

RESOLUTION NO. 16-12-8

A RESOLUTION OF THE CITY OF COOPER CITY, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH WHEELABRATOR ENVIRONMENTAL SYSTEMS, INC. FOR OPTIONAL WASTE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COOPER CITY, FLORIDA:

Section 1: That the Mayor and City Clerk be and hereby are authorized to execute an Agreement with Wheelabrator Environmental Systems, Inc. for Optional Waste Services, a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference.

Section 2: This Resolution shall be in force and take full effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 13th day of December, A.D., 2016.

GREG ROSS
Mayor

ATTEST:

SUSAN POLING
City Clerk

ROLL CALL

Mayor Ross _____
Commissioner Sims _____
Commissioner Mallozzi _____
Commissioner Curran _____
Commissioner Green _____

AGREEMENT

between

CITY OF COOPER CITY

and

WHEELABRATOR ENVIRONMENTAL SYSTEMS INC.

for

OPTIONAL WASTE SERVICES

This Agreement (“Agreement”) dated this ____ day of _____, 2016, between CITY OF COOPER CITY, a municipal corporation of the State of Florida, its successors and assigns, hereinafter the “CITY”;

AND

WHEELABRATOR ENVIRONMENTAL SYSTEMS INC., a Delaware corporation, hereinafter referred to as “WHEELABRATOR”;

ARTICLE 1

- 1.1 The CITY desires to provide service for itself and for its residents for certain Optional Waste Services as defined herein.
- 1.2 Subject to the terms and conditions of this Agreement, WHEELABRATOR is willing to provide Optional Waste Services to the CITY.
- 1.3 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
DEFINITIONS

The following contains the definitions of the terms as applied to this Agreement.

- 2.1 Agreement. The term “Agreement” shall mean this Agreement for the providing of Optional Waste Services.
- 2.2 Bulk Trash. The term “Bulk Trash” includes large items such as sofas, chairs, mattresses, appliances, carpeting, and White Goods, as well as woody waste such as fencing and lumber.
- 2.3 City. The term “CITY” shall mean CITY OF COOPER CITY.

- 2.4 Electronic Waste. The term “Electronic Waste” means end of life electronic devices, such as computers, computer monitors, televisions, printers, fax machines, cell phones, and copiers.
- 2.5 Hazardous Waste. The term “Hazardous Waste” means any waste, substance, object or material deemed hazardous under (i) Section 403.703, Florida Statutes; (ii) RCRA, 42 U.S.C.A. § 6901, *et seq.*; (iii) CERCLA, 42 U.S.C.A. § 9601, *et seq.*; Toxic Substances Control Act, 15 U.S.C.A. § 2601, *et seq.*; and in each of the foregoing cases, applicable regulations promulgated thereunder.
- 2.6 HHW. The term “Household Hazardous Wastes” or “HHW” shall mean those products listed in Exhibit “A” that are stored, generated or used at a resident’s household, together with such other Hazardous Waste, substances, goods, products, equipment, and other matter as are stored, generated, or used at a resident’s household which are now part of, or in the future become part of, the Additional Waste HHW program or Special Waste program conducted by Broward County and Wheelabrator Environmental Systems Inc. in conjunction with that certain contract between them dated June 26, 2012. The term includes Electronic Waste, waste tires, and used oil and lead-acid batteries.
- 2.7 Interlocal Agreement. The term “Interlocal Agreement” shall mean the Interlocal Agreement between the CITY and Broward County, dated as of February 22, 2013.
- 2.8 Optional Waste Services. The term “Optional Waste Services” shall mean the services to be performed by WHEELABRATOR for collection and disposal of HHW as further described in the Scope of Work attached as Exhibit “A”, and the disposal of HHW and Special Waste when dropped off at a designated WHEELABRATOR facility by CITY and CITY residents.
- 2.9 Optional Waste Services Fee. The term “Optional Waste Services Fee” shall be the fee to be paid by the CITY for the performance of the Optional Waste Services as set forth in Article 4 hereof.
- 2.10 Special Waste. The term “Special Waste” means solid wastes that are stored, generated or used at a resident’s household and that can require special handling and management, including, but not limited to, Bulk Trash, White Goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, and Yard Trash.
- 2.11 White Goods. The term “White Goods” includes discarded air conditioners, heaters, refrigerators, ranges, water heaters, freezers, and other similar domestic large appliances that are stored, generated or used at a resident’s household.
- 2.12 Yard Trash. The term “Yard Trash” means vegetative matter resulting from landscaping maintenance and land clearing operations (and includes associated rocks and soils), and from tropical storms, or from hurricanes.

ARTICLE 3
SCOPE OF WORK

- 3.1 WHEELABRATOR (directly or through subcontractors) shall perform the Optional Waste Services as defined in this Agreement and as further set forth in the Scope of Work attached hereto as Exhibit "A" and made a part hereof.
- 3.2 WHEELABRATOR shall provide and perform everything required to be furnished and done to ensure the proper disposal of the HHW and Special Waste in accordance with all applicable law and regulation, and in doing so shall provide all required and reasonably necessary employment and the furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the receipt, processing, and disposal of the HHW and Special Waste and any associated residual materials.
- 3.3 WHEELABRATOR shall provide, at its sole expense, all necessary personnel, materials and equipment for the operation, maintenance and repair of disposal facilities, including but not limited to the primary WHEELABRATOR disposal facility, and the "Disposal Facilities" as defined under the Interlocal Agreement, to ensure always that HHW and Special Waste can be properly disposed of in accordance with the terms hereof. The primary WHEELABRATOR disposal facility for CITY and CITY residents to use for dropping off HHW and Special Waste shall be the WHEELABRATOR South Broward facility ("Wheelabrator South Broward") located at 4400 S State Road 7, Davie, FL (the "Primary Wheelabrator Disposal Facility"). WHEELABRATOR reserves the right to relocate the Primary Wheelabrator Disposal Facility to another mutually agreeable location upon thirty (30) days' prior notice to the CITY.
- 3.4 WHEELABRATOR shall keep the Primary Wheelabrator Disposal Facility open for the receipt of HHW and Special Waste from the CITY or the CITY's residents from 8:00 a.m. to 4:00 p.m. on the designated Saturdays during the year. In the event WHEELABRATOR's standard operating hours change, WHEELABRATOR will coordinate with the CITY to ensure an acceptable disposal facility is open and available for the receipt of HHW and Special Waste from the CITY and its residents during the hours prescribed above.

ARTICLE 4
PAYMENT

The CITY shall pay WHEELABRATOR \$15,000.00 annually for performance of the Optional Waste Services. Payments of \$1,250.00 are due within thirty (30) days of each of the twelve collection events held per year in accordance with this Agreement.

ARTICLE 5
RELATIONSHIPS OF THE PARTIES

Except as set forth herein, no party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement shall be deemed to constitute a partnership or joint venture or to create any type of fiduciary responsibility or relationship or any kind whatsoever between the parties. The obligations created and imposed by this Agreement are not joint; rather, such obligations are separate and several between each of WHEELABRATOR and CITY.

ARTICLE 6
INDEMNIFICATION; INSURANCE

- 6.1 WHEELABRATOR shall protect, indemnify, defend, and hold harmless the CITY, and its present and future elected and appointed officials, officers, and employees (collectively "CITY Indemnites"), from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits or actions (including administrative, at trial, and at all judicial or appellate review), which relate, refer, or pertain to personal injury, bodily injury, sickness, disease or death, or some or all of the foregoing, of any person(s), or loss or damage to property, or pollution or environmental contamination, arising out of:
- A. WHEELABRATOR's operation of disposal facilities to perform the Optional Waste Services under this Agreement; or,
 - B. WHEELABRATOR's performance (or non-performance) of its obligations under this Agreement; or,
 - C. Any negligent or reckless or intentional act or omission of WHEELABRATOR's officers or employees in the performance of services hereunder; or,
 - D. Some or all of the foregoing, including any such actions of subcontractors utilized by WHEELABRATOR to perform the Optional Waste Services under this Agreement.

Notwithstanding the foregoing, WHEELABRATOR is not required by this Paragraph 6.1 to indemnify or hold harmless the CITY for liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits or actions to the extent caused by the negligent or reckless acts or omissions, or willful misconduct, of the CITY.

- 6.2 In the Event it becomes necessary for either WHEELABRATOR or CITY to enforce the indemnity and Hold Harmless set forth in Paragraph 6.1 above, the prevailing party shall be entitled to recover its attorney's fees and court costs.
- 6.3 Notwithstanding anything to the contrary, the Indemnity and Hold Harmless provisions of this Article 6 shall survive the termination or expiration of this

Agreement, regardless of the reason (or lack thereof) for such termination or expiration.

6.4 WHEELABRATOR shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, commencing prior to the commencement of the work and continuing to provide coverage for claims based on occurrences during the term of this Agreement (except for Pollution Liability, which may be provided on a claims made basis) for a minimum of three (3) years from the date of termination or expiration of this Agreement:

General Liability	\$1,000,000/\$2,000,000
Automobile Liability	\$1,000,000/\$2,000,000
Pollution Liability	\$25,000,000/\$50,000,000
Commercial Umbrella	\$25,000,000
Employer's Liability	\$1,000,000
Worker's Compensation	Statutory Amount

6.4.1 The CITY shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation.

6.4.2 Insurance Company-Standards. Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with a minimum rating from AM Best Company of A- Excellent: FSC VII.

6.4.3 WHEELABRATOR agrees to furnish CITY with at least thirty (30) days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, WHEELABRATOR shall furnish, at least ten days prior to 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 the Agreement and extension there under is in effect. WHEELABRATOR shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

6.4.4 To ensure an adequate level of outstanding insurance coverage for claims that arise from WHEELABRATOR's performance under this Agreement, WHEELABRATOR shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of \$25,000,000 after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the three year period set forth above.

6.5 WHEELABRATOR shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely

responsible for the payment of all deductibles and retentions to which such policies are subject.

- 6.6 WHEELABRATOR may satisfy the requirements of Article 6.4 by ensuring that the CITY is an additional insured on its policies and coverages which it is required to maintain under the Interlocal Agreement, except for Workman's Compensation, and supplying either endorsements to coverage or certificates of insurance evidencing same, whichever the CITY risk management supervisor may require.

ARTICLE 7 **DEFAULT AND TERMINATION**

In the event there should occur any material breach in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty (30) days, except for a monetary breach which shall be remedied within fifteen (15) days, after receipt of notice from the non-breaching party specifying such breach, the non-breaching party may, if such breach is continuing, terminate this Agreement upon thirty (30) days (or fifteen 15 days in the case of monetary breach) notice to the party in breach.

In the event the City is not satisfied with the level of resident participation in the HHW program provided under this Agreement, the CITY may terminate this Agreement for convenience upon ninety (90) days written notice to WHEELABRATOR.

ARTICLE 8 **DURATION**

- 8.1 This Agreement shall be effective upon execution by CITY and WHEELABRATOR. This Agreement shall continue for an "Initial Term" that expires on July 3, 2018, unless renewed or terminated earlier by the parties as set forth herein. This Agreement may be renewed by mutual agreement for up to three (3) additional, successive five year terms (each renewal is a "Renewal Term") upon the terms set forth herein.
- 8.2 Notwithstanding the foregoing, if for any reason the Interlocal Agreement is terminated, WHEELABRATOR shall advise the CITY as soon as possible of such fact, and this Agreement shall be deemed terminated as of the date of termination of the Interlocal Agreement.
- 8.3 All indemnities provided to the CITY under this Agreement shall survive the Agreement's termination or expiration.

ARTICLE 9 **MISCELLANEOUS**

- 9.1 ASSIGNMENT. This Agreement, or any interest herein, may not be assigned, transferred or otherwise encumbered, under any circumstances, by any party, without the prior written consent of the other party to this Agreement.

- 9.2 STATE AND FEDERAL LAWS. The provision of HHW disposal services and all other services to be provided by WHEELABRATOR under this Agreement shall comply with all applicable state and federal laws. This Agreement shall be construed in accordance with the laws of the State of Florida.
- 9.3 NOTICES. All notices, consents and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and shall be delivered either by hand with proof of delivery or mailed by first class registered or certified mail, return receipt required, postage prepaid, and in any case shall be addressed as provided in Exhibit "B", which is attached hereto and made a part hereof. Changes in the respective addresses of WHEELABRATOR and CITY provided in Exhibit "B" may be made by either party by giving written notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.
- 9.4 INCORPORATION OF AGREEMENTS. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements, or understandings, applicable to the matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties.
- 9.5 SEVERABILITY. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.
- 9.6 REPRESENTATIONS AND WARRANTIES. Each of WHEELABRATOR and CITY hereby represents and warrants as to itself as follows:
- A. It is duly organized and validly existing under the constitution and laws of the State of its incorporation, with full legal right, power and authority to enter into and perform its obligations hereunder;
 - B. This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by Article X, Section 13 of the Florida Constitution or bankruptcy, moratorium, reorganization or similar laws affecting the right of creditors generally).

- 9.7 JOINT PREPARATION. Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
- 9.8 JURISDICTION, VENUE, WAIVER OF JURY TRIAL. This Agreement shall be interpreted and construed in accordance with and covered by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional devise. BY ENTERING INTO THIS AGREEMENT, WHEELABRATOR AND CITY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.
- 9.9 MULTIPLE ORIGINALS. Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the full force and effect of any original document. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; CITY, signing by and through its Mayor, authorized to execute same by City Commission action on this ____ day of _____, 2016, and WHEELABRATOR, signing by and through officers duly authorized to execute same.

CITY

CITY OF COOPER CITY

ATTEST:

Name: Susan Poling
Title: City Clerk

By: _____
Name: Greg Ross
Title: Mayor
Date: December 13, 2016

Approved as to form by:

Name: David M. Wolpin
Title: City Attorney
Date: December 13, 2016

WHEELABRATOR

WHEELABRATOR ENVIRONMENTAL SYSTEMS INC.

ATTEST:

Name:
Title:

By: _____
Name:
Title:
Date:

**EXHIBIT “A”
SCOPE OF WORK**

Household Hazardous Waste (HHW) Collection:

WHEELABRATOR shall conduct twelve (12) monthly Household Hazardous Waste (HHW) Collection Events per year. These events are open to all CITY residents free of charge with proof of residency. There will be a convenient drive-thru service where WHEELABRATOR staff will unload the resident's HHW; the resident may be encouraged to remain in his or her vehicle. The residents will be asked to keep the HHW products in their original containers, or to label them clearly. The residents will be asked to ensure all lids are sealed tightly, and leaking containers should be placed in a large plastic container.

Free Drop Off with Proof of City Residency
(Dates to be mutually agreed upon and set by CITY and WHEELABRATOR)

Location - Primary Wheelabrator Disposal Facility
Wheelabrator South Broward
4400 S State Road 7
Davie, FL 33314

- Furniture and metal polish
- Insecticides
- Automotive fluids and gasoline solvents
- Fertilizers
- Fire extinguishers
- Flares
- Mercury thermometers, rechargeable and automobile batteries
- Oil/latex paints
- Oven and drain cleaners
- Paint thinners/strippers
- Pesticides
- Pool chemicals
- Propane tanks
- Spot removers
- Tires
- Used oil
- Electronics

Wheelabrator reserves the right to refuse acceptance of types of waste not covered by this Agreement.

WHEELABRATOR, directly or through its subcontractor, will have a staff person at their sites at all times who is certified to deal with hazardous materials to ensure that the work of the vendors follow all regulatory and safety requirements. The same staff person shall ensure customer service as well.

1. **Full Service.** WHEELABRATOR's program accepts a full range of household hazardous materials from your residents, including household cleaners, lawn chemicals, pesticides, paint, tires (up to 4 per resident, per event), electronics, auto and boat batteries, motor oil and gasoline, and pool chemicals.
2. **Convenience.** WHEELABRATOR shall keep the Primary Wheelabrator Disposal Facility open for the receipt of HHW and Special Waste from the CITY or the CITY's citizens from 8:00 a.m. to 4:00 p.m. on Saturdays, during the year, excluding Holidays in accordance with the terms of the Agreement.
3. **Electronics Recycling.** WHEELABRATOR's services under this Agreement includes the recycling of household electronics, such as computers, televisions, printers, DVD/VCR players, copiers, and cell phones.
4. **Customer Service.** WHEELABRATOR, its employees and subcontractors are committed to providing a high level of professionalism and want to make each customer's drop-off a positive experience.
5. **Accountability.** The materials collected through WHEELABRATOR's HHW and electronics program shall be recycled where possible, and otherwise properly disposed of through the utilization of EPA-permitted facilities. The program includes regulatory oversight and monitoring of all personnel associated with handling the materials, and materials shall be tracked to their final disposition to ensure environmental compliance.
6. **Reporting.** The CITY will be provided with a quarterly report on their residents' participation in the program, program activities, and associated costs in a format acceptable to the CITY.

EXHIBIT "B"
NOTICES FOR PARTIES

CITY:

Denise Yoezle
Public Works Director
City of Cooper City
9070 SW 51st Street
Cooper City, FL 33329

With a copy to:

David M. Wolpin, Esq.
City Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
200 E. Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301

WHEELABRATOR:

Wheelabrator Environmental Systems Inc.
4400 S State Road 7
Davie, FL 33314

With a copy to:

Wheelabrator Environmental Systems Inc.
100 Arboretum Drive
Suite 310
Portsmouth, NH 03801
Attn: General Counsel