To the extent permissible under applicable law and provided it does not interfere with County's ability to fulfill its statutory obligations, including under Section 403.706(1), Florida Statutes, the Authority will have the power to provide Authority Solid Waste disposal for Authority Solid Waste generated in the Parties' jurisdictions. The Authority is not granted the power to own or operate a "solid waste disposal facility," as that term is defined in Section 403.703, Florida Statutes (2022), or sell or otherwise transfer an interest in such a facility, unless an amendment to this Agreement, granting such power to the Authority and setting forth the limits and extent of such power, is entered into by the elected bodies of: (a) Municipal Parties representing at least two-thirds (2/3) of the total population of the Municipal Parties, and (b) County; provided, however, if the amendment is approved by all municipal parties but not the County, the amendment will be deemed approved, subject to a veto by the County, which veto shall require at least six County Commissioners voting in favor of the veto.

8.1.9 Conduct studies and research on strategies to improve the management of System Waste.

8.1.10 Provide monitoring of projects, programs, and facilities that directly or indirectly affect the System.

8.1.11 Provide education, outreach, and public information programs to increase the percentage of Recyclable Materials and Recovered Materials that are successfully recycled, to promote the reduction and reuse of Authority Solid Waste within the Parties' jurisdictions, and to increase public understanding of, and engagement with, the Authority's work.

8.1.12 Issue bonds or other instruments related to short- or long-term borrowing, and letters of credit or debt that relate to the System.

8.1.13 Sue and be sued, implead, and be impleaded in all courts.

8.1.14 Consistent with the powers described in this Article 8, the requirements of Chapter 403, Florida Statutes, and other applicable law, the Authority will have the power to contract with governmental agencies, individuals, public or private corporations, municipalities, and any other person.

8.1.15 In order to fulfill the purpose and intent of this Agreement, and except as expressly limited by this Agreement, exercise all other necessary and appropriate powers of an independent entity created pursuant to Chapter 163, Florida Statutes, including without limitation, to acquire, at its discretion, personal or real property or any interest therein by gifts, lease, or purchase.

8.2 The Governing Board has power and authority to take the following actions:

8.2.1 Approval of annual budgets as described in Article 9.

8.2.2 Approval and levy of special assessments as described in Article 9.

8.2.3 Approval of revenue bonds.

8.2.4 Establish the aggregate maximum debt authority of the Executive Committee.

8.2.5 Purchase, sell, or lease any assets of the Authority, in any amount, subject to applicable law.

8.2.6 Enter into agreements for services in any amount, subject to applicable law.

8.2.7 Approval of the Master Plan, the Facilities Amendment, and other amendments, as described in Article 7 and subject to the terms and conditions stated in this Agreement.

8.2.8 Appointment of legal counsel to act as the general counsel and advisor to the Authority, including counsel to the Governing Board and Executive Committee. The Authority counsel will have such duties as authorized by the Governing Board and serve at the pleasure of same.

8.2.9 Approval of the annual tipping fee(s).

8.2.10 Approval of any fictitious name or marketing name for the Authority.

8.2.11 Approval of any Governing Board rules of procedure.

8.2.12 Approval of bylaws for the Authority, including, without limitation, the extent of the powers and authority of the Executive Committee or Executive Director to: (a) approve and execute contracts for goods, services, and real property; (b) pursue, defend, and settle legal claims or litigation; (c) enter into revolving and other debt agreements; and (d) exercise other powers of the Governing Board.

8.3 Unless provided otherwise in this Agreement, the Executive Committee has the following powers:

8.3.1 Overseeing the operation and management of the Authority.

8.3.2 Establishing surety bond requirements for the Authority's officers and employees in such amounts as it deems necessary. The premiums for the bonds will be paid by the Authority in the same manner as any other operating expense.

8.3.3 Approval of operational policies for the Authority.

8.3.4 Approval of any annual plan of operations for the Authority.

8.3.5 Develop and recommend to the Governing Board tipping fees, rates, and other charges and revenue sources to sufficiently fund the System and the maintenance of the Authority.

8.3.6 Develop and recommend to the Governing Board an annual budget, including hosting public workshops and other forums for public input for the annual budget.

8.3.7 Develop and recommend bylaws for the Authority to the Governing Board.

8.3.8 Enforce System Waste flow control ordinances and the flow control provisions of hauler contracts, as the agent for the Municipal Parties and County, if provided for in such ordinances and to the extent such action is necessary to comply with the Authority's obligations under this Agreement and the service agreements.

8.3.9 Initiate the process for the issuance of revenue bonds; provided that no such revenue bonds will be issued unless approved by the Governing Board.

8.3.10 For special assessments, retain any consultants necessary to conduct rate and methodology studies.

8.3.11 Appointment of and all personnel-related decisions regarding the Executive Director, including annual reviews, compensation, and, as necessary, removal.

8.4 The Executive Director serves as the chief executive officer of the Authority, responsible for the operation of the Authority in accordance with the policies and decisions of the Governing Board and the Executive Committee, and, among such other duties as authorized by those policies and decisions, has the following specific duties and responsibilities:

8.4.1 Hire and manage a chief sustainability officer for the Authority or other such employee with similar responsibilities regardless of title.

8.4.2 Hire and manage other such employees as authorized by the Governing Board through its approval of the annual budget as being necessary for the operation of the Authority.

8.4.3 Oversee all personnel issues with employees of the Authority, including setting salaries and benefits, annual reviews, discipline, and termination.

8.4.4 Serve as registered agent for all service of process on the Authority and sign documents on the Authority's behalf as authorized by the Governing Board.

8.4.5 Provide recommendations, assistance, and support as necessary for the Governing Board's adoption of a Master Plan.

8.4.6 Provide recommendations, assistance, and support as necessary for the Executive Committee's approvals of operational policies for the Authority and the annual plan of operations for the Authority.

## **ARTICLE 9. REVENUE, BORROWING, AND BUDGET**

9.1 Special Assessments. In accordance with the provisions of Florida law, including Chapters 163 and 197, Florida Statutes, the Parties agree and stipulate that all improved properties in the geographical areas governed by any of the Parties receive a direct, substantial benefit by the provision of System Waste disposal and processing services by the Authority. Therefore, the Authority has the power to impose, levy, and collect (directly or indirectly) special assessments as a means of: financing the construction and/or acquisition of additions, extensions, and improvements to the System and/or the payment of the principal of and interest on bonds issued pursuant to this Agreement; paying the cost of operating, maintaining, and repairing the System; and providing funds for all other payments that are required to be made by the Authority in connection with the purposes of this Agreement.

9.2 Subject to Section [6.8], the Governing Board will have the power to set rates for and approve the levy, collection, and enforcement of special assessments by resolution, as provided by and consistent with Florida law and this Agreement. Prior to any vote of the Governing Board to levy a special assessment, the Authority will conduct, or hire a consultant to conduct, an assessment study. If such a study was performed on behalf of County and Municipal Parties prior to the creation of the Authority, the Governing Board may, in lieu of having a new study

performed, adopt the findings of such earlier study if the Governing Board determines that such findings remain valid and reliable despite the passage of time.

9.3 Revenue Bonds and Other Instruments. The Governing Board will determine the need for the issuance of any bonds or other instruments related to short- or long-term borrowing, and the need for letters of credit that it deems necessary or convenient for the operation of the Authority.

9.4 The Governing Board must establish, and may amend, a maximum amount of aggregate debt that may be approved by the Executive Committee. The Executive Committee may approve the issuance of any debt up to that maximum amount in the aggregate. Any debt that exceeds that maximum amount will not be issued unless approved by the Governing Board.

9.5 Annual Budget. The Authority, through the Governing Board, must adopt an annual budget for each fiscal year, consistent with the requirements of state law as well as any local authorities such as the Broward County Property Appraiser and Broward County Tax Collector.

#### **ARTICLE 10. AUDITING**

10.1 The Executive Committee must appoint an external auditor to serve as auditor to the Authority (“Auditor”) who will, among other things, complete an annual audit of the Authority’s receipts and expenditures. The Auditor will report directly to the Governing Board.

10.2 The Executive Committee will appoint five (5) of its members to serve on a Standing Audit Committee. The Standing Audit Committee will be responsible for the selection process for engaging an Auditor and recommending the appointment of the Auditor to the Executive Committee for its approval.

#### **ARTICLE 11. COMMITMENT OF SYSTEM WASTE**

11.1 Commitment of System Waste. The Parties must cause all System Waste that is: (a) identified by the Master Plan as acceptable for delivery into the System and (b) generated within each of their respective boundaries (for County, within the unincorporated area) to be collected, transported, delivered, and deposited at the designated receiving facilities of the System pursuant to the Master Plan or annual plan of operations, except for System Waste that is transported outside the State of Florida. Except with the prior express written consent of the Authority, no Party will deliver (directly or by contract) into the System any waste, debris, substance, constituent, object, or material that does not qualify as System Waste.

11.2 Regulatory Flow Control. Each Party agrees to enact prior to [\_\_\_\_\_, 202\_\_\_], and thereafter maintain in effect throughout its participation as a Party, a flow control ordinance pursuant to Section 403.713, Florida Statutes, in a form provided by the Authority, directing that all System Waste generated within its respective geographic boundaries be delivered to the System, as designated in the Master Plan, except for such waste that is to be transported outside the State of Florida. Nothing in this section requires a Party to enact an ordinance that operates to terminate or breach any existing contractual agreement the Party has in place prior to

becoming a Party; however, each Party must provide copies of all such agreements to the Authority at the time it becomes a Party and shall not renew or extend any such contract to the extent it conflicts with this provision. For those Parties with existing contractual agreements in place on the Effective Date, the adoption of a flow control ordinance under this section must specify that it becomes effective upon the expiration or earlier termination of such existing agreements. Notwithstanding anything else contained herein, this Agreement does not require any Party to violate the prohibitions in Sections 403.7046(2) or 402.713(2), Florida Statutes, concerning the sale and management of Recovered Materials.

11.3 Each Party agrees to include in any contracts or contract amendments with Haulers executed after the Effective Date, a provision that all System Waste must be delivered to the System, except for any waste generated within that Party's geographic boundaries, as may be amended, that is shown to be destined for recycling or disposal outside the State of Florida, and each Party must strictly enforce such contract obligation. In each such contract and all contract amendments, the Authority must be (a) expressly identified as a third-party beneficiary of such enforcement provisions; and (b) given the right to enforce such provisions, if enforcement is necessary, to ensure the delivery of System Waste to the System. Prior to initiating any such enforcement action, the Authority must communicate and coordinate with the relevant Party.

11.4 System Waste Reporting Ordinance. Each Municipal Party and County agrees to enact prior to [\_\_\_\_\_, 202\_\_], and thereafter maintain in effect, a System Waste reporting ordinance, in a form provided by the Authority, directing that each Hauler will report on a monthly basis all of the following information to their contracting Party or Parties, with a copy to the Authority:

11.4.1 The amount of each category of System Waste collected by each Party in cubic yards or tons.

11.4.2 Where each category of System Waste collected by the Hauler has been transported. Identification will be by the name and address of the facility.

11.4.3 The quantity (either by volume, weight, or number and size of all trucks or containers) of System Waste that is not processable that has been collected by the Hauler and which is to be transported outside the State of Florida.

11.4.4 Where the System Waste that is not processable has been transported outside of the State of Florida. Identification will be by the name and address of the receiving facility.

11.5 With the prior consent of the Authority, any Party may appoint the Authority as its agent for the enforcement of obligations in any agreement, license, permit, franchise, or other arrangement related to the obligations of this article.

11.6 Each Party agrees to include the obligation to comply with the requirements of the ordinances required by Sections [11.2 and 11.4], respectively, in all applicable agreements,

licenses, permits, franchises or other arrangements with Haulers entered into on or after the Effective Date.

11.7 Title to and Interest in System Waste. The Parties relinquish to the Authority any and all title to and interest in System Waste collected within their respective boundaries, effective upon delivery of that System Waste to the System. To the maximum extent provided under applicable law, and except as otherwise provided herein, upon delivery of their System Waste to the Authority, the Parties also relinquish to the Authority all liability for the proper management and disposal of such System Waste.

11.8 Commitment Limited by Existing Agreements. Notwithstanding anything to the contrary in this Agreement, the Authority will not, and this Agreement will not, require any Party to take any action that would breach or conflict with any current agreement concerning System Waste, including, without limitation: the June 2012 agreement between County and Wheelabrator Environmental Systems Inc. (now WIN-Waste Innovations, Inc.) for solid waste disposal services and the May 2015 Global Amendment thereto; the September 2012 interlocal agreement for solid waste disposal support services, as amended; the April 2015 Settlement Agreement between Waste Management Inc. of Florida and the City of Coconut Creek; any debris clearing or temporary debris management site contracts that predate the Effective Date; or any Hauler contracts that predate the Effective Date. In addition, the Authority will not, and this Agreement will not, require any Party to take any action that would breach or conflict with the Interlocal Agreement between Broward County and various municipalities for Optional County Services for Keep Broward Beautiful, Household Hazardous Waste and Electronics, and Bulk Trash and Yard Waste Drop-Off Programs, or any successor agreement concerning Household Hazardous Waste.

## **ARTICLE 12. DEBT OBLIGATIONS**

Except as expressly provided in this Agreement or applicable law, any debt obligations incurred by the Authority will be the sole obligation of the Authority and will not be an indebtedness of any Party or Parties within the meaning of any constitutional, statutory, charter, ordinance provision, or other limitation of such Party. No Party is obligated to pay or cause to be paid any amounts due under this Agreement except as provided or incorporated herein, and no Party pledges its full the faith and credit for the payment of any such amounts.

## **ARTICLE 13. RELATIONSHIPS OF THE PARTIES**

Except as set forth herein, nothing in this Agreement imposes upon any Party any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party, and nothing in this Agreement will be deemed to make any Party a partner, agent, or local representative of any other Party or to otherwise create any type of fiduciary responsibility or relationship of any kind whatsoever among the Parties. The obligations created and imposed by this Agreement are not joint; rather, such obligations are separate and several between the Parties.

## ARTICLE 14. INDEMNIFICATION

14.1 Indemnification Obligations. The Authority will, at its sole cost and expense, indemnify, hold harmless, and defend (“Indemnification Obligations”) each Party and each Party’s current, past, and future officers, agents, and employees (each, an “Indemnified Party”), to the maximum extent permitted by law, from and against any and all causes of action, demands, claims, counterclaims, third-party claims, administrative actions, damages of any kind (including, without limitation, personal injury or bodily harm), destruction, losses, liabilities, costs (including, without limitation, costs of investigations, assessments, clean up, fines, violations, punitive damages, regulatory reopeners, and/or remediation), and expenditures of any kind, including, without limitation, attorneys’ fees, court costs, and expenses, including through the conclusion of any appellate proceedings, for the matters described above and in Sections [14.2 and 14.3] below (each a “Claim”). Notwithstanding the Indemnification Obligations in this article, nothing herein shall act as a waiver by a Party or the Authority of any limitation on liability, including but not limited to sovereign immunity and limitations on tort liability as provided in Section 768.28, Florida Statutes.

14.2 System-Related Claims. The Authority must fulfill its Indemnification Obligations to each Indemnified Party, regardless of whether the Indemnified Party allegedly or actually caused, directly or indirectly, in whole or in part, any Claims arising from, relating to, or in connection with, any or all of the following:

- (a) any alleged, threatened, or actual presence or release of any Hazardous Materials in, on, above, or under any site that is or was part of the System at a time when such Hazardous Substance was threatened to be released or actually present or released;
- (b) any actual, proposed, or threatened use, treatment, storage, holding, existence, disposition, discharge, or other release, generation, production, manufacturing, processing, refining, control, management, containment, abatement, removal, handling, or transfer of any Hazardous Materials located in, under, on, or above any site that is or was in the System, or transportation of any Hazardous Materials to or from the System (collectively, “Covered Activity”);
- (c) any actual or proposed assessment, clean up, and/or remediation of any Hazardous Materials at any time located in, under, on, or above any site that is or was in the System, whether or not such assessment, clean up, and/or remediation is voluntary or pursuant to court or administrative order, including any resulting or required clean up, control, management, containment, abatement, removal, remedial, or corrective action;
- (d) the imposition, recording, or filing or the threatened imposition, recording, or filing of any environmental lien encumbering any site that is or previously was part of the System at any time during the Term;
- (e) any past, present, or threatened injury to, destruction of, or loss of natural resources relating to the construction, use, operation, or maintenance of the System or within the

System, including claims for damages, contribution, costs to investigate and assess such injury, destruction, or loss; or

(f) any actual or threatened failure to comply with any debt obligation incurred by the Authority.

14.3 Claims for Acts or Omissions of Authority Actors. The Authority must fulfill its Indemnification Obligations to each Indemnified Party for Claims that are caused or alleged to be caused, in whole or in part, by any act or omission of the Authority, its officers, employees, agents, or contractors acting on behalf of the Authority (collectively, "Authority Actors") for any Claims, including, without limitation, those arising from, relating to, or in connection with one or more of the following:

(a) any actual or threatened breach of any obligation contained within or undertaken as a result of this Agreement;

(b) any failure to comply with any provision or material obligation contained within or undertaken as a result of the Master Plan;

(c) any intentional, reckless, or negligent act or omission;

(d) arranging for storage, handling, treatment, disposal, or transport of Hazardous Materials to, from, or at any facility or incineration vessel containing such or similar Hazardous Materials; or

(e) any past, present, or threatened noncompliance with or violation of: (i) any environmental laws, including, without limitation, Chapter 27 of the Broward County Code of Ordinances, Chapters 376 and 403, Florida Statutes, Fla. Admin. Code Chapters 62-701 through 62-787, the Clean Water Act, 33 U.S.C. § 1321, et seq., RCRA, 42 U.S.C. § 6901, et seq., CERCLA, 42 U.S.C. § 9601, et seq., Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., 40 C.F.R. Parts 239 through 799, 49 C.F.R. § 172.101; (ii) any ordinance, regulation, standard, condition, requirement, permit, license, or authorization; or (iii) any order of any governmental authority.

14.4 Defense of Claims. The Authority must, upon written notice of a Claim from an Indemnified Party, defend that Indemnified Party with counsel approved by the Indemnified Party, which approval will not be unreasonably withheld.

14.5 Right to Withhold. If considered necessary by an Indemnified Party, any amounts due the Authority from that Indemnified Party under Section [5.4], whether as provided for in this Agreement or any subsequently adopted Master Plan, may be retained by the Indemnified Party until all Claims against the Indemnified Party subject to the Indemnification Obligations have been settled or otherwise resolved by the Authority. Any withheld amounts shall not be subject to payment of interest.

14.6 Exclusions. Notwithstanding anything in this article to the contrary, nothing in this Agreement will be construed to require the Authority (or any successor thereto) to fulfill the Indemnification Obligations if prohibited by applicable law (including, without limitation, the restrictions stated in Section 768.28(19), Florida Statutes), or in connection with a Claim in which an Indemnified Party seeks to be relieved of its sole statutory liabilities, with exceptions for joint and several liabilities, caused by that Indemnified Party's intentional delivery (whether directly or indirectly, including by contract) of previously known Hazardous Materials into the System without the prior express written consent of the Authority. Nothing in this article limits the defenses available to the Authority (including under Section 768.28, Florida Statutes) in the defense of an Indemnified Party pursuant to the Indemnification Obligations.

14.7 Survival of Indemnification Obligations. The Authority's Indemnification Obligations survive the expiration or earlier termination of this Agreement.

#### **ARTICLE 15. DEFAULT**

If any Party or the Authority fails to perform or observe any of the material terms and conditions of this Agreement and fails to cure such failure within sixty (60) days after receipt of written notice of such default from another Party or from the Authority (or, if such failure cannot be reasonably be cured within sixty (60) days, the Party fails to promptly initiate and diligently pursue cure to completion), then in addition to any other claim at law or in equity, the Party giving the notice of default shall be entitled, but is not required, to seek specific performance of this Agreement. The Parties acknowledge that money damages may be an inadequate remedy for the failure to perform and that the Party giving notice is entitled to obtain an order requiring specific performance, injunction, or other equitable relief. Failure of any Party to exercise its rights in the event of any breach by another Party shall not constitute a waiver of such rights. No Party shall be deemed to have waived any failure to perform by another Party unless such waiver is in writing and signed by the waiving Party, with such waiver limited to the terms specifically contained therein.

#### **ARTICLE 16. AMENDMENTS TO THIS AGREEMENT**

16.1 Except as expressly authorized in Sections [3.3 and 8.1.8], this Agreement may only be amended as follows:

16.1.1 The Executive Committee is responsible for recommending proposed amendments to this Agreement to the Governing Board.

16.1.2 Upon approval of a proposed amendment to this Agreement by the Governing Board, such amendment must be forwarded to all Parties of the Authority for consideration by each Party's elected body.

16.1.3 Any amendment that substantively modifies any of the following provisions, or that concerns any of the following subjects, will not be effective unless approved by every Party's elected body:

- 16.1.3.1 Article 3 (Formation);
- 16.1.3.2 Article 4 (Duration);
- 16.1.3.3 Section 6.2.1 (Governing Board composition);
- 16.1.3.4 Section 6.3.1 (Executive Committee composition);
- 16.1.3.5 Section 6.8 (Major Decisions);
- 16.1.3.6 Section 8.1 (Powers of the Authority), except for Section [8.1.8];
- 16.1.3.7 Article 12 (Debt);
- 16.1.3.8 Article 14 (Indemnification);
- 16.1.3.9 Article 17 (Dispute Resolution Process; Authority Liability; Choice of Law, Venue, Jury Trial Waiver);
- 16.1.3.10 Wind Down (as defined in Section [3.3.3.2]); or
- 16.1.3.11 Disposition of assets owned by the Authority.

16.1.4 Except as otherwise provided in this Agreement, all amendments are effective if approved by the elected bodies of Parties representing at least two-thirds (2/3) of the total population of the Parties plus a majority of the Parties; however, if a Party does not give notice of its elected body's rejection of the proposed amendment within ninety (90) days after that Party received notice of the amendment, that Party will be deemed to have approved the amendment.

16.1.5 No amendment that directly or indirectly: (a) creates any additional liability or obligation of any one Party (but not all Parties), (b) disproportionately removes a right of only one Party, or (c) has a disproportionate adverse effect on any Party, will be effective unless it is approved by such Party (or Parties) as evidenced by the adoption of a resolution approving the amendment by that Party's (or Parties') elected body.

16.1.6 This Agreement may not be amended to provide greater powers to the Governing Board, the Executive Committee, or the Executive Director than have been granted to the Authority.

16.2 Unless the amendment states otherwise, the amendment will take effect upon certification by the Governing Board that the necessary approvals of the Parties have been obtained.

**ARTICLE 17. DISPUTE RESOLUTION PROCESS; AUTHORITY LIABILITY; CHOICE OF LAW, VENUE, JURY TRIAL WAIVER**

17.1 Informal Dispute Resolution. The following procedure will apply to resolve a dispute between the Authority and any number of Parties, or between Parties, relating to matters arising out of this Agreement (“Dispute”): (i) the Authority or the Party will issue written notice of the Dispute to the Party or the Authority, as applicable, and any other applicable Parties; (ii) the parties to the Dispute will use reasonable efforts to resolve the Dispute within forty-five (45) days after the written notice, including through informal settlement meetings, discussions, mediation, or other process as may be agreed among them.

17.2 Formal Dispute Resolution. If the Dispute is not fully resolved through the informal dispute resolution process described in Section 17.1 above, the parties to the Dispute will follow the conflict resolution procedures for governmental disputes as provided in Chapter 164, Florida Statutes.

17.3 Failure to Resolve through Formal Dispute Resolution. If the processes required by Sections 17.1 and 17.2 fail to resolve the Dispute, the Authority and/or applicable Parties may litigate such Dispute.

17.4 Court-Ordered Dissolution of Authority; Termination of Agreement. In addition to any remedy at law or equity that a Party may have against the Authority, if a court of competent jurisdiction enters a final judgment that (a) the Authority is incapable of performing the services for which it was created, or (b) the actions or inactions of the Authority have prevented County from performing its obligations under Section 403.706, Florida Statutes, such court may order monetary damages or equitable relief including, without limitation, the termination of this Agreement and the dissolution of the Authority.

17.5 Authority Liability for Capital Expansion of County Solid Waste Disposal Facilities. In addition to any other damages or remedies at law or in equity, if the Authority fails to perform its obligations under Sections [7.2 or 7.3] and, as a result, County undertakes an expansion of its solid waste disposal facilities to ensure it can satisfy its statutory obligations under Section 403.706, Florida Statutes, to provide disposal capacity for Authority Solid Waste generated within each Party’s jurisdiction, the Authority shall be liable and responsible for payment to County of costs incurred by County for such capital expansion through the end of the of the remaining projected useful life of the disposal facility or facilities. Neither a reduction in the amount of Authority Solid Waste disposed of because of increases in the amount of Recyclable Materials lawfully processed or recycled at an appropriate site, nor a reduction in Authority Solid Waste disposal capacity at any Authority-owned facility resulting from County’s exercise of its right of first refusal, pursuant to [Article 18], shall be deemed a failure by the Authority to perform its obligations under Sections [7.2 or 7.3] of this Agreement.

17.6 Choice of Law; Venue; Waiver of Jury Trial. This Agreement and all disputes between the Parties and the Authority arising out of or relating to this Agreement shall be construed in accordance with and governed by the laws of the State of Florida. The sole and exclusive venue

for any litigation related to or arising out of this Agreement, or the duties and responsibilities of the Authority and the Parties, shall be in State Courts of the Seventeenth Judicial Circuit, in and for Broward County, Florida. **EACH PARTY KNOWINGLY, VOLUNTARILY, AND UNEQUIVOCALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY FOR ANY CLAIMS WHETHER IN CONTRACT, TORT, OR STATUTE, ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

#### **ARTICLE 18. RIGHT OF FIRST REFUSAL**

18.1 Prior to entering an agreement to sell real property owned by the Authority of any value, including the associated material property, plant, or equipment, (collectively referred to as “Authority Property”), the Authority must provide a copy of the offer, letter of intent, or proposed agreement (“Offer”) to all Parties. The Parties will have a right of first refusal to purchase the Authority Property at the same price, and on the same terms and conditions, as the Offer, as provided below:

18.1.1 If the Authority Property is a “solid waste disposal facility,” as defined in Section 403.703, Florida Statutes (2022), County will have the right of first refusal. If County does not exercise the right of first refusal provided in this section, the Municipal Party or Municipal Parties where the Authority Property is located will have the right of first refusal.

18.1.2 For all other Authority Property, the Municipal Party, Municipal Parties, and/or County (for Authority Property located within unincorporated Broward County) where the subject Authority Property is located will have the right of first refusal. For Authority Property located within the territorial jurisdiction of more than one local governmental entity (e.g., two Municipal Parties or a Municipal Party and unincorporated Broward County), the right of first refusal may be exercised jointly or, if one Party elects not to exercise the right, by the other applicable Party. If no Municipal Party exercises the right of first refusal provided in this section, County will have the right of first refusal.

If the applicable Party does not provide the Authority with notice of its intent to exercise its right of first refusal within sixty (60) days after the Authority provides the Parties with a copy of the Offer, the Authority may proceed with the sale of the Authority Property. If County does not provide the Authority with notice of its intent to exercise the right of first refusal as provided in subsection [18.1.1], above, the relevant Municipal Party or Municipal Parties will have thirty (30) days to provide notice of intent to exercise its right of first refusal after receipt of notice from the Authority that County has not exercised its right. If no Municipal Party provides the Authority with notice of its intent to exercise the right of first refusal as provided in subsection [18.1.2], above, County will have thirty (30) days to provide notice of its intent to exercise its right of first refusal after receipt of notice from the Authority that no applicable Municipal Party has exercised its right.

#### **ARTICLE 19. MISCELLANEOUS**

19.1 Assignment. Except in the event of merger between Parties or the dissolution of a Party, wherein the successor to the Party will automatically become a Party, this Agreement, or any interest herein, may not be assigned, transferred, or otherwise encumbered, under any circumstances by any Party without the prior written consent of all other Parties to this Agreement, which will not be unreasonably withheld. Subject to [Section 6.8], nothing herein will be deemed to restrict or prohibit the Authority's assignment of its rights and obligations as is deemed necessary or appropriate by the Authority for the provision of services under this Agreement.

19.2 Notices. All notices, consents and other communications required, permitted, or otherwise delivered under this Agreement must be in writing and delivered either by hand with proof of delivery or mailed by first class registered or certified mail, return receipt required, postage prepaid, with contemporaneous email, and in any case must be addressed as provided in Exhibit [ ] which is attached hereto and made a part hereof. Changes in the respective addresses of the members provided in Exhibit [ ] may be made by any Party by giving notice to the other Parties and the Authority. Notices and consents given by mail in accordance with this section will be deemed to have been given five (5) business days after the day of dispatch; notices and consents given by any other means will be deemed to have been given when received.

19.3 Incorporation of Agreements. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements, or understandings, applicable to the matters contained therein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

19.4 Incorporation by Reference. 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.

19.5 Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, then (a) that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not), and (b) the Parties shall negotiate in good faith and agree as to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as supplemented, or otherwise affected by such action, remain in full force and effect. If an unenforceable provision is modified, disregarded, or amended in accordance with this section, the rest of this Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

19.6 Representations and Warranties. Each Party hereby represents and warrants as to itself as follows:

19.6.1 It is duly organized and validly existing under the constitution and laws of the State of Florida, with full legal right, power, and authority to enter into and perform its obligations hereunder;

19.6.2 This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by Article X, Section 13 of the Florida Constitution or bankruptcy, moratorium, reorganization or similar laws affecting the right of creditors generally);

19.6.3 Neither the execution nor delivery of this Agreement, nor the performance of such Parties obligations hereunder nor the fulfillment of the terms herein: (i) conflicts with, violates or results in a breach of the Constitution, any law or government regulation of the State of Florida, or any other local law or ordinance; or (ii) conflicts with, violates or results in any breach of any term or condition of any judgment or decree, or any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound, or constitutes a default thereunder; and

19.6.4 Except for the procedures provided under Chapter 163 and Chapter 75, Florida Statutes, and such action as has already been taken, no approval authorization, or order of, or any consent or declaration, registration of filing with, any governmental authority of the State of Florida or any referendum or other action of voters by election, action by town or city council or otherwise is required for the valid execution, delivery, and performance of this Agreement by it.

19.7 The applicable financial disclosure, noticing and reporting requirements of the Authority shall be those provided by general law.

19.8 Intellectual Property. The Authority will have all right, title, and interest in and to any intellectual property created by or for the Authority. No other Party will make any claim of ownership to any such intellectual property and will have no rights to the intellectual property other than as expressly set forth in a written agreement between the Board and that other party.

19.9 Sovereign Immunity. Except to the extent sovereign immunity is expressly waived by entering into this Agreement among the Parties, nothing herein is intended to serve as a waiver of sovereign immunity by the Parties nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement.

19.10 Interpretation. Terms such as “herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Any references to “must,” “shall,” or “will” are obligatory. All citations to “Florida Statutes” mean those statutes as may be amended from time to time, except for references to the term “solid waste disposal facility,” as defined in Section 403.703, Florida Statutes (2022). Any reference to “days” means calendar days, unless otherwise expressly stated.

19.11 Third-Party Beneficiaries. The Parties do not intend to directly or substantially 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 shall be entitled to assert a right or claim against either of them based upon this Agreement.

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

19.13 Joinder by Authority. This Agreement is contingent upon the Authority, by majority vote of the Governing Board at its first meeting, agreeing to the terms, conditions, and obligations of the Authority as provided for in this Agreement and execution of the joinder of Authority provided for herein. The Authority may not exercise any power under this Agreement until and unless it has executed such joinder, and this Agreement automatically terminates should the Governing Board fail to join in this Agreement by the end of its first meeting.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature on behalf of each Party to this Agreement, signing by and through its Mayor or Vice-Mayor, authorized to execute same by action of its elected body.

[SIGNATURE PAGES]

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**JOINDER BY AUTHORITY**

By affirmative vote of the Governing Board of the Authority on \_\_\_\_\_, and signing by and through its Chair or Vice-Chair, the Authority hereby joins in this Agreement and further agrees to be bound by all terms, conditions, and obligations stated herein that apply to the Authority.

[SIGNATURE BLOCK]

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