

SECOND AMENDMENT

to

AMENDED AND RESTATED  
FACILITY SITE LEASE AGREEMENT

dated as of February 1, 2001

by and between

BROWARD COUNTY, FLORIDA  
(Lessor)

and

WHEELABRATOR SOUTH BROWARD, INC.  
(Lessee)

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and

WHEELABRATOR SOUTH BROWARD, INC.  
(Lessee)

This "Second Amendment" to the Amended and Restated Facility Site Lease, dated as of February 1, 2001 ("Lease") is dated as of June \_\_, 2011, and entered into by and between Broward County, Florida, a public body corporate and politic and a political subdivision of the State of Florida ("Lessor"), and Wheelabrator South Broward, Inc., a Delaware corporation ("Lessee").

WHEREAS, Lessor and Lessee have previously entered into the Lease for the purpose of providing for Lessee's use of the Project Site for the construction, maintenance, and operation of a resource recovery plant, the South Ash Monofill and such other uses as may be provided for in the Lease; and

WHEREAS, the Initial Term of the Lease shall end on August 4, 2011; and

WHEREAS, the Lessor and Lessee by this Second Amendment desire to memorialize their understanding with respect to the renewal of the Lease; NOW, THEREFORE,

In consideration of the premises, covenants, agreements, and obligations contained herein, the parties do hereby agree as follows:

1. As used herein, all capitalized terms shall have the meanings set forth in the Lease unless otherwise defined herein.

2. Section 2 C, Term, is amended to read as follows:

C. Lessee shall have the option to renew this Lease and extend the term hereof for five (5) additional terms of five years each (six additional five-year terms if Lessor does not elect to extend the term of the South Site Service Agreement for a five-year period under Section 2.2(a) thereof) each such term being called a "Renewal Term." ~~by notifying Lessor of its election to renew this Lease~~ Each Renewal Term shall be self executing and shall be deemed to have been exercised by Lessee without any further action required by Lessor or Lessee. If Lessee elects not to exercise a Renewal Term, Lessee shall notify Lessor at least one (1) year prior to the end of the current Renewal Term commencement date of such Renewal Term.

3. Section 3 A, Rental, is amended to read as follows:

A. During the Initial Term hereof, Lessee shall pay to Lessor for the Project Site the annual rental of ONE HUNDRED THOUSAND DOLLARS (\$100,000) payable in advance and without notice in equal monthly installments of Eight Thousand Three Hundred Thirty-three and 33/100 DOLLARS (\$8,333.33) commencing on the first day of April, 1989, and on the first Business day of each month thereafter during the Initial Term hereof. Lessee may prepay any or all such rent accruing during the Initial Term hereof at any time, and Lessor will execute such acknowledgements of receipt thereof as Lessee may reasonably request.

~~During any Renewal Term, Lessee shall pay to Lessor for the Project Site a rental equal to the fair market rental value of the Project Site identified in schedule 1 attached hereto as the "resource recovery site" (defined as Parcel A described in Schedule I attached hereto) valued as unimproved land subject to use for refuse-to-energy or similar industrial purposes at the beginning of each such Renewal Term. If Lessor and lessee cannot agree on such fair market rental value within 60 days after receipt by Lessor of the notice from lessee of its election to renew this Lease for such Renewal Term, such fair market rental value shall be determined in accordance with the appraisal procedure set forth in the next paragraph. Such renewal rent shall be payable in equal installments on the first day of each month during such Renewal Term.~~

~~"Appraisal procedure" shall mean the following procedure for determining the fair market rental value or fair market sales value of the Project Site pursuant to this Paragraph 2, Paragraph 17.B or Paragraph 24 hereof: such matters shall be determined on the basis of an appraisal by an independent appraiser mutually agreed upon by Lessor and Lessee who~~

~~has been a member of the Appraisal Institute of the American Institute of Real Estate Appraisers for the past 5 years and is experienced in industrial real estate appraisal work in Broward County, Florida. If Lessor and Lessee fail to agree upon a mutually acceptable appraiser within 20 days after Lessor or Lessee delivers a written request therefor to the other, each shall appoint an independent appraiser (similarly qualified), who shall jointly determine such matter, or if such appraisers cannot agree on such matter within 20 days, such matter shall be determined by the two independent appraisers and a third independent appraiser (similarly qualified) chosen within 20 days after such 20-day period by agreement of such first two appraisers or, if such three appraisers fail to reach an agreement, the estimate of such third appraiser and the next closest estimate of the first two appraisers shall be averaged. If such third appraiser is not appointed within such 20-day period, then such appraiser shall be appointed by the Miami Regional Director of the American Arbitration Association at the written request of Lessor or Lessee. If each party fails to appoint an appraiser within the time required, the determination of the appraiser appointed by the other party shall be final. The expenses of the appraisal procedure shall be shared equally by Lessee and Lessor.~~

For the first Renewal Term, Lessee shall pay to Lessor for the Project Site the annual rental of One Million One Hundred Sixty Thousand Dollars \$1,160,000.00 payable in advance and without notice in equal monthly installments of Ninety Six Thousand Six Hundred and Sixty-Six Cents (\$96,666.66), commencing on the first day of September, 2011, and on the first Business Day of each month thereafter during the first Renewal Term. Any applicable sales tax attributable to Lessee's rent shall be paid by Lessor on behalf of Lessee.

For each subsequent Renewal Term, Lessee shall pay to Lessor for the Project Site an annual rental to be calculated as:

Rental for the new Renewal Term = Rental for the previous Renewal Term multiplied by the change in the CPI from the April 1 prior to the beginning of the previous Renewal Term to the March 31 prior to the end of the previous Renewal Term, where "CPI" means the Consumer Price Index for all Urban Areas, CPI-U 1967=100 Base published by the Bureau of Labor Statistics of the U.S. Department of Labor.

Lessee shall provide Lessor, in writing according to the notice provisions of Section 39 herein, Lessee's calculation of the annual rental for a Renewal Term pursuant to the preceding paragraph no less than ninety (90) days prior to the end of the previous Renewal Term. Said rental shall

be payable in advance and without notice in equal monthly installments on the first Business Day of each month during the Renewal Term.

In addition to the rental payable with respect to the Project Site hereunder, Lessee shall also pay an additional rental amount with respect to the South Ash Monofill (defined as all of the property described on Schedule I with the exception of Parcel A) equal to any incremental reasonable costs of closing and capping the South Monofill in accordance with applicable laws that arise out of Lessee's use of the South Ash Monofill during any Renewal Term. Such additional rental shall be payable on the last day of the last Renewal Term. The obligations of the Lessee to pay for the costs of closing and capping of the South Ash Monofill in accordance with the terms of this paragraph shall be guaranteed by Waste Management, Inc., in accordance with the terms of the Parental Guarantee attached hereto as Exhibit "A" and made a part hereof. In addition to any rental, during a Renewal Term, Lessee shall be responsible for all operating and maintenance costs, real estate taxes and capital costs associated with the South Ash Monofill that first arise during such Renewal Term.

At least one hundred twenty (120) days prior to the end of any Renewal Term, the Lessor shall deliver to Lessee its estimate of the incremental closure costs for the South Site Monofill resulting from the Lessee's use of the South Ash Monofill during the Renewal Term. If Lessee disagrees with such estimate, it shall notify Lessor within thirty (30) days in writing, describing the reasons for its disagreement. If the parties are unable to resolve any disagreement within 10 days of the Lessor's receipt of the Lessee's written objection, then either party may submit the dispute to binding arbitration. The arbitration shall be held in Miami, Florida in accordance with the rules of the American Arbitration Association then in effect. If the parties cannot agree upon an arbitrator within the 10 days of receipt of notice from the party submitting the matter to arbitration, the arbitrator shall be selected by the American Arbitration Association. The written decision of the arbitrator so appointed shall be conclusive and binding on the parties and enforceable by a court of competent jurisdiction.

4. A new Section 43, Emergency Debris Site, is created to read as follows:

43. Emergency Debris Site

In the event of a declared state or local emergency as provided for by Florida law or in the event that Broward County adopts a resolution declaring a health and safety emergency caused by any event which has created excessive amounts of debris that temporarily exceed or overburden the available disposal capacities

within Broward County, the Lessor shall be entitled to utilize such designated portions of the Project Site as are mutually agreeable to Lessor and Lessee, at no charge, as a debris site storage area during the period of the state or local emergency. Such use by the Lessor shall be subject to the Lessor providing notice to the Lessee as may be reasonable under the circumstances. The Lessor shall be responsible for paying all costs in connection with any such use of the agreed upon debris site storage area and shall restore the area to its prior condition upon conclusion of the use. The Lessor shall use its good faith efforts to endeavor to not interfere with the operations of the Lessee in the exercise of its rights under this section.

5. Except as modified herein, the Lease between the parties shall remain in full force and effect.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment to Amended and Restated Facility Site Lease Agreement as of the day and year first hereinabove written.

COUNTY:

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and Ex-Officio  
Clerk of the Board of County  
Commissioners of Broward County,  
Florida

By: \_\_\_\_\_  
Mayor

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
JONI ARMSTRONG COFFEY, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By: \_\_\_\_\_  
Noel M. Pfeffer  
Deputy County Attorney

SECOND AMENDMENT TO AMENDED AND RESTATED FACILITY SITE LEASE AGREEMENT DATED AS OF \_\_\_\_\_, 2011, BY AND BETWEEN BROWARD COUNTY, FLORIDA, AND WHEELABRATOR SOUTH BROWARD, INC.

LESSEE:

WHEELABRATOR SOUTH BROWARD, INC

By \_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

NMP:slw  
06/16/11  
WHEELABRATOR2ndAmend

**Exhibit A (Parental Guarantee) to be forwarded  
as Additional Agenda Material.**