

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:

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 Board approval of Item Nos. 57, 58, and 60.

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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

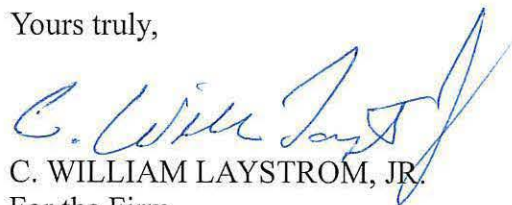
become effective, Waste Management may choose to seek such approvals in the future with or without expressing a willingness to undertake any voluntary commitments.

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
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