

**SOLID WASTE DISPOSAL  
CAPACITY AGREEMENT**

**THIS AGREEMENT**, entered into this 14th day of October, 2009, by and between NASSAU COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and WASTE MANAGEMENT INC. OF FLORIDA, a Florida corporation, hereinafter referred to as "WASTE MANAGEMENT".

**WHEREAS**, the COUNTY is obligated under Florida law to provide for the solid waste disposal needs of its residents, within both the unincorporated and incorporated areas of the COUNTY; and

**WHEREAS**, the COUNTY has operated its own landfill for many years, thereby providing for the solid waste disposal needs of it residents; and

**WHEREAS**, the COUNTY desires to cease operations at its existing landfill but still provide for the solid waste disposal needs of its residents; and

**WHEREAS**, the COUNTY currently receives approximately 200 tons of solid waste per day at its existing landfill; and

**WHEREAS**, the COUNTY will implement a procedure to provide for the collection of solid waste at a convenience center located at the existing landfill to collect solid waste from residents who do not have access to curbside pickup; and

**WHEREAS**, the COUNTY is seeking assurances that there will be a lawfully permitted and environmentally safe solid waste disposal facilities available to the COUNTY and those haulers serving the residents of Nassau County to properly dispose of solid waste generated within Nassau County; and

**WHEREAS**, WASTE MANAGEMENT owns and operates a solid waste disposal facility which has the capacity to provide for the solid waste disposal needs of the residents of Nassau County and desires to enter into an Agreement to assure the COUNTY air space within its solid waste disposal facility upon the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree, each with the other, as follows:

- 1. **RECITALS.** All of the recitals contained herein are true and correct.
- 2. **DEFINITIONS.** Whenever the following words and expressions are used in this Agreement, they shall be interpreted and construed as follows:
  - (a) **"Acceptable Waste"** means Solid Waste that may be disposed of lawfully in a Class I landfill, provided that the Solid Waste was collected within the County.
  - (b) **"Agreement"** means this "Solid Waste Disposal Capacity Agreement" between the County and Waste Management.

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

(d) **"Class I landfill"** shall be as defined in Rule 62-701.340(3)(a), F.A.C.

(e) **"CPI"** means the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, for the US City Average – All Items—All Urban Wage Earners and Clerical Workers , , or any other category that is mutually acceptable to the parties.

(f) **"Effective Date"** means the date when this Agreement is signed by the County.

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

(h) **"Force Majeure"** shall be as defined in Section 19 (g) herein.

(i) **"Prohibited Wastes"** are those waste materials that Waste Management prohibits at the Chesser Island Road Landfill, including but not limited to Hazardous Waste, asbestos, biomedical wastes, biological waste, mercury-containing devices, radioactive waste, sludge and liquid wastes.

(j) **"Solid Waste"** shall be as defined in Rule 62-701.200(113), F.A.C.

(k) **"Waste Tire"** shall be as defined by Rule 62-701.200(134), F.A.C.

(l) **"White Goods"** shall be as defined by Rule 62-701.200 (141), F.A.C.

(m) **"Yard Trash"** shall be as defined by Rule 62-701.200 (143), F.A.C.

3. **SOLID WASTE DELIVERIES.** WASTE MANAGEMENT hereby agrees to accept at its solid waste disposal facility at Chesser Island Road Landfill all of the Acceptable Waste generated within

Nassau County and transported to the facility by the COUNTY at COUNTY expense in self unloading vehicles.

4. **PROHIBITED WASTE.** Under this Agreement, the WASTE MANAGEMENT shall not accept, and the COUNTY shall not deliver: Hazardous Waste; biomedical waste; Prohibited Wastes; White Goods, Waste Tires, ash, lead-acid batteries, or other types of special waste; Yard Trash; construction and demolition debris; or any type of Solid Waste that cannot be disposed of lawfully in a Class I landfill pursuant to Applicable Laws.

5. **TITLE TO AND ACCEPTANCE OF SOLID WASTE.** Title and risk of loss and responsibility for Acceptable Waste delivered to the Chesser Island Road Landfill by the COUNTY shall pass to WASTE MANAGEMENT at the time the waste material is removed from the delivery vehicle. Title to waste material, which does not conform to the definition of Acceptable Waste, shall remain with COUNTY and shall not be deemed to pass to WASTE MANAGEMENT.

COUNTY shall tender Acceptable Waste to WASTE MANAGEMENT and WASTE MANAGEMENT shall accept Acceptable Waste pursuant to the terms of this Agreement. Nonconforming waste may be rejected by WASTE MANAGEMENT prior to unloading. Acceptable Waste shall be considered accepted at the time the material is removed from COUNTY's vehicle at the Chesser Island Road Landfill. Acceptance of waste other than Acceptable Waste shall not impair, or operate as a waiver of any rights or remedy available to WASTE MANAGEMENT, including revocation of acceptance, in the event that the waste is later discovered to be nonconforming. WASTE MANAGEMENT may inspect, sample, analyze and test any waste; however, exercise or a failure to exercise such right shall not relieve the COUNTY of its indemnity or other obligations under this Agreement to deliver only Acceptable Waste.

If COUNTY delivers to the Chesser Island Road Landfill any material failing to conform to the definition of Acceptable Waste or to the requirements of any authorization or applicable government law, regulation, rule, directive or order, WASTE MANAGEMENT may direct that the COUNTY arrange for the lawful management, handling, packaging and transportation and disposal of such waste. The COUNTY shall promptly arrange for such lawful activities. In the event the COUNTY fails to do so, WASTE MANAGEMENT, at its option, may make such arrangements and shall charge the COUNTY for same.

If at any time the COUNTY shall learn that waste it delivered or caused to be delivered was not Acceptable Waste, it shall promptly notify WASTE MANAGEMENT and provide the basis for its understanding.

6. **RATES AND FEES.**

a) **Base Rate.** COUNTY shall pay to WASTE MANAGEMENT the base rate of \$22.45 per ton of Acceptable Waste delivered to the WASTE MANAGEMENT facility in vehicles owned and operated by the COUNTY, together with the State of Georgia fee of \$1.75 per ton.

b) **CPI Adjustment.** The base rate shall be adjusted on each anniversary of the Effective Date of this Agreement, based upon the percentage change in the previous year's Consumer Price Index for the U.S. City Average – All Items – All Urban Wage Earners and Clerical

Workers, published by the United States Department of Labor, Department of Labor Statistics (CPI), not to exceed five percent (5%) in any one year.

c) **Change in Law.** The base rate shall also be adjusted based upon increases in the amount of any direct charges imposed upon WASTE MANAGEMENT by local, state or federal environmental protection agencies having jurisdiction over its facility. Such direct charges shall include, but shall not be limited to, State of Georgia imposed fees. In addition, WASTE MANAGEMENT may petition the COUNTY to adjust its rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation other than direct charges set forth above. Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefor. The COUNTY shall be entitled to audit WASTE MANAGEMENT'S financial and operational records directly related to the request in order to verify the increase in costs and the reasons therefor. The COUNTY shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the COUNTY. The COUNTY shall make a reasonable determination based upon the documentation provided in reaching its decision and shall not unreasonably deny relief hereunder.

7. **BILLING AND PAYMENT.** Each month WASTE MANAGEMENT shall tender COUNTY a statement of compensation due for processing the COUNTY'S waste for the previous month. COUNTY shall pay the statement in full within fifteen (15) days of date of invoice. Interest shall run on unpaid amounts pursuant to applicable law. Failure of the COUNTY to make complete and timely payment shall permit WASTE MANGEMENT to suspend acceptance of material and/or terminate this Agreement, in addition to all other rights and remedies it may have at law or in equity.

8. **OTHER HAULERS.** WASTE MANAGEMENT may enter into agreements with solid waste haulers doing business within Nassau County in order to permit them to dispose of waste generated within Nassau County at WASTE MANAGEMENT'S facility, upon terms and conditions suitable to those parties.

9. **TERM.** This Agreement shall commence on the Effective Date and shall continue in effect until midnight of the tenth (10<sup>th</sup>) anniversary of that date. Thereafter, this Agreement shall be automatically extended for a period of five (5) years, unless either party provides the other party written notice of intent to cancel this Agreement at least one hundred twenty (120) days prior to the end of any ten-year or five-year period.

10. **FLOW CONTROL.** Nothing in this Agreement shall be construed to require the COUNTY or any solid waste hauler conducting business within Nassau County to deliver its waste to the WASTE MANAGEMENT facility, nor shall the COUNTY be obligated to mandate disposal of any solid waste generated within Nassau County at the WASTE MANAGEMENT facility.

11. **COUNTY LANDFILL CLOSURE.** WASTE MANAGEMENT acknowledges and recognizes that the COUNTY has made its decision to close its landfill in reliance upon WASTE MANAGEMENT'S agreement to accept solid waste generated within the COUNTY so that the COUNTY may fulfill its statutory duties to its residents. As such, the parties recognize the potential detrimental and irreparable impacts that

material breaches of this Agreement could have if WASTE MANAGEMENT refuses to accept waste from the COUNTY pursuant to the provisions of this Agreement.

12. **IMPLEMENTATION.** COUNTY and WASTE MANAGEMENT recognize and agree that the successful implementation of this Agreement is dependent upon the good faith performance of their respective obligations. COUNTY and WASTE MANAGEMENT hereby warrant that each will take all reasonable actions necessary to promptly and efficiently carry out their responsibilities under this Agreement and will cooperate with each other, as necessary, to assure the effective, continuous performance of each party's obligations hereunder.

13. **LAW GOVERNING.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and it shall be binding upon, and inure to the benefits of, the parties, their successors and assigns. WASTE MANAGEMENT shall submit to service of process and the jurisdiction of the State of Florida for any controversy or claim arising out of or relating to the Agreement. Any action to interpret and/or enforce the Agreement shall be brought and maintained in the State of Florida. Venue shall be in Nassau County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

14. **NO THIRD PARTY BENEFICIARIES.** Neither the COUNTY nor WASTE MANAGEMENT intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties hereto agree that there are no third party beneficiaries to this Agreement and that no third party shall be able to assert a right or claim against either of them based upon this Agreement.

15. **NOTICE.** Written notices and responses to written notices shall be given to the parties at the following addresses or such other place or other person as each party shall designate by similar notice:

COUNTY:

County Coordinator  
96160 Nassau Place  
Yulee, Florida 32097

WASTE MANAGEMENT:

David McConnell  
Vice President  
Waste Management Inc. of Florida  
6501 Greenland Road  
Jacksonville, FL 32258

16. **OPERATING PROCEDURES.** COUNTY shall comply with the normal safety and operating procedures established at the Chesser Island Road Landfill, including but not limited to weight limits for COUNTY delivery vehicles pursuant to Applicable Laws.

17. **INDEMNITY.**

a) Indemnification and Limitation of Liability by the COUNTY. The COUNTY, subject to and within the limits set forth in section 768.26, Florida Statutes, and as otherwise limited or prohibited by law, agrees to indemnify, save harmless, and defend WASTE MANAGEMENT from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which it may hereafter incur, become responsible for, or pay out as the result of bodily injuries or death to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders to the extent caused, in whole or in part, by:

- (1) The COUNTY's breach of any term or provision of the Agreement and this Agreement; or
- (2) Any negligent act or omission of the COUNTY, its employees, or subcontractors in the performance of this Agreement.

b) Indemnification and Limitation of Liability by WASTE MANAGEMENT. WASTE MANAGEMENT agrees to indemnify, defend and save harmless the COUNTY, its present and future officers and employees, from and against any and all losses, liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders to the extent caused, in whole or in part, by:

- (1) WASTE MANAGEMENT's breach of any term or provision of the this Agreement; or
- (2) Any negligent act or omission of WASTE MANAGEMENT, its employees, or subcontractors in the performance of this Agreement.

c) Neither COUNTY nor WASTE MANAGEMENT as the case may be shall be liable for consequential, incidental or punitive damages. The indemnification obligations herein shall survive termination of this Agreement.

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

19. **MISCELLANEOUS.**

a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein. This Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters. It may not be modified, varied, altered or discharged except by written agreement, signed by the parties hereto.

b) **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party, which may be withheld in its sole discretion. An allowed assignment shall not relieve the assignor of liability hereunder. An assignment that is made or attempted without consent of the other party hereto is void and of no effect.

c) **Successors.** This Agreement shall inure to the benefit of and be binding upon the respective successors and allowed assigns of the parties.

d) **Waiver.** Failure to enforce any provision hereof shall not constitute a waiver by either party and any such provision shall remain in full force and effect and may be asserted by either party at anytime during the period of this Agreement.

e) **Severability.** If any clause, provision or part of this Agreement is declared unenforceable or void, it shall not affect the enforceability of the balance of such clause, provision or part thereof, with the Agreement as a whole.

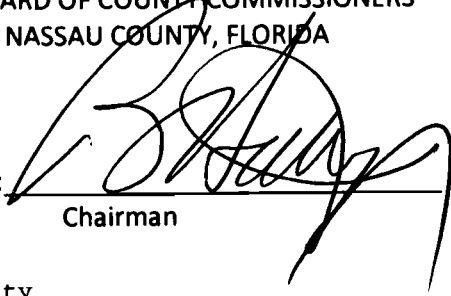
f) **Captions.** The captions herein are solely for the convenience of the parties and shall not be used to modify, amplify, decrease or otherwise interpret the provisions herein.

g) **Force Majeure.** If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the services hereunder.

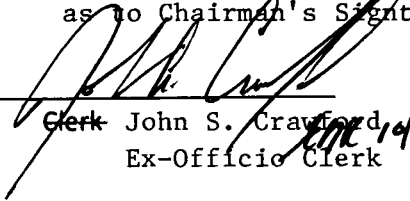
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their designated representatives, as of the day and year first above written.

COUNTY:

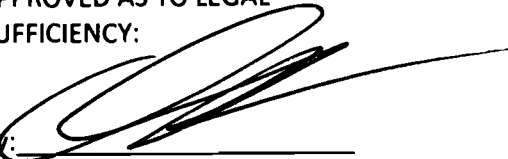
BOARD OF COUNTY COMMISSIONERS  
OF NASSAU COUNTY, FLORIDA

By:   
Chairman

ATTEST: Attestation: Only to Authenticity  
as to Chairman's Signature:

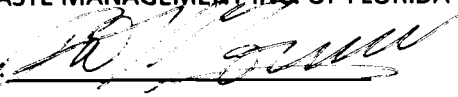
By:   
Clerk John S. Crawford  
Ex-Officio Clerk  
*MC 12/4/09*

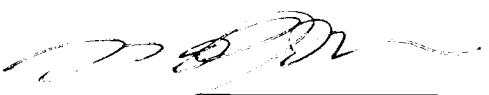
APPROVED AS TO LEGAL  
SUFFICIENCY:

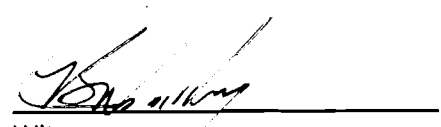
By:   
County Attorney

WASTE MANAGEMENT:

WASTE MANAGEMENT INC. OF FLORIDA

By: 

  
Witness  
Printed Name: mi-lin chun

  
Witness  
Printed Name: Brian D...