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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 14(A)(1)

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: September 16, 2015

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Resolution authorizing execution of the Second Amended and Restated Non-Exclusive Agreement between Miami-Dade County, Florida Progressive Waste Solutions of FL, Inc. (PWS) for commitment to use the County Solid Waste Management System for Municipal Solid Waste Disposal

Resolution No. R-785-15

The accompanying resolution was prepared by the Public Works & Waste Management Department and placed on the agenda at the request of Prime Sponsor Metropolitan Services Committee.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: September 16, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Second Amended and Restated Agreement with Progressive Waste Solutions for Commitment to Use the County Solid Waste Management System

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing execution of the Second Amended and Restated Non-Exclusive Agreement (Agreement) between Miami-Dade County (County), Florida and Progressive Waste Solutions of Florida, Inc. (PWS) for Commitment to Use the County Solid Waste Management System (System) for Municipal Solid Waste Disposal. This Agreement is regulatory in nature and is required to implement the sections of the Miami-Dade County Code (Code) relating to Resource Recovery and Management Facility permitting and the Public Works and Waste Management Department's (PWWM) bond covenant relating to facilities that may compete with the County Solid Waste Management System. The Agreement governs operation of the PWS waste transfer facility (PWS Facility) located at 4070 NW 37 Court, Miami, Florida. The Public Works and Waste Management Department's (PWWM) Bond Engineer has found that this Agreement is beneficial to the County's Solid Waste Disposal System and recommends approval by the Board (see attached letter dated July 17, 2015).

Scope

This Agreement effectively maintains a competitive market for the provision of solid waste services in the County for the next 10 to 20 years, resulting in efficient, effective services to all local residents and businesses. It also provides a means for PWS to utilize its own existing waste disposal facility in St. Cloud, Florida, for a portion of the waste stream collected by or for PWS in the County, thereby allowing it to maintain a market position locally. Financial stability of the local solid waste market through competitive procurement of services by the municipalities results in financial benefit to residents, businesses and to the County.

Disposal capacity guarantees provided to the County at the PWS Facility and the PWS Landfill in St. Cloud, Florida, under this Agreement will enhance the County's ability to meet solid waste concurrency requirements. The County provides solid waste concurrency for: (1) the Unincorporated Municipal Service Area (UMSA), (2) municipalities included in the Solid Waste Collection Service Area, and (3) municipalities that contract with the County for waste disposal services.

The PWS Facility will accept only waste from PWS waste collection vehicles or third parties working under contract with PWS; no municipal or other private hauler vehicles are permitted to use this facility for municipal solid waste disposal.

Fiscal Impact/Funding Source

The Agreement provides for a significant gross revenue stream to the County Solid Waste System over the active term of the Agreement. Without this Agreement, that revenue stream from PWS to the County would be at risk and may not be replaced, in part or in whole, by potential successors to the PWS services. PWS is the PWWM's largest single waste disposal customer, currently delivering

approximately 16 percent of total System tonnage. The proposed Agreement requires PWS to deliver approximately 259,000 tons to the County in the initial year, 50,000 tons of which must be delivered to a County transfer facility, generating gross revenues of approximately $18 million annually (16 percent of total disposal revenues). Per the terms of the Agreement, PWS's waste delivery obligation will adjust up or down annually as the total amount of waste PWS collects in the County increases or decreases.

If the County elects or needs to dispose of solid waste at the PWS Landfill, the disposal rate is $20.00 per ton (subject to annual CPI adjustment), with no commitment for any minimum waste delivery. The 500,000 tons of annual capacity is available for use by the County as our waste stream grows over time or during emergencies. At the County's request, PWS may also provide waste transfer services to the PWWM from the PWS Facility to its landfill in St. Cloud, Florida, at combined rate (transfer and disposal) of $45.00 per ton (subject to annual CPI adjustment).

All revenues and expenses related to the Agreement are proprietary to the Waste Enterprise within PWWM; no General Fund revenues or expenses are involved in this Agreement.

The term of the proposed amended agreement is 10 years (until 2025), with two (2), five-year options to renew.

Track Record/Monitor
PWS waste deliveries to the PWWM are tracked by PWWM operations staff under the direction of Paul Mauriello, Deputy Director for Waste Operations.

Delegated Authority
The Mayor or designee is authorized to exercise any and all powers and options within the Agreement including termination.

Background
The original agreement with Browning-Ferris Industries (BFI) for operation of the PWS Facility was approved by the Board in 1995. That agreement required BFI to deliver 300,000 tons of waste to County facilities each year, with 100,000 tons going through the waste transfer stations. Prior to the 2005 expiration of the agreement, the company began having difficulty meeting its waste delivery obligation to the County. After a review of BFI's market and financial condition by the Department's financial consultants, it was determined to be in the County's best long-term interests to renegotiate the agreement with a lower waste delivery requirement and an extended term. The agreement was amended in 2001 to include a reduced annual waste delivery requirement of 220,000 tons and reduced transfer station deliveries of 75,000 tons per year.

The proposed Agreement further refines the waste delivery requirements and the manner in which the waste delivery obligation is adjusted. These changes will ensure that the PWS waste delivery obligation remains consistent relative to the company's market share over the entire term of the Agreement. The proposed waste delivery obligation is 51 percent of the total amount of waste PWS collects in the County (in the initial year approximately 259,000 tons), with 50,000 tons going to County transfer stations.

The proposed Agreement also contains a new provision that will allow the County to take advantage of waste disposal capacity at the PWS Landfill in St. Cloud, Florida, as described in the Fiscal Impact section.

Attachment

Alina T. Hudak
Deputy Mayor

ARCADIS

Infrastructure · Water · Environment · Buildings

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Mr. Paul Mauriello
Deputy Department Director
Public Works and Waste Management Department
2525 NW 62nd Street, #5001
Miami, Florida 33147

Subject: Review of Proposed Second Amended and Restated Non-Exclusive Agreement Between Miami-Dade County, Florida, and Progressive Waste Solutions of Florida, Inc., for Commitment to Use the County Solid Waste Management System for Municipal Solid Waste Disposal (the "Agreement")

Date:
July 17, 2015

Contact:
Robert French, PE, BCEE

Phone:
239.218.6821

Email:
Robert.French@arcadis-us.com

Dear Mr. Mauriello:

Miami-Dade Solid Waste has enjoyed a successful partnership with Progressive Waste Solutions of Florida, Inc. for many years. This partnership has resulted in the efficient and effective collection and disposal of solid waste within specific municipalities in Miami-Dade County. The proposed Agreement represents an updated version of the original agreement to accommodate minor changes to the solid waste environment and expand potential opportunities for mutual benefit going forward for the next ten years with the option for two additional, consecutive five-year renewals.

ARCADIS-US, as the Solid Waste Bond Engineer, coordinated with PWWM during negotiations with Progressive Waste Solutions and has reviewed the proposed final Agreement, revised July 16, 2015. It is the opinion of the Bond Engineer that this proposed Agreement represents both a financial benefit to the Miami-Dade Solid Waste System and the opportunity for additional, low-cost disposal of solid waste from the Miami-Dade Solid Waste System if necessary or desirable in the future.

This Agreement builds on the long-standing, successful relationship with Progressive Waste Solutions. For this reason, Bond Engineer recommends approval of this Agreement.

ARCADIS is available to discuss this matter or answer questions the Board of County Commissioners may have during deliberation of this Agreement.

Very truly yours,

ARCADIS-US, INC.

Robert H. French, P.E., BCEE
Principal-In-Charge

cc Johanna Faddis (PWWM)

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: September 16, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 14(A)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(1)
9-16-15

RESOLUTION NO. R-785-15

RESOLUTION AUTHORIZING EXECUTION OF THE SECOND AMENDED AND RESTATED NON-EXCLUSIVE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND PROGRESSIVE WASTE SOLUTIONS OF FL, INC. (PWS) FOR COMMITMENT TO USE THE COUNTY SOLID WASTE MANAGEMENT SYSTEM FOR MUNICIPAL SOLID WASTE DISPOSAL, AND AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXERCISE ANY OPTIONS OR TERMINATION OR DEFAULT PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, approval by the Board of this Second Amended and Restated Agreement is a necessary step to ensure the long-term financial stability of the County's Solid Waste Management System,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Second Amended and Restated Non-Exclusive Agreement Between Miami-Dade County, Florida and Progressive Waste Solutions of FL, Inc. for commitment to use the County Solid Waste Management System for Municipal Solid Waste Disposal Services is approved and the Mayor or Mayor's designee is authorized to execute the Agreement in substantially the form attached hereto. The Mayor or Mayor's designee is authorized to exercise any and all powers and rights within the Agreement, including the renewal options, and default and termination provisions.

The foregoing resolution was offered by Commissioner **Dennis C. Moss** , who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Jr., Vice Chairman	**aye**		
Bruno A. Barreiro	**aye**	Daniella Levine Cava	**absent**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**nay**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of September, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David Sherman

SECOND AMENDED AND RESTATED NON-EXCLUSIVE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND PROGRESSIVE WASTE SOLUTIONS OF FL, INC. FOR COMMITMENT TO USE THE COUNTY SOLID WASTE MANAGEMENT SYSTEM FOR MUNICIPAL SOLID WASTE DISPOSAL

SECOND AMENDED AND RESTATED NON-EXCLUSIVE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND PROGRESSIVE WASTE SOLUTIONS OF FL, INC. FOR COMMITMENT TO USE THE COUNTY SOLID WASTE MANAGEMENT SYSTEM FOR MUNICIPAL SOLID WASTE DISPOSAL

A non-exclusive agreement for commitment to use the COUNTY SOLID WASTE MANAGEMENT SYSTEM for municipal solid waste disposal ("Agreement") is made this_____ day of_____, 2015 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, (hereinafter referred to as the "**COUNTY**") and PROGRESSIVE WASTE SOLUTIONS OF FL, INC. (hereinafter referred to as "**PWS**").

WITNESSETH:

BACKGROUND RECITALS

Whereas, the Miami-Dade County Board of County Commissioners (the "Board") hereby finds and declares that it is necessary to the health, safety and welfare of the citizens of Miami-Dade County to provide for solid waste disposal and management facilities and services; and

Whereas, the **County** desires to maximize the use of its Resources Recovery facility processes, extend the life of its landfills, and ensure satisfaction of concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.); and

WHEREAS, PWS desires to continue operation of a Municipal Solid Waste transfer facility located at 4070 N.W. 37th Court, Hialeah, Florida in Miami-Dade County ("the Facility"); and

Whereas, the **County** must comply with the stipulations of Bond Ordinance No. 96-168 regarding the construction, acquisition, or operation of any private solid waste disposal facilities within the **County** that may compete or tend to compete with the **County** Solid Waste Management System, and the provisions of **County** Ordinance No. 92-155 regarding permitting of resource recovery and management facilities; and

Whereas, PWS's commitment of Solid Waste to the **County** contained herein sufficiently mitigates the adverse financial impact to the County Solid Waste Management System resulting from operation of the Facility and is consistent with the goals established in the state Solid Waste Management Act (Chapter 403, Part IV of the Florida Statutes);

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual considerations contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

//

DEFINITIONS

For the purposes of this Agreement, the following capitalized words and phrases shall be given the following respective meanings:

Annual Stated Tons – the total tonnage of Solid Waste collected by **PWS** for disposal, including that which is collected for it by third parties under contract with **PWS** for disposal, from within Miami-Dade County, for the twelve (12) months preceding October 1 of each year.

Base Tons – the total tonnage of Solid Waste collected by **PWS** for disposal, including that which is collected for it by third parties under contract with **PWS** for disposal, from within Miami-Dade County, in the Base Year plus 36,500 tons.

Base Year – the twelve (12) months preceding October 1, 2014.

Board - the Miami-Dade County Board of County Commissioners.

Change in Law - after the date of execution of this Agreement, (a) the adoption, promulgation, issuance, modification, or change in interpretation of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, of the United States or any state or territory thereof, unless (i) such law, regulation, rule, requirement, ruling or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental entity or official having jurisdiction, or (ii) compliance with such law, regulation, rule requirement, ruling or ordinance was provided for in the Agreement; (b) the issuance of an order and/or judgment of any governmental entity or official having jurisdiction, to the extent such order and/or judgment constitutes a reversal of a prior applicable order and/or judgment, or an overturning of prior administrative policy or judicial precedent.

County – Miami-Dade County, Florida, by and through its Board of County Commissioners.

County Solid Waste Management System (System) - The aggregate of those solid waste management facilities owned by or operated under contract with Miami-Dade County, which shall include the North Dade Landfill (21500 NW 47th Avenue); South Dade Landfill (23707 SW 97th Avenue); Resources Recovery Facility (6990 NW 97th Avenue); Waste Management of Florida, Inc. Landfill in the Town of Medley, Florida (9350 NW 89th Avenue); Northeast Transfer Station (18701 NE 6th Avenue); Central Transfer Station (1150 NW 20th Street); West Transfer Station (2900 SW 72nd Avenue); and other such facilities as may be added to or deleted from this listing from time to time, by the County Mayor at his sole discretion. Such additions or deletions may be made by use of an attachment hereto without need for formal amendment to this Agreement.

Director - the Director of the Department of Public Works and Waste Management or his/her designee.

Disposal Fee(s) - the fee charged to **PWS** by the **County** to dispose of Solid Waste at County-owned solid waste disposal facilities or facilities operated under contract with the **County** for solid waste disposal. This fee does not include any federal, state or local fees, charges or

surcharges. This term shall also refer to the fee charged to the **County** by **PWS** to dispose of Solid Waste at the JED Landfill.

Environmental Law - all applicable laws, ordinances, orders, and resolutions relating to the environment, including without limitation, rules or regulations relating to the environment issued or enacted by any regulatory agency with jurisdiction over components of the County Solid Waste Management System.

Fiscal Year - the period beginning October 1 of each year and ending September 30 of the subsequent year. The use of the words "annual" or "annually" in this Agreement shall mean a Fiscal Year. All annual amounts stated herein shall be prorated for any partial Fiscal Year.

Force Majeure - an act of God, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood or similar occurrence, strike, act of a public enemy, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement which by the exercise of due diligence the party relying thereon as justification for not performing any obligation under this Agreement shall not have been able to avoid, and which is not the result of a willful or negligent action or omission of such party.

Hazardous Waste - as defined in Chapter 403, Part IV, Florida Statutes, as amended.

JED Landfill – the JED Landfill, owned by Progressive Waste Solutions of FL, Inc., and which is located at 1501 Omni Way, St. Cloud, Florida.

Municipal Solid Waste (MSW) or **Solid Waste** or **Waste** - all discarded materials or substances, exclusive of source-separated recyclable materials, including, but not limited to, garbage, trash, yard trash, litter, refuse, rubbish, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill, Class III landfill or resource recovery facility which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form.

Source-Separated Recyclable Materials - materials separated from MSW at their source of generation which are set-out for collection at their source of generation. Such materials shall be limited to: clean yard trash, construction and demolition debris, aseptic and gable top containers, corrugated cardboard, magazines, newspapers, telephone books, household batteries, glass containers, plastic containers, steel cans, aluminum cans, and other source-separated recyclable materials as may be added to this listing from time to time by the County Mayor, at his sole discretion; such additions may be made by use of an attachment hereto without need for formal amendment to this Agreement.

Transfer Fee(s) - the fee charged to **PWS** by the **County** to transfer Solid Waste delivered to County-owned transfer stations for transfer and disposal. This fee does not include any federal, state or local fees, charges or surcharges. This term shall also refer to the fee charged to the **County** by **PWS** to transfer Solid Waste delivered to its Facility for transfer and/or disposal.

Unacceptable Waste - any waste that cannot be legally disposed of at a Class I Landfill, Class III Landfill or resource recovery facility in accordance with Environmental Law.

ARTICLE 1
CONSTRUCTION OF AGREEMENT

The word "shall" as used in this Agreement shall in all cases be construed to be mandatory and to require the action so modified by the word "shall" to be taken without regard to the exercise of discretion.

ARTICLE 2
RESPONSIBILITIES OF THE PARTIES

1. Solid Waste Delivery and Acceptance Generally. Annually, beginning October 1, 2015, and subject to the terms and conditions contained herein, **PWS** agrees to deliver, at its sole cost and expense, and the **County** agrees to accept and dispose of, Fifty-One Percent (51%) of the total tons of Solid Waste PWS collected in the Base Year, or all the Waste **PWS** collects or that which is collected for it by third parties under contract with **PWS** for disposal, from within Miami-Dade County, whichever is less, at System facilities (the "Waste Delivery Obligation"), plus any annual adjustments made in accordance with section 2 of this Article.

2. Adjustments to the Waste Delivery Obligation.

i. As of October 1, 2015 and for the term of this Agreement, if in any year **PWS's** Annual Stated Tons is greater than the Base Tons [tons in the Base Year, plus 36,500 tons; refer to definitions section], the Waste Delivery Obligation shall increase by fifty percent (50%) of the difference between the then most recent Annual Stated Tons and the Base Tons, and the waste delivery requirements contained in section 3 of this Article shall be adjusted accordingly [i.e. If Annual Stated Tons – Base Tons = Positive Difference; then 50% of the positive difference is added to the Waste Delivery Obligation in the then current year beginning October 1]. Once the Annual Stated Tons has surpassed the Base Tons as described above, year-to-year increases in the Annual Stated Tons will be used to determine the waste delivery requirements for the then current year beginning October 1.

ii. Alternatively, as of October 1, 2015 and for the term of this Agreement, if **PWS's** Annual Stated Tons is less than the previous year's Annual Stated Tons the Waste Delivery Obligation shall be reduced by fifty percent (50%) of the difference, and the waste delivery requirements contained in section 3 of this Article shall be adjusted accordingly [i.e. If the most current Annual Stated Tons – prior year's Annual Stated Tons = Negative Difference; then 50% of the negative difference is subtracted from the Waste Delivery Obligation in the then current year beginning October 1].

iii. During any fiscal year period when the Waste Delivery Obligation is less than Fifty-One Percent (51%) of the tons collected in the Base Year due to reductions as described in the previous section, then in the event that **PWS's** Annual Stated Tons increase above the previous year's Annual Stated Tons, the full amount of the increase shall be added to the Waste Delivery Obligation for the next year, unless and until the

Fifty-One Percent (51%) of the tons collected in the Base Year level has again been reached, and the waste delivery requirements contained in section 3 of this Article shall be adjusted accordingly [e.g. If the Waste Delivery Obligation had previously been reduced by 10,000 tons and the most current Annual Stated Tons showed an increase of 10,000 tons, the Waste Delivery Obligation would be increased by 100% of the positive difference in the Annual Stated Tons].

iv. On the effective date of this Agreement **PWS** shall submit an affidavit to the **County** which provides the total number of tons of Solid Waste it collected for disposal, including that Waste collected for it by third parties under contract with **PWS** for disposal, from within Miami-Dade County, in the Base Year. Such affidavit shall be subject to audit by the **County**. Annually thereafter, but no later than October 15 of each subsequent year of this Second Amended and Restated Agreement, **PWS** shall submit an affidavit to the **County** which provides the Annual Stated Tons. Such affidavit shall be subject to audit by the **County**. In the event that PWS enters into a waste collection agreement with a Miami-Dade County municipality which has a an effective long-term waste disposal agreement with the County, the residential waste collected by PWS from within that municipality shall be obligated for delivery to the County, but shall not be included in the Annual Stated Tons affidavit required pursuant to this section.

3. Waste Delivery Requirements. **PWS** shall be required to deliver at least Eighty Percent (80%) of an amount equal to Fifty-One Percent (51%) of the tons collected in the Base Year divided by fifty-two (52) weeks multiplied by six (6) weeks in any rolling six (6) week period. The rolling six (6) week delivery amount shall be decreased in proportion to the amount of Solid Waste **PWS** collects for disposal, from within Miami-Dade County, if less than Fifty-One Percent (51%) of the tons collected in the Base Year.

4. Transfer Station Waste Deliveries. Of the Waste Delivery Obligation referred to in section 1 of this Article, Fifty Thousand (50,000) tons shall be delivered annually to any of the **County's** transfer stations by **PWS**. **PWS** shall be required to deliver at least Four Thousand Six Hundred Fifteen (4,615) tons in any rolling six (6) week period to any of the transfer stations. **PWS** may deliver more than Fifty Thousand (50,000) tons to the **County's** transfer stations.

5. Direction to Facilities. The Director may identify particular System Waste disposal facilities within Miami-Dade County to which **PWS** shall deliver its Waste Delivery Obligation, except the Director may direct **PWS** to the South Dade Landfill only in the event all other System Waste disposal facilities are closed to Waste deliveries. Such direction shall not inhibit **PWS's** ability to fulfill its obligations under this Agreement.

6. Unacceptable Waste. The **County** may refuse for disposal any load of solid waste which, based on substantial competent evidence, the **County** has determined to contain Unacceptable Waste. In the event Unacceptable Waste is disposed by **PWS**, and **PWS** fails to promptly remove such Unacceptable Waste, the **County** may take any and all appropriate action to remove and dispose of the Unacceptable Waste as required by law and **PWS** shall pay all costs incurred for such removal, transportation and disposal for which verifiable information pertaining to such costs is provided in written form to **PWS** by the **County**. The **County** shall use reasonable commercial efforts to minimize said costs. The **County** shall immediately notify the vehicle

driver and shall notify a **PWS** manager immediately by phone of its intent to refuse disposal of any waste delivered by **PWS** pursuant to this Agreement, or to remove, transport and dispose of Unacceptable Waste delivered by **PWS**.

7. Other Similar Facilities. The **County** acknowledges that it shall use the same criteria as applied to **PWS** to determine adverse financial impacts in the permitting of similar resource recovery and management facilities in accordance with Chapter 15 of the County Code and that charges and/or waste delivery guarantees applied to such facilities in the aggregate shall be no less stringent than those agreed to by PWS in this Agreement.

8. Disposal Limitations. The PWS Transfer Station shall only accept Waste collected by PWS or Waste that is collected by third parties under contract with PWS. This same limitation shall apply to all facilities permitted by the County to accept Waste or Solid Waste or MSW as defined in this Agreement.

9. Disposal Capacity. Annually, **PWS** shall make Waste disposal capacity available to the County at its JED Landfill in the amount of Five Hundred Thousand (500,000) tons total capacity. **PWS** may increase the capacity available to the County subject to mutual agreement by **PWS** and the County, without the need for further approval by the Board. The County shall have no obligation to deliver MSW to the JED Landfill for the term of this Agreement.

ARTICLE 3
DISPOSAL FEES AND PAYMENT

1. Disposal Fees.

   A. As of October 1, 2014, **PWS'** Disposal Fee paid to the **County** is Sixty-Six dollars and Thirty-Four cents ($66.34) per ton for each ton of Solid Waste delivered to the **County** for disposal pursuant to the terms of this Agreement. In the event that **PWS** fails to fulfill its rolling six (6) week delivery amount or annual Waste Delivery Obligation pursuant to Article 2, of this Agreement, **PWS** shall pay the **County** the Disposal Fee only on those tons of solid waste obligated for delivery. Payment of disposal fees to the **County** by **PWS** for shortfalls in meeting minimum rolling six (6) week waste delivery amount shall be made monthly and shall count toward payment of disposal fees for shortfalls in meeting the annual Waste Delivery Obligation.

   B. Beginning October 1, 2015, the **County** shall pay **PWS** a Disposal Fee of Twenty dollars ($20.00) for each ton of MSW delivered for disposal to the JED Landfill by or on behalf of or at the direction of the **County** pursuant to this Agreement.

2. Transfer Fees.

   A. As of October 1, 2014, **PWS'** Transfer Fee paid to the **County** is of Thirteen dollars and Four cents ($13.04) per ton in addition to the Disposal Fee for Solid Waste delivered to County-owned transfer stations for transfer and disposal pursuant to the terms of this Agreement. In the event that **PWS** fails to fulfill its rolling six (6) week waste delivery amount or annual Waste Delivery Obligation pursuant to Article 2 of this Agreement, **PWS** shall pay the **County** the Disposal and Transfer Fee only on those tons of Solid

Waste obligated for delivery. Payment of disposal and transfer fees to the **County** by **PWS** for shortfalls in meeting minimum rolling six (6) week waste delivery amount shall be made monthly and shall count toward payment of disposal and transfer fees for shortfalls in meeting the annual Waste Delivery Obligation.

B. Beginning October 1, 2015, the **County** shall pay **PWS** a transfer fee of Forty-Five dollars ($45.00) for each ton of MSW delivered to the **PWS** Facility, which fee includes the cost for disposal at the JED Landfill, for each ton of MSW delivered to the Facility by or on behalf of or at the direction of the **County** pursuant to this Agreement.

C. Upon the **County's** request, **PWS** may provide a per-ton Transfer Fee rate for the transfer of MSW from its Facility to various disposal locations specified by the **County**. The **County** and **PWS** may mutually agree to per-ton Transfer Fee rates and other terms of Waste transfer without the need for further approval by the Board. The County shall have no obligation to deliver MSW to the Facility for the term of this Agreement.

3. Disposal and Transfer Fee Adjustments. The Disposal Fees and Transfer Fees may be increased or decreased for inflation or deflation beginning on October 1, 2015, and on the first day of each Fiscal Year thereafter, relative to increases or decreases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases or decreases shall be capped at five percent (5%) per year for the term of this Agreement. In the event that the actual CPI increase or decrease exceeds the five percent (5%) cap in a given Fiscal Year, the amount of CPI increase or decrease above or below the five percent (5%) cap shall be applied to CPI increases or decreases in future years when the CPI increase or decrease is less than five percent (5%). The Disposal Fees and Transfer Fees shall not otherwise increase, unless as required by Change in Law, as defined herein, which may occur at any time during the term of this Agreement. The **County** and **PWS** shall notify one another, as applicable, of proposed Disposal Fee and Transfer Fee adjustments on the basis of Change in Law. A Disposal Fee or Transfer Fee increase based on Change in Law shall fully compensate the **County** or **PWS**, as applicable, for its increased costs. **PWS** shall pay prevailing disposal fees for waste materials for which the **County** charges other than the County Disposal Fee for the entire term of this Agreement, including, without limitation, tires and asbestos, if provided to the **County** for disposal. In no case shall disposal and transfer fee adjustments require **PWS** to pay higher disposal or transfer fees than those offered to any other user of the System.

4. Terms of Payment.

A. The **County** shall invoice **PWS** for Disposal and Transfer Fees, based on **County** weighing records, by means of First Class U.S. Mail, within five (5) days of the last day of each month, commencing in the first month after the effective date of this Agreement, and continuing monthly thereafter for the term of this Agreement. In accordance with Section 218.74(2), Florida Statutes, as amended from time to time, payment of Disposal and Transfer Fees owed to the **County** shall be due from, and payment shall be made by **PWS**, forty-five (45) days from the date of receipt of the **County's** monthly invoice.

B. In the event that the **County** delivers MSW to the JED Landfill or the Facility during the term of this Agreement, **PWS** shall invoice the **County** for applicable Disposal and

Transfer Fees based on its weighing records, by means of First Class U.S. Mail, within five (5) days of the last day of the month. The **County** shall pay Disposal and Transfer Fees owed to **PWS** within forty-five (45) days from the date of **County** receipt of an invoice from **PWS**.

5. Dispute on Invoicing. In the event of a dispute on invoicing, **PWS** or the **County**, as applicable, shall first pay the full amount of the disputed charges when due and shall, within thirty (30) days from the date of receipt of the disputed invoice, give written notice of the disputed invoice to **PWS** or the **County**, as applicable. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The County Mayor or his designee shall confer with **PWS** and the County Mayor or his designee shall resolve the dispute not later than sixty (60) days after the date upon which the disputed invoice was received. Should **PWS** disagree with the determination of the County Mayor or his designee, it may pursue any remedy at law except withholding payment.

ARTICLE 4
WEIGHING RECORDS

The **County** shall cause all System facilities and **PWS** shall cause all its facilities to operate and maintain motor truck scales calibrated to the accuracy required by Florida law and to weigh all vehicles delivering MSW. The **County** or its contractor or **PWS**, as applicable, may from time to time, require revalidation of the tare weight of any vehicle. **PWS** and the **County**, as applicable, shall provide to one another information about each contract hauler or other entity delivering MSW on its behalf to include: name and address, make, body type and motor vehicle registration number of each vehicle used for such purpose. All such haulers shall have and maintain a valid **County** solid waste hauler permit in accordance with Section 15-17 of the Code of Miami-Dade County, as amended from time to time.

The **County** and **PWS** will supply each other with monthly weighing records as may be reasonably required by either the **County** or **PWS** to administer their Waste operations. Copies of all transaction tickets will be maintained by the **County** and **PWS** for at least two (2) years. If weighing scales are inoperable or are being tested, the facility operator shall estimate the quantity of MSW delivered using a schedule of estimated waste material weights in accordance with Section 15-25, Subsections (b) and (d) of the Miami-Dade County Code, as amended from time to time. The estimates shall take the place of actual weighing records, when the scales are not operational. The **County** and **PWS** shall use reasonable efforts to maintain the scales in an operable condition.

ARTICLE 5
DURATION OF AGREEMENT

The term of MSW deliveries by **PWS** to the **County** under this Agreement shall commence on the effective date of this Agreement and shall remain in effect up to and including October 1, 2025. Following the initial term, and upon mutual agreement of the parties hereto, this agreement may be renewed for up to two (2) successive five (5) year periods. In the event that this Agreement is terminated prior to October 1, 2025, the Director shall reevaluate the adverse financial impact, in accordance with then applicable sections of the Miami-Dade County Code, on the System of further operation of the **PWS** transfer facility, and shall submit his/her findings

to the Director of the County's Department of Regulatory and Economic Resources (RER) within ninety (90) days. Continuance of the RER operating permit for the transfer facility shall be contingent upon satisfactory compliance with then applicable sections of the Miami-Dade County Code.

ARTICLE 6
APPROVALS AND NOTICES

Notices and approvals required or contemplated by this Agreement shall be written and personally served or mailed, by registered or certified United States mail, with return receipt requested, to the following address:

To County:
Miami-Dade County Florida
111 N.W. 1st Street, 29th Floor
Miami, FL 33128
Attn.: County Mayor
Phone: (305) 375-5311

cc: Department of Public Works & Waste Management
111 N.W. 1st Street, 29th Floor

Miami, FL 33166
Attn.: Deputy Mayor and Director, Public Works and Waste Management Department
Phone: (305) 375-5311

cc: Miami-Dade County Attorney's Office
111 N.W. 1st Street, 27th Floor
Miami, FL 33128
Attn.: Assistant County Attorney Representing Public Works and Waste Management
Phone: (305) 375-5151

To PWS:
Progressive Waste Solutions of FL, Inc.
450 Carillon Parkway
Suite 2-130
St. Petersburg, FL 33716
Attn: Mr. Dean DiValerio
Phone: (727) 258-0941

cc: Progressive Waste Solutions of FL, Inc.
2301 Eagle Parkway
Suite 200
Fort Worth, TX 76177
Attn: General Counsel
Phone: (817) 632-4017

ARTICLE 7
AMENDMENT TO AGREEMENT

This Agreement may be modified, altered or amended only by a written amendment duly executed by the parties hereto. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

ARTICLE 8
NON-ASSIGNMENT

In no case shall **PWS** assign, transfer, convey or otherwise hypothecate any interest, rights, duties, or obligations hereunder, or any part thereof to any person, partnership, corporation or other entity, or to, including without limitation, any division, subsidiary or affiliate of **PWS**, without approval in writing by the County Mayor in his sole discretion. In the event **PWS** attempts to assign, transfer, convey or otherwise hypothecate this Agreement or its rights, duties or obligations hereunder, or any part thereof, the **County** may at its option, terminate this Agreement within five (5) days of issuing notice of its intent to terminate in accordance with Article 6 of this Agreement.

ARTICLE 9
INDEMNIFICATION

PWS shall indemnify and hold harmless the **County** and its officers, employees and agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the **County** or its officers, employees or agents may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature, including, without limitation, Worker's Compensation claims and violations of Environmental Law, arising out of or resulting from the negligence of **PWS** or its employees', agents', servants', partners', principals' or subcontractors' within the scope of this Agreement; and **PWS** shall, at its own expense and at the **County**'s option, appear, defend and pay all charges or attorneys' fees and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgments shall be rendered against the **County** or its officers, employees or agents in any such action, **PWS** shall, at its own expense, satisfy and discharge same. **PWS** is not obligated to indemnify the **County** and its officers, employees and agents from any and all liability, losses or damages, including attorneys' fees and costs of defense should the **County** be found negligent or have willful misconduct. **PWS** expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided by **PWS,** shall in no way limit the responsibility to indemnify, keep and save harmless and defend the **County** or its officers, employees or agents as herein provided.

ARTICLE 10
INSURANCE REQUIREMENTS

Insurance Requirements: County

PWS recognizes that the **County** has an on-going self-insurance program for Worker's Compensation, Public Liability and Automobile Liability, in compliance with and subject to limitations of the Florida Statutes, Section 768.28.

Insurance Requirements: PWS

In addition to any specific state or federal insurance requirements, **PWS** shall furnish to Miami-Dade County, c/o Risk Management Division, 111 N.W. 1st Street, Suite 2340, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

a. Worker's Compensation Insurance for all employees of the Contractor or subcontractor(s) as required by Florida Statute 440.

b. Public Liability Insurance on a comprehensive basis, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. The **County** must be shown as an additional insured with respect to this coverage.

c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of **PWS**.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of the Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and must be members of the Florida Guaranty Fund. Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

ARTICLE 11
NONDISCRIMINATION

PWS agrees that there will be no discrimination as to race, sex, religion, age, handicaps, color, creed, or national origin with regard to obligations, work, and services performed under the terms of this Agreement. **PWS** agrees to comply with Executive order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375, as supplemented by the Department of Labor Regulations (41CFR, Part 60).

ARTICLE 12
RIGHTS OF OTHERS

Nothing in this Agreement, either express or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement. There are no third party beneficiaries to this Agreement.

ARTICLE 13
WAIVER

There shall be no waiver of any right related to this Agreement unless that such waiver is in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular rights waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

ARTICLE 14
FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under this Agreement during any period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch. It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a Force Majeure delay has commenced within five (5) working days after such commencement. If a party fails to give timely notice, such failure shall not prejudice any party's right to justify any non-performance as caused by Force Majeure, unless the failure to give timely notice causes material prejudice to the other party.

ARTICLE 15
COUNTY EVENT OF DEFAULT

The failure by the **County** to substantially fulfill any of its material obligations in accordance with this Agreement, unless excuses are justified by Force Majeure, shall constitute a "**County** event of default". If a **County** event of default should occur, **PWS** shall have all of the following rights and remedies which it may exercise singly or in combination: 1. the right to declare that this Agreement together with all rights granted to the **County** hereunder are

terminated, effective upon such date as is designated by PWS; 2. any and all other rights provided under federal laws and the laws of the State of Florida. In any event, the **County** shall maintain responsibility for any debts owed to **PWS** for services provided under the terms of this Agreement. Notwithstanding any other provision of this article, **PWS** shall not terminate this Agreement for a "**County** event of default" unless **PWS** first give(s) the **County** written notice of intent to terminate specifying the alleged default, and providing the **County** a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 16
PWS EVENT OF DEFAULT

The failure by **PWS** to substantially fulfill any of its material obligations in accordance with this Agreement, unless excuses are justified by Force Majeure, shall constitute a "**PWS** event of default". If a **PWS** event of default should occur, the **County** shall have all of the following rights and remedies which it may exercise singly or in combination: 1. the right to declare that this Agreement together with all rights granted to **PWS** hereunder are terminated, effective upon such date as is designated by the **County;** 2. any and all other rights provided under federal laws and the laws of the State of Florida. In any event, **PWS** shall maintain responsibility for any debts owed to the **County** for services provided under the terms of this Agreement. Notwithstanding any other provision of this article, the **County** shall not terminate this Agreement for a "**PWS** event of default" unless the **County** first give(s) **PWS** written notice of intent to terminate specifying the alleged default, and providing **PWS** a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 17
AGREEMENT GOVERNS; ENTIRE AGREEMENT

This Agreement shall govern and supersede any other Agreement between **PWS** and the **County** with regard to provision of solid waste disposal services by **PWS.** This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 18
HEADINGS

The Section headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way effect its provisions.

ARTICLE 19
RELATIONSHIPS OF THE PARTIES

PWS shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the **County**. Nothing herein shall be construed as creating a partnership or joint venture between the **County** and **PWS**. No person performing any of the work or services described hereunder shall be considered and officer, agent, servant or employee of the County, nor shall any such person be entitled to any benefits available or granted to employees of the County.

ARTICLE 20
FLORIDA LAW GOVERNS; VENUE IN DADE COUNTY, FLORIDA

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

ARTICLE 21
BINDING EFFECT

This Agreement shall be binding upon the parties and their respective successors and assigns.

ARTICLE 22
COUNTERPARTS

This Agreement may be executed in one or more counterpart(s), each of which shall be deemed an original.

ARTICLE 23
SEVERABILITY

If any term, covenant or provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the balance of this Agreement shall remain in effect and be construed without regard to such provision.

[Continued on following page]

IN WITNESS WHEREOF, Miami-Dade County, Florida, by and through its Board of County Commissioners has caused this Agreement to be executed in its name by the duly authorized County Mayor or his designee, attested by the clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and Progressive Waste Solutions of FL, Inc. has caused this Agreement to be executed in its name by its duly authorized Chairman or Vice-President attested by its Assistant Secretary and has caused the seal of the corporation to be attached, all on the date stated above.

ATTEST:

Progressive Waste Solutions of FL, Inc.
A Delaware Corporation

By:_____
Assistant Secretary
Thomas J. Fowler

By:_____
Dean DiValerio
Region Vice-President

[SEAL]

ATTEST:

HARVEY RUVIN

MIAMI-DADE COUNTY, a political subdivision of the State of Florida BY ITS BOARD OF COUNTY COMMISSIONERS

By:_____
Clerk of the Board

By:_____
Carlos A. Gimenez
County Mayor

Approved for Legal Sufficiency by:

_____
Assistant County Attorney