

Restated Leachate Treatment and Disposal Services Interlocal Agreement

This Restated Leachate Treatment and Disposal Services Interlocal Agreement (the "Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida ("County") and the City of Pembroke Pines, established under the laws of the State of Florida ("City") (collectively, the "Parties").

RECITALS

A. The Parties previously entered into a Leachate Treatment and Disposal Services Interlocal Agreement with an effective date of June 18, 2002 (the "Initial Interlocal Agreement").

B. The Initial Interlocal Agreement was entered for a period of five years with an option to renew for two successive five year terms upon mutual consent.

C. The Parties have renewed the Initial Interlocal Agreement through both terms, and the Initial Interlocal Agreement is set to expire on June 18, 2017.

D. The County and City agree it is in the Parties' best interest to continue the relationship established in the Initial Interlocal Agreement and to continue to ensure the proper treatment and disposal of leachate from the Broward County Landfill.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Agreement.** This Agreement includes Articles 1 through 8 and all Exhibits attached hereto and referenced herein.
- 1.2 **Board.** The Board of County Commissioners of Broward County, Florida.
- 1.3 **County Contract Administrator.** The Director of Solid Waste and Recycling Services, or his or her designee.
- 1.4 **City Contract Administrator.** [City to fill in]
- 1.5 **IPP.** An Industrial Pretreatment Program, implementation of which is governed by Chapter 62-625 of the Florida Administrative Code, or by Title 40 CFR Part 403 of the Federal Register, or both.
- 1.6 **Landfill.** The Broward County Landfill, owned by the County, and located in Broward County, Florida.
- 1.7 **Landfill Closing.** The date upon which the Landfill permanently ceases to accept waste, and includes those actions taken by the County to prepare the Landfill for any necessary monitoring and maintenance after closing.

- 1.8 **Leachate**. Liquid that has passed through or emerged from solid waste and may contain soluble, suspended or miscible materials.
- 1.9 **Maximum Daily Flow**. The largest volume of Leachate flowing during any consecutive 24-hour period expressed in gallons.
- 1.10 **Point of Connection**. The point where the Landfill connects to the City's system for the purpose of accepting delivery of Leachate, as indicated on **Exhibit A** attached hereto and incorporated herein.
- 1.11 **Treatment Plant**. The Pembroke Pines Wastewater Treatment Plant, owned by, and located in, Pembroke Pines, Florida.

ARTICLE 2. LEACHATE DISPOSAL

2.1 **Leachate Acceptance**. The City shall accept Leachate from the County for treatment and disposal at the Treatment Plant. The County shall ensure that its delivery of Leachate to the City does not exceed 20 million gallons per year.

2.2 **Transmission Point**. Leachate shall be transmitted to the City at the Point of Connection (as identified on **Exhibit A**).

2.3 **Leachate Treatment**. Once the City transmits Leachate to the Treatment Plant from the Point of Connection, the City shall sample and analyze already-in-existence wastewater and wastewater residuals at the Treatment Plant and assess the impact of receiving Leachate by comparing new results with the past results at the Treatment Plant.

2.3.1 **Implementation of IPP Due to Amount of Leachate**. If the Florida Department of Environmental Protection ("FDEP") requires the City to implement an IPP because the amount of Leachate being sent to the City by the County exceeds the limits permitted by law before such implementation, the County may, in the sole discretion of the County Contract Administrator, (a) limit the daily flow of Leachate to the Treatment Plant to an amount below the threshold level needed to trigger the state or federal requirement to implement an IPP or (b) agree with the City Contract Administrator to pay for additional verifiable expenses incurred by the City for the IPP's development and administration as outlined in Section 2.3.3 below. If neither option is agreeable to the County Contract Administrator, the Board may terminate the Agreement upon one-hundred eighty days' written notice to the City.

2.3.2 **Implementation of IPP Due to Quality of Leachate**. If FDEP requires the City to implement an IPP because of the nature of the Leachate, the County may, in the sole discretion of the County Contract Administrator, (a) improve the quality of the leachate to the required level before sending the Leachate to the Treatment Plant or (b) agree with the City Contract Administrator to pay for additional verifiable expenses incurred by the City for the necessary treatment of the Leachate and for the IPP development and administration as outlined in Section 2.3.3, if needed. If neither option is agreeable to the County Contract Administrator, the board may terminate the Agreement upon one-hundred eighty days' written notice to the City.

2.3.3 **Cost of IPP.** If Leachate sent by the County to the Treatment Plant is subject to treatment under an IPP, the County shall pay its proportionate share of verifiable administrative costs for the IPP, based on average monthly Leachate delivered to the Treatment Plant and treated under the IPP. City shall include such charges in the invoice City submits to County for Leachate disposal under Section 4.1.

2.3.4 **Failure to Agree on Terms of IPP.** If a mutually acceptable fee for IPP expenses or if suitable remedial steps to improve the quality of the Leachate cannot be agreed upon between the County and the City, either the County or the City may terminate this Agreement upon one-hundred eighty days' notice.

2.4 **Exceeding Maximum Flows.** If possible, the County Contract Administrator shall notify the City within twenty-four hours of discovering that the maximum daily flow identified in Section 2.1 will be exceeded. If possible, the County Contract Administrator should provide such notice to the City in advance of County sending the Leachate. If the County continues to consecutively send Leachate in excess of the maximum daily flow identified in Section 2.1 for more than one calendar month, the City Contract Administrator and the County Contract Administrator shall renegotiate the limits identified in Section 2.1.

2.5 **Maintenance of the Flow Meter.** The County shall measure the amount of flow of Leachate being sent to the Treatment Plant at a meter at the Landfill ("County's Flow Meter"), as identified on **Exhibit A**. The County shall maintain, at its sole expense, the County's Flow Meter. The County shall have the County's Flow Meter calibrated, at its sole expense, at least once every twelve months by a factory authorized representative. The County Contract Administrator shall send the City a copy of the certified calibration report of the County's Flow Meter ("Meter Report") within thirty days of the calibration.

2.5.1 **Meter Reading.** City Contract Administrator shall read the County's Flow Meter for billing purposes on ____ day of each month, or on a date that is mutually agreed to by the County Contract Administrator and the City Contract Administrator, as long as it occurs at least once each calendar month.

2.5.1.1 **Meter Failure.** If at any time during the Agreement, the County's Flow Meter fails for any reason to accurately measure the flow into the Treatment Plant, the City shall base each successive monthly charge on the average monthly meter reading for the three year period immediately preceding the last available accurate meter reading each month until the meter is once again fully operational. If practicable, the County shall repair the meter within thirty days of the County's knowledge of the meter failure.

2.5.2 **Accuracy of Meter.** If a Meter Report finds the County's Flow Meter to be inaccurate or malfunctioning in any way, the County's Flow Meter will be deemed to be inaccurate as of the earlier of, (a) the last Meter Report, or (b) three months before the finding. If a Meter Report deems the County's Flow Meter inaccurate or malfunctioning, the City shall adjust the next monthly bill following that Meter Report to reflect either a credit or additional charge to the County for metered flow during the applicable period.

2.5.3 **Additional Meter Report.** The City may request, at any time, that County obtain a Meter Report. Such request must be made in writing to the County Contract Administrator and through the City Contract Administrator. The County Contract Administrator shall obtain the Meter Report on or before ninety days from receipt of the written request, and provide the same to City within ten days of County's receipt of same. If the Meter Report finds that the County's Flow Meter is malfunctioning or requires calibration, the County will bear the sole expense for obtaining the requested Meter Report. If, on the other hand, the Meter Report finds that the meter is operating properly within the manufacturers' guaranteed range of accuracy, the County shall provide invoices of costs associated with the Meter Report to the City, and the City shall credit the County in the subsequent monthly bill for all expenses associated with obtaining the Meter Report.

2.6 **Leachate Sample Results.** On or before June 30th and on or before December 30th of each year, the County Contract Administrator shall provide the City Contract Administrator with results of Leachate sampling that, at a minimum, includes monitoring of the following parameters: COD, BOD5, dioxin, gross alpha, radium 226, radium 228, and asbestos. The City Contract Administrator may request additional sampling from the County Contract Administrator if either a change in law requires such request or if the City Contract Administrator reasonably suspects that County's Leachate is causing adverse impacts on the Treatment Plant. The City Contract Administrator may modify the frequency of the requirements of this section upon consultation with, and agreement from, the County Contract Administrator.

ARTICLE 3. TERM AND TERMINATION

3.1 **Term.** The Agreement shall begin on the date the Agreement is signed by both Parties and shall terminate thirty years after Landfill Closing. The Agreement term after Landfill Closing is provided to address Leachate generated at the Landfill for the thirty-year post-closure period.

3.2 **Termination.** This Agreement may be terminated for cause by the non-breaching party if the other party breaches the Agreement and the breaching party does not correct the breach within ninety days after receipt of written notice from the non-breaching party identifying the breach. Notwithstanding the above sentence, if the breaching party commences to cure the breach, but the breach cannot be fully cured within such ninety day period, the cure period shall be extended for so long as the breaching party continues expeditiously and in good faith to cure the breach.

ARTICLE 4. COMPENSATION

4.1 **Payment for Leachate Disposal.** The County shall pay City \$4.75 per 1,000 gallons of Leachate accepted, treated and disposed of at the Treatment Plant. The County shall pay the City within thirty calendar days of receipt of the City's proper and detailed invoice, as required by the "Broward County Prompt Payment Ordinance," Section 1-51/6 of the Broward County Code of Ordinances. Payment may be withheld for failure of the City to comply with a term, condition, or requirement of this Agreement.

4.2 **Increase in Fee for Governmental Charges**. If any tax, fee, surcharge, duty or other charge of any nature ("Fee") is levied or imposed by any governmental entity or agency against the City and is payable because of the nature of the operations conducted, the fees for Leachate Disposal shall increase commensurately by the amount needed to cover the increased Fee. The City may only increase the charge for Leachate disposal if it provides the County with at least thirty days' prior written notice of the increase.

ARTICLE 5. SOVEREIGN IMMUNITY

The County is a state agency or political subdivision as defined in § 768.28, Florida Statutes. The City is a municipal corporation or political subdivision as defined in § 768.28, Florida Statutes. The County and the City are each fully responsible for the acts and omissions of their agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may apply. Nothing herein shall be construed as consent by the County or the City to be sued by third parties in any matter arising out of this Agreement.

ARTICLE 6. ACCESS TO THE LANDFILL

During regular business hours, and upon the City's request, the County must provide the City with full, unimpeded, and immediate access to the Landfill and the Leachate pumping facilities. During such visit, the City may perform sampling of leachate at any onsite location.

ARTICLE 7. INSURANCE

7.1 **County's Insurance Obligations**. The County is a self-insured governmental entity subject to the limitations of § 768.28, Florida Statutes. The County shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of § 768.28, Florida Statutes.

7.2 **County's and City's Contractors**. If the County or the City contracts with a contractor to provide services relating to this Agreement, any contract with such contractor shall require the contractor to keep and maintain, at contractor's sole expense, insurance of the types and amounts as set forth in **Exhibit B**, a copy of which is attached hereto and incorporated herein. The Parties shall also require any such contractor to include the other party as an additional insured on the required policies.

ARTICLE 8. MISCELLANEOUS

8.1 **Independent Contractor**. The City and the County are independent contractors under this Agreement. Neither the City nor its agents shall act as officers, employees, or agents of the County. Neither the County nor its agents shall act as officers, employees, or agents of City. Neither the County nor the City shall have the right to bind the other to any obligation not expressly undertaken under this Agreement.

8.2 **Third Party Beneficiaries.** Neither the City nor the County intends to directly or substantially benefit a third party by this Agreement. Therefore, there are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a right or claim against either the City or County based upon this Agreement.

8.3 **Notices.** For a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein and until changed by providing notice of such change in accordance with the provisions of this Section.

For County:

Broward County Solid Waste and Recycling Services
Director
1 North University Drive, Suite 400
Plantation, Florida 33324
Email address: _____

With copy to:

Broward County Attorney
Governmental Center, Room 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: _____

For City:

City of Pembroke Pines
City Manager
10100 Pines Boulevard
Pembroke Pines, Florida 33026
Email address: _____

With a copy to:

Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Email address: _____

8.4 **Assignment.** Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted or encumbered by the County or the City without the prior written consent of the other party. If either the County or the City violates this Section 8.4, the non-violating party shall have the right to immediately terminate this Agreement.

8.5 **Amendments.** No modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the County and the City or others delegated authority or otherwise authorized to execute same on their behalf.

8.6 **Representation of Authority.** Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date that he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does with full legal authority.

8.7 **Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

8.8 **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 8 of this Agreement, the provisions contained in Articles 1 through 8 shall prevail and be given effect.

8.9 **Incorporation by Reference.** The Recitals stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

8.10 **Severability.** If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

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

PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

8.12 **Prior Agreements**. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

8.13 **Waiver of Breach**. Either party's failure to perform any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of such provision or modification of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.14 **Joint Preparation**. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20__, and THE CITY OF PEMBROKE PINES, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Signature (Date)

By _____
Angela F. Benjamin (Date)
Assistant County Attorney

Print Name and Title above

By _____
Michael J. Kerr (Date)
Deputy County Attorney

AFB/dnt
06/02/17
Leachate and Sludge Disposal Agreement
17-081.01

RESTATED LEACHATE TREATMENT AND DISPOSAL SERVICES INTERLOCAL
AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF PEMBROKE PINES.

CITY

ATTEST:

CITY CLERK

BY: _____

APPROVED AS TO FORM:

Office of the City Attorney

_____ day of _____, 20____

EXHIBIT "A"
METER LOCATIONS & POINT OF CONNECTION

EXHIBIT "B"

CITY'S OR COUNTY'S INSURANCE REQUIREMENTS

Contractor shall not utilize the Facilities until he has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of either the City (if the contractor is under contract with the County) or the County (if the contractor is under contract with the City).

1. Certificates of Insurance. Reflecting evidence of the required insurance shall be filed with the Risk Manager of either the City (if the contractor is under contract with the County) or the County (if the contractor is under contract with the City) before the commencement of this Agreement. These Certificates shall contain a provision that coverage's afforded under these policies will not be cancelled until at least forty-five days prior written notice has been given to either the City (if the contractor is under contract with the County) or the County (if the contractor is under contract with the City). Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than "A-V1" in the latest edition of "Best Key Rating Guide," published by A.M. Best Guide.

2. Insurance shall be in force until the obligations required to be fulfilled under the terms of this Agreement are satisfied. If the insurance certificate provided indicated that the insurance shall terminate and lapse during the period of this contract, then the Contractor shall furnish, at least forty-five days before the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of this Agreement and extension thereunder is in effect. The Contractor shall not utilize the Facilities pursuant to this contract unless all required insurance remains in full force and effect.

3. Commercial General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability.

| | |
|-------------|---|
| \$1,000,000 | Combined Single Limit – each occurrence |
| \$1,000,000 | Combined Single Limit – general aggregate |
| \$1,000,000 | Personal Injury |
| \$1,000,000 | Products/Completed Operations Aggregate |

Lessee shall have its insurer name either the City of Pembroke Pines if the contractor is under contract with the County or Broward County if the contractor is under contract with the City as an additional insured on its General Liability policy.

4. Worker's Compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, the Contractor shall require the Subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the

protection afforded by the Contractor. The Contractor and his subcontractors shall maintain during the life of this policy Employers Liability Insurance. The following limits must be maintained:

| | | |
|----|----------------------|--------------------------------|
| A. | Workers Compensation | Statutory |
| B. | Employer's Liability | \$100,000 each accident |
| | | \$500,000 Disease-policy limit |
| | | \$100,000Disease-each employee |

If Contractor claims to be exempt from this requirement, Contractor shall provide either the City (if the contractor is under contract with the County) or the County (if the contractor is under contract with the City) with proof of such exemption along with a written request for City or County to exempt Contractor, written on Contractor's Letterhead.

EXHIBIT A



NOT TO SCALE