

**Exclusive Franchise Agreement**  
**between**  
**City of Delray Beach, Florida**  
**and**  
**Southern Waste Systems, LLC**  
**for the Collection of**  
**Solid Waste and Recyclable Materials**

# Exclusive Franchise Agreement

## Table of Contents

<b>1.</b>	<b>DEFINITIONS .....</b>	<b>2</b>
<b>2.</b>	<b>CONTRACTOR’S FRANCHISE.....</b>	<b>10</b>
2.1	EXCLUSIVE FRANCHISE FOR RESIDENTIAL AND COMMERCIAL COLLECTION SERVICE.....	10
2.2	NON-EXCLUSIVE FRANCHISE FOR SOURCE SEPARATED RECYCLABLE MATERIALS GENERATED ON COMMERCIAL PROPERTY .....	10
2.3	LIMITATIONS ON THE CONTRACTOR'S FRANCHISE .....	10
<b>3.</b>	<b>TERM OF THIS AGREEMENT .....</b>	<b>10</b>
3.1	INITIAL TERM OF FRANCHISE AGREEMENT .....	10
3.2	CITY’S OPTION TO RENEW THE AGREEMENT .....	10
<b>4.</b>	<b>THE SERVICE AREA .....</b>	<b>11</b>
4.1	DESCRIPTION OF THE SERVICE AREA .....	11
4.2	ADJUSTMENTS TO THE SERVICE AREA .....	11
<b>5.</b>	<b>CONTRACTOR’S OBLIGATIONS PRIOR TO COMMENCEMENT DATE .....</b>	<b>11</b>
5.1	CONTRACTOR’S TRANSITION PLAN .....	11
5.2	DEADLINES FOR THE CONTRACTOR’S TRANSITION PLANNING.....	12
<b>6.</b>	<b>GENERAL SCOPE OF CONTRACTOR’S DUTIES AFTER COMMENCEMENT DATE.....</b>	<b>13</b>
<b>7.</b>	<b>CONTRACTOR’S SPECIFIC COLLECTION SERVICES .....</b>	<b>14</b>
7.1	GENERAL REQUIREMENTS FOR RESIDENTIAL COLLECTION SERVICE AT CURBSIDE.....	14
7.2	RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR RECYCLABLE MATERIALS .....	14
7.3	RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR BULKY WASTE.....	15
7.4	RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR YARD WASTE.....	15
7.5	RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR TIRES .....	16
7.6	RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR EXCESS AND OVERSIZED MATERIALS .....	16
7.7	RESIDENTIAL SIDE DOOR SERVICE.....	16
7.8	RESIDENTIAL COLLECTION SERVICE FOR MULTI-FAMILY DWELLINGS .....	17
7.9	COLLECTION OF GARBAGE AND RUBBISH FROM COMMERCIAL PROPERTY .....	17
7.10	COLLECTION OF SOURCE SEPARATED RECYCLABLE MATERIALS FROM COMMERCIAL PROPERTY .....	17
7.11	COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS, BULKY WASTE AND YARD WASTE FROM COMMERCIAL PROPERTY .....	17
7.12	SPECIAL COLLECTION SERVICE.....	18
7.13	OPTIONAL BENEFITS AND SERVICES .....	18
<b>8.</b>	<b>HOURS AND DAYS OF CONTRACTOR’S COLLECTION SERVICES.....</b>	<b>18</b>

<b>9.</b>	<b>SCHEDULES AND ROUTES FOR COLLECTION SERVICES.....</b>	<b>18</b>
9.1	SCHEDULES AND ROUTES .....	18
9.2	SCHEDULED COLLECTION DAYS FOR BULKY WASTE, YARD WASTE, AND SOURCE SEPARATED RECYCLABLE MATERIALS .....	19
9.3	SCHEDULES FOR TWICE WEEKLY SERVICE .....	19
<b>10.</b>	<b>CHANGES TO COLLECTION SCHEDULES AND ROUTES FOR RESIDENTIAL SERVICE .....</b>	<b>19</b>
10.1	NO CHANGES WITHOUT ADMINISTRATOR’S APPROVAL.....	19
10.2	HOLIDAY SCHEDULES .....	19
10.3	PUBLIC NOTICE OF CHANGES.....	20
10.4	NOTICE OF TEMPORARY DELAYS .....	20
10.5	NO DELAYS EXCUSED FOR FLUCTUATIONS IN SOLID WASTE QUANTITIES.....	20
<b>11.</b>	<b>MANDATORY CHANGES TO COLLECTION SERVICE .....</b>	<b>20</b>
<b>12.</b>	<b>THE RESIDENTIAL CUSTOMER LIST .....</b>	<b>21</b>
<b>13.</b>	<b>PROPER COLLECTION PROCEDURES FOR CONTRACTOR .....</b>	<b>22</b>
<b>14.</b>	<b>RESTRICTIONS ON COLLECTION OF MIXED LOADS .....</b>	<b>22</b>
<b>15.</b>	<b>NON-COLLECTION PROCEDURES.....</b>	<b>23</b>
<b>16.</b>	<b>PROCEDURES FOR MISSED COLLECTIONS.....</b>	<b>24</b>
<b>17.</b>	<b>PROTECTION OF PRIVATE AND PUBLIC PROPERTY .....</b>	<b>24</b>
<b>18.</b>	<b>CONTRACTOR’S ACCESS TO STREETS AND COLLECTION CONTAINERS.....</b>	<b>25</b>
<b>19.</b>	<b>THE CITY'S DESIGNATED FACILITIES .....</b>	<b>26</b>
<b>20.</b>	<b>SPILLAGE AND LITTER BY CONTRACTOR .....</b>	<b>26</b>
<b>21.</b>	<b>EXEMPT WASTES AND RECOVERED MATERIALS .....</b>	<b>27</b>
<b>22.</b>	<b>THE CONTRACTOR'S SAFETY PROGRAM .....</b>	<b>28</b>
<b>23.</b>	<b>THE CONTRACTOR'S COLLECTION PLAN.....</b>	<b>28</b>
<b>24.</b>	<b>OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS.....</b>	<b>29</b>
<b>25.</b>	<b>RESERVED.....</b>	<b>29</b>
<b>26.</b>	<b>SET OUT PROCEDURES FOR CUSTOMERS .....</b>	<b>29</b>
26.1	GENERAL PROCEDURES FOR ALL CUSTOMERS .....	30
26.2	SPECIFIC PROCEDURES FOR RESIDENTIAL CUSTOMERS RECEIVING COLLECTION SERVICE AT CURBSIDE .....	30
26.3	SPECIFIC PROCEDURES FOR CUSTOMERS IN MULTI-FAMILY DWELLINGS THAT USE MECHANICAL CONTAINERS .....	31
26.4	PROCEDURES FOR COMMERCIAL CUSTOMERS.....	32
<b>27.</b>	<b>COLLECTION CONTAINERS.....</b>	<b>32</b>
27.1	PURCHASE AND OWNERSHIP OF CONTAINERS .....	32
27.2	MAINTENANCE AND REPAIR OF CONTAINERS .....	34
27.3	STORAGE, DISTRIBUTION AND REPLACEMENT OF CONTAINERS .....	35
27.4	EXCHANGE OF CARTS AND CONTAINERS.....	35
27.5	TECHNICAL SPECIFICATIONS FOR COLLECTION CONTAINERS .....	36

<b>28.</b>	<b>CONTRACTOR’S VEHICLES AND COLLECTION EQUIPMENT .....</b>	<b>37</b>
28.1	GENERAL REQUIREMENTS FOR CONTRACTOR’S VEHICLES AND COLLECTION EQUIPMENT .....	37
28.2	DEDICATED FLEET FOR CITY .....	38
28.3	AGE OF CONTRACTOR’S COLLECTION VEHICLES .....	38
28.4	ANCILLARY EQUIPMENT IN CONTRACTOR’S VEHICLES .....	38
28.5	RESERVE VEHICLES AND EQUIPMENT .....	38
28.6	MAINTENANCE AND CLEANING .....	39
28.7	IDENTIFICATION OF CONTRACTOR’S VEHICLES AND EQUIPMENT .....	39
28.8	COMPLIANCE WITH THE LAW APPLICABLE TO VEHICLES .....	40
28.9	CITY’S RIGHT TO INSPECT CONTRACTOR’S VEHICLES AND EQUIPMENT .....	40
28.10	LOCAL STORAGE AND REPAIR OF CONTRACTOR’S VEHICLES .....	40
<b>29.</b>	<b>CONTRACTOR’S PERSONNEL.....</b>	<b>41</b>
29.1	GENERAL REQUIREMENTS .....	41
29.2	DISTRICT MANAGER .....	41
29.3	FIELD SUPERVISOR.....	41
29.4	EMPLOYEE CONDUCT .....	41
29.5	EMPLOYEE IDENTIFICATION .....	41
29.6	ATTIRE FOR EMPLOYEES .....	42
29.7	REMOVAL OF EMPLOYEES .....	42
29.8	EMPLOYEE TRAINING AND LICENSES.....	42
29.9	CONTRACTOR’S COMPLIANCE WITH LABOR LAWS.....	42
29.10	LEGAL STATUS OF CONTRACTOR’S EMPLOYEES .....	42
29.11	SUBCONTRACTORS AND TEMPORARY LABOR.....	42
<b>30.</b>	<b>CONTRACTOR’S LOCAL OFFICE.....</b>	<b>43</b>
<b>31.</b>	<b>CUSTOMER RELATIONS.....</b>	<b>43</b>
31.1	HANDLING CUSTOMER COMPLAINTS AND REQUESTS .....	43
31.2	DISPUTE RESOLUTION PROCESS FOR CUSTOMERS .....	45
<b>32.</b>	<b>CONTRACTOR’S RELATIONSHIP WITH THE CITY .....</b>	<b>45</b>
32.1	AVAILABILITY OF CONTRACTOR’S REPRESENTATIVES.....	45
32.2	ADMINISTRATOR’S REVIEW OF CONTRACTOR’S PERFORMANCE.....	45
32.3	CITY’S RIGHT TO INSPECT CONTRACTOR’S OPERATIONS .....	46
32.4	CITY’S RIGHT TO APPROVE.....	46
<b>33.</b>	<b>CONTRACTS FOR COMMERCIAL COLLECTION SERVICE .....</b>	<b>46</b>
33.1	CONTRACTS FOR COMMERCIAL COLLECTION SERVICE .....	46
33.2	DISCLOSURE OF FEES FOR COMMERCIAL COLLECTION SERVICE.....	47
33.3	RESERVED.....	47
33.4	INITIATION OF SERVICE TO A COMMERCIAL CUSTOMER .....	47
33.5	TERMINATION OF SERVICE TO A COMMERCIAL CUSTOMER .....	47
<b>34.</b>	<b>RECORD KEEPING AND REPORTING .....</b>	<b>48</b>
34.1	GENERAL RECORD KEEPING AND REPORTING REQUIREMENTS .....	48
34.2	SPECIFIC RECORD KEEPING REQUIREMENTS .....	48
34.3	QUARTERLY REPORT .....	50
34.4	ANNUAL REPORT .....	50

34.5	ACCIDENT REPORTS.....	50
34.6	CITY'S RIGHT TO INSPECT AND AUDIT CONTRACTOR'S RECORDS.....	51
34.7	PUBLIC'S RIGHT TO INSPECT CONTRACTOR'S RECORDS.....	51
<b>35.</b>	<b>PUBLIC NOTICES AND EDUCATIONAL SERVICES.....</b>	<b>52</b>
35.1	NOTICE FOR COMMENCEMENT OF SERVICE.....	52
35.2	ANNUAL NOTICE TO CUSTOMERS.....	52
35.3	NOTICES FOR NEW CUSTOMERS.....	52
35.4	NOTICES CONCERNING CHANGES IN COLLECTION SCHEDULES .....	52
35.5	NOTICES FOR HOLIDAYS .....	52
<b>36.</b>	<b>CONTRACTOR'S COLLECTION SERVICES FOR THE CITY.....</b>	<b>53</b>
36.1	GENERAL REQUIREMENTS .....	53
36.2	COLLECTION OF SOLID WASTE AND SOURCE SEPARATED RECYCLABLE MATERIALS AT CITY FACILITIES.....	53
36.3	COLLECTIONS FROM TRASH RECEPTACLES AND RECYCLING CONTAINERS AT BUS SHELTERS, PARKS, AND OTHER PUBLIC LOCATIONS.....	54
36.4	COLLECTION OF SOURCE SEPARATED RECYCLABLE MATERIALS AT PUBLIC DROP-OFF FACILITIES .....	54
36.5	COLLECTION OF BULKY WASTE AND YARD WASTE .....	55
36.6	COLLECTION OF BIOLOGICAL WASTE .....	55
36.7	COLLECTIONS FOR SPECIAL PROJECTS .....	55
36.8	COLLECTION FOR COMMUNITY EVENTS .....	55
36.9	CITY'S INTEGRATED SOLID WASTE MANAGEMENT PROGRAM AND PUBLIC EDUCATIONAL ACTIVITIES .....	56
<b>37.</b>	<b>CONTRACTOR'S EMERGENCY SERVICES.....</b>	<b>56</b>
37.1	COLLECTION OF GARBAGE AFTER A DISASTER .....	56
37.2	EMERGENCY VARIANCES IN ROUTES AND SCHEDULES .....	56
37.3	COLLECTION OF DISASTER DEBRIS .....	56
37.4	CONTRACTOR'S CONTINGENCY PLAN .....	57
37.5	CITY'S EMERGENCY MANAGEMENT MEETINGS .....	57
<b>38.</b>	<b>RATES FOR CONTRACTOR'S SERVICES .....</b>	<b>57</b>
38.1	UNIFORM RATES FOR ALL COLLECTION SERVICES .....	57
38.2	RATES FOR SPECIFIC COLLECTION SERVICES .....	57
38.3	CPI ADJUSTMENTS TO COLLECTION COMPONENT OF RATES .....	57
38.4	RESERVED.....	58
38.5	ADJUSTMENTS TO DISPOSAL COMPONENT OF COMMERCIAL RATES.....	58
38.6	RATE ADJUSTMENTS FOR CHANGES IN LAW .....	58
38.7	EXTRAORDINARY RATE ADJUSTMENTS .....	59
38.8	RATES FOR DISASTER DEBRIS .....	60
38.9	ADJUSTMENTS TO FRANCHISE FEE .....	60
<b>39.</b>	<b>PAYMENTS TO CONTRACTOR FOR COLLECTION SERVICES .....</b>	<b>60</b>
39.1	GENERAL BILLING AND PAYMENT PROVISIONS .....	60
39.2	PROHIBITIONS ON PAYMENTS FROM CUSTOMERS TO CONTRACTORS .....	60
39.3	PAYMENTS FROM CITY FOR RESIDENTIAL COLLECTION SERVICE.....	60

39.4	CITY’S PAYMENTS FOR COLLECTION SERVICES PROVIDED TO CITY PROPERTIES, TRASH RECEPTACLES, AND RECYCLING CONTAINERS .....	61
39.5	CITY’S PAYMENTS FOR DISPOSAL COSTS .....	61
39.6	CITY’S UNDERPAYMENTS AND OVERPAYMENTS TO CONTRACTOR .....	62
39.7	LIMITATIONS ON CONTRACTOR'S RIGHT TO PAYMENT FROM CITY .....	62
39.8	PAYMENT FOR COMMERCIAL COLLECTION SERVICES .....	62
39.9	PAYMENTS FOR GARBAGE CARTS AND RECYCLING CARTS .....	63
39.10	PAYMENTS FOR SPECIAL COLLECTION SERVICES .....	63
39.11	PAYMENTS FOR DISPOSAL OF UNACCEPTABLE WASTE .....	63
<b>40.</b>	<b>PAYMENTS TO THE CITY .....</b>	<b>63</b>
40.1	FRANCHISE FEES .....	63
40.2	OTHER PAYMENTS .....	65
<b>41.</b>	<b>RECYCLING REVENUES FOR CITY .....</b>	<b>65</b>
<b>42.</b>	<b>PAYMENT OF TIPPING FEES .....</b>	<b>65</b>
<b>43.</b>	<b>VERIFICATION OF PAYMENT AMOUNTS .....</b>	<b>65</b>
<b>44.</b>	<b>ADMINISTRATIVE CHARGES .....</b>	<b>66</b>
44.1	BASIS FOR ADMINISTRATIVE CHARGES .....	66
44.2	PROCEDURE FOR ASSESSING ADMINISTRATIVE CHARGES .....	66
44.3	ADMINISTRATIVE CHARGES BEFORE COMMENCEMENT DATE .....	67
44.4	ADMINISTRATIVE CHARGES DURING TERM OF AGREEMENT .....	67
<b>45.</b>	<b>PAYMENTS WITHHELD FROM CONTRACTOR .....</b>	<b>71</b>
<b>46.</b>	<b>NO LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO FORCE MAJEURE EVENTS .....</b>	<b>71</b>
<b>47.</b>	<b>BREACH AND TERMINATION OF AGREEMENT .....</b>	<b>72</b>
47.1	TERMINATION BY EITHER PARTY FOR CAUSE .....	72
47.2	INTERIM OPERATIONS .....	74
47.3	EFFECT OF TERMINATION .....	74
47.4	SETTLEMENT AND RELEASE .....	74
<b>48.</b>	<b>OPERATIONS DURING DISPUTE .....</b>	<b>75</b>
<b>49.</b>	<b>DISPUTE RESOLUTION PROCESS .....</b>	<b>75</b>
<b>50.</b>	<b>CONTRACTOR’S OBLIGATIONS PRIOR TO TERMINATION OF THIS AGREEMENT .....</b>	<b>76</b>
50.1	CONTINUATION OF CONTRACTOR’S SERVICE .....	76
50.2	SALE OR LEASE OF CONTRACTOR’S MECHANICAL CONTAINERS .....	76
50.3	SCHEDULE FOR TERMINATION OF CONTRACTOR’S SERVICE .....	77
50.4	CITY'S RIGHT TO PROCURE NEW SERVICES .....	77
<b>51.</b>	<b>DAMAGES AND INDEMNIFICATION .....</b>	<b>77</b>
51.1	LIABILITY .....	77
51.2	CONTRACTOR’S INDEMNIFICATION OF CITY .....	77
51.3	CONTRIBUTION .....	78
51.4	DAMAGES .....	78

51.5	NO PERSONAL LIABILITY .....	79
51.6	COLLECTION OF OVERDUE PAYMENTS AND INTEREST .....	79
<b>52.</b>	<b>CONTRACTOR’S INSURANCE .....</b>	<b>79</b>
52.1	COMMERCIAL GENERAL LIABILITY .....	79
52.2	BUSINESS AUTOMOBILE LIABILITY .....	80
52.3	POLLUTION LIABILITY .....	80
52.4	EXCESS LIABILITY .....	80
52.5	WORKER’S COMPENSATION INSURANCE & EMPLOYERS LIABILITY .....	80
52.6	ADDITIONAL INSURED ENDORSEMENTS .....	80
52.7	WAIVER OF SUBROGATION .....	80
52.8	CERTIFICATE(S) OF INSURANCE .....	81
52.9	DEDUCTIBLES, SELF-INSURED RETENTIONS, AND SUPPLEMENTAL COVERAGE.....	81
52.10	RIGHT TO REVISE OR REJECT .....	82
52.11	MINIMUM REQUIREMENTS FOR INSURANCE COMPANIES .....	82
52.12	OTHER INSURANCE REQUIREMENTS .....	82
<b>53.</b>	<b>PERFORMANCE BOND .....</b>	<b>82</b>
<b>54.</b>	<b>PARENT CORPORATION GUARANTEE .....</b>	<b>83</b>
<b>55.</b>	<b>ASSIGNMENT OF AGREEMENT .....</b>	<b>83</b>
<b>56.</b>	<b>TRANSFER OF AGREEMENT .....</b>	<b>84</b>
<b>57.</b>	<b>SUBSEQUENT CITY ORDINANCES .....</b>	<b>84</b>
<b>58.</b>	<b>AMENDMENTS TO THE AGREEMENT .....</b>	<b>84</b>
58.1	GENERAL REQUIREMENTS .....	84
58.2	CITY POWER TO AMEND AGREEMENT .....	84
58.3	AMENDMENTS DUE TO CHANGES IN LAW .....	85
<b>59.</b>	<b>WAIVER OF RIGHTS .....</b>	<b>85</b>
<b>60.</b>	<b>WAIVER OF FLOW CONTROL CLAIMS.....</b>	<b>85</b>
<b>61.</b>	<b>GOVERNING LAW AND VENUE .....</b>	<b>85</b>
<b>62.</b>	<b>COMPLIANCE WITH LAWS AND REGULATIONS.....</b>	<b>86</b>
<b>63.</b>	<b>PERMITS AND LICENSES .....</b>	<b>86</b>
<b>64.</b>	<b>EQUAL OPPORTUNITY EMPLOYMENT .....</b>	<b>86</b>
<b>65.</b>	<b>AGREEMENT DOCUMENTS .....</b>	<b>86</b>
<b>66.</b>	<b>ALL PRIOR AGREEMENTS SUPERSEDED .....</b>	<b>86</b>
<b>67.</b>	<b>HEADINGS .....</b>	<b>87</b>
<b>68.</b>	<b>CONSTRUCTION OF AGREEMENT .....</b>	<b>87</b>
<b>69.</b>	<b>SURVIVABILITY .....</b>	<b>87</b>
<b>70.</b>	<b>SEVERABILITY .....</b>	<b>87</b>
<b>71.</b>	<b>FAIR DEALING .....</b>	<b>88</b>
<b>72.</b>	<b>SOVEREIGN IMMUNITY.....</b>	<b>88</b>
<b>73.</b>	<b>REMEDIES NOT EXCLUSIVE .....</b>	<b>88</b>

<b>74.</b>	<b>NOTICES TO PARTIES .....</b>	<b>88</b>
<b>75.</b>	<b>COOPERATION WITH THE INSPECTOR GENERAL.....</b>	<b>89</b>
<b>76.</b>	<b>CONTRACTOR’S REPRESENTATIONS AND WARRANTIES.....</b>	<b>89</b>



## **EXHIBITS**

EXHIBIT 1	GENERAL MAP OF SERVICE AREA, INCLUDING AREAS RECEIVING SIDE DOOR SERVICE OR SERVICE WITH PLASTIC BAGS
EXHIBIT 2	RESERVED
EXHIBIT 3A	RATES FOR RESIDENTIAL COLLECTION SERVICES
EXHIBIT 3B	RATES FOR COMMERCIAL COLLECTION SERVICES
EXHIBIT 3C	RATES FOR COLLECTION SERVICES FOR THE CITY
EXHIBIT 3D	RATES FOR SPECIAL COLLECTION SERVICES
EXHIBIT 4	PARENT CORPORATION GUARANTEE
EXHIBIT 5	PERFORMANCE BOND
EXHIBIT 6	SPECIFICATIONS FOR GARBAGE CARTS
EXHIBIT 7	LIST OF BUS SHELTER LOCATIONS IN DELRAY BEACH
EXHIBIT 8	LIST OF BIG BELLY SOLAR LOCATIONS
EXHIBIT 9	LIST OF CITY PROPERTIES RECEIVING COLLECTION SERVICE
EXHIBIT 10	LIST OF CITY'S PUBLIC DROP-OFF FACILITIES FOR RECYCLABLE MATERIALS
EXHIBIT 11	LIST OF TRASH RECEPTACLES ON ATLANTIC AVENUE, THE BEACH, AND PINEAPPLE GROVE
EXHIBIT 12	SAMPLE CALCULATIONS FOR CPI ADJUSTMENTS
EXHIBIT 13	OPTIONAL BENEFITS AND SERVICES

## **EXCLUSIVE FRANCHISE AGREEMENT**

This Exclusive Franchise Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of February, 2015 (“Effective Date”) by and between the City of Delray Beach, Florida (“City”), a municipal corporation organized and existing under the laws of the State of Florida, and Southern Waste Systems, LLC (“Contractor”), a Florida limited liability company, which is authorized to do business in the State of Florida.

### **RECITALS**

WHEREAS, the City issued a request for proposals (“RFP”) (City RFP No. 2014-38) for the Collection of certain types of Solid Waste and Recyclable Materials that are generated in the City; and

WHEREAS, the Contractor submitted a proposal in response to the City’s RFP; and

WHEREAS, the City has relied upon the proposal and other information provided by the Contractor concerning the Contractor’s experience and ability to provide Collection Services to the City; and

WHEREAS, after evaluating all of the proposals that were submitted in response to the City’s RFP, the City Commission (“Commission”) finds that the Contractor has submitted the best proposal; and

WHEREAS, the City wishes to use and the Contractor wishes to provide the Contractor’s services for the Collection of Solid Waste and Recyclable Materials, subject to the terms and conditions contained in this Agreement; and

WHEREAS, the Commission finds that granting an exclusive franchise to the Contractor, subject to the terms and conditions contained in this Agreement, is in the public interest and will protect the public health, safety, and welfare; and

WHEREAS, the Commission finds that the franchise granted herein properly balances the Commission’s desire to provide excellent, environmentally-sound Collection Services to the City’s residents and the Commission’s desire to minimize the cost of such services; and

WHEREAS, the Solid Waste Authority of Palm Beach County (“Authority”) has adopted an integrated Solid Waste management plan and the City supports the Authority’s plan; and

WHEREAS, this Agreement will help the City implement the Authority’s integrated Solid Waste management plan, which will enhance the public health, safety, and welfare.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and the mutual benefits provided hereunder, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor agree that they shall be bound by and shall strictly comply with the following provisions of this Agreement:

## 1. DEFINITIONS

The definitions contained in this Section 1 shall be used when interpreting this Agreement. If a word or phrase is not defined in this Agreement, the definition of such word or phrase in the City's Ordinances shall apply. In the event that a definition contained herein conflicts with a similar definition in a federal, state or local law, including but not limited to the Ordinances, the definition herein shall prevail when construing this Agreement.

**1.1 Advertising** shall mean any written communication for the purpose of promoting a product or service. The Contractor's name and telephone number, and other information provided in the manner specified in this Agreement, is not Advertising.

**1.2 Administrator** shall mean the City's contract administrator for this Agreement. The Administrator shall be the City employee designated by the City Manager to be the City's official representative in routine discussions with the Contractor regarding this Agreement.

**1.3 Agreement** shall mean this Exclusive Franchise Agreement between the City and the Contractor.

**1.4 Applicable Law** shall mean any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which is in effect or is enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relates in any manner to the performance of the City or Contractor under this Agreement.

**1.5 Authority** shall mean the Solid Waste Authority of Palm Beach County.

**1.6 Biomedical Waste** shall mean any solid or liquid waste which may present a threat of infection to humans, including non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; discarded sharps; and absorbent materials saturated with blood or body fluids.

**1.7 Bulky Waste** shall mean a large item that is discarded by a Customer on their Property as a result of normal housekeeping activities, and cannot be placed in a Garbage Cart because of its size, shape or weight. Bulky Waste includes, but is not limited to, White Goods, furniture, fixtures, sinks, toilets, ladders, and large pieces of carpet.

**1.8 Certificate of Occupancy** shall mean a document issued by the City certifying that a newly constructed or renovated building complies with the City's specifications and is suitable for use.

**1.9 Change in Law** shall mean the adoption, promulgation, or modification of any Applicable Law after the Effective Date, which directly and substantially affects the Contractor's or City's cost or ability to perform under this Agreement. A Change in Law does not include a change in any tax law or workers' compensation law.

**1.10 City** shall mean, depending on the context, either (a) the geographic area contained within the boundaries of the incorporated City or (b) the government of the City, acting through the Commission or the Commission's designees.

**1.11 City Indemnified Parties** shall mean the City, the Commission and each of its members, and every agent, officer, official, servant, and employee of the City.

**1.12 City Manager** shall mean the City's chief executive officer or the City Manager's designee(s).

**1.13 Collection** shall mean the process of picking up Solid Waste and Recyclable Materials from a Person that generates such waste and materials, and then transporting and delivering the Solid Waste and Recyclable Materials to a Solid Waste Management Facility.

**1.14 Collection Container** shall mean Garbage Cans, Garbage Carts, Recycling Containers, and Mechanical Containers.

**1.15 Collection Plan** shall mean the Contractor's written plan for providing Collection Service in compliance with the requirements in this Agreement.

**1.16 Collection Service** shall mean one or more of the various services provided by the Contractor for the Collection of Solid Waste and Recyclable Materials. Collection Service includes, but is not limited to Residential Collection Service, Commercial Collection Service, Special Collection Service, and Collection Service provided to the City's facilities.

**1.17 Commencement Date** shall mean June 1, 2015, which is the date when the Contractor shall begin providing Collection Services in the City pursuant to this Agreement.

**1.18 Commercial Collection Service** shall mean the Collection of Commercial Waste from a Commercial Customer. Commercial Collection Service also includes the Collection of Source Separated Recyclable Materials from a Commercial Customer, if the Customer requests such service.

**1.19 Commercial Customer** shall mean any Person that owns or occupies Commercial Property and receives or should receive Commercial Collection Service from the Contractor pursuant to this Agreement.

**1.20 Commercial Lawn Care Company** shall mean a Person that provides lawn and garden maintenance services for remuneration. This definition includes landscapers.

**1.21 Commercial Property** shall mean real property that is located in the Service Area and not classified as Residential Property. Commercial Property includes property used primarily for: (a) commercial purposes, such as hotels, motels, stores, restaurants, business offices, theaters, and service stations; (b) institutional purposes, such as governmental offices, churches, hospitals, and schools; and (c) not-for-profit organizations. Vacant land, not classified as Improved Property, shall be deemed Commercial Property.

**1.22 Commercial Waste** shall mean Garbage, Rubbish and Bulky Waste generated on Commercial Property.

**1.23 Commission** shall mean the City Commission of the City of Delray Beach, Florida.

**1.24 Community Events** shall mean civic events sponsored by the City or designated by the City pursuant to Section 36.8, below.

**1.25 Compactor** shall mean a stationary or mobile mechanism that is used to compress and densify Solid Waste in a Mechanical Container.

**1.26 Construction and Demolition Debris** shall mean discarded materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete,

asphalt roofing material, pipe, gypsum wallboard, and lumber, resulting from the construction, destruction, or renovation of a structure.

**1.27 Consumer Price Index** or "CPI" shall mean the "Consumer Price Index—All Urban Consumers," all items, not seasonally adjusted, for the Miami-Ft. Lauderdale, Florida area, Base Period 1982-84 = 100 (Series ID CUURA320SA0), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor agency.

**1.28 Contingency Plan** shall mean the Contractor's plan for avoiding an interruption in Collection Service in the event that an emergency or other situation renders the Contractor's operations yard or equipment unusable.

**1.29 Contractor** shall mean Southern Waste Systems, LLC, a Florida limited liability company.

**1.30 Curbside** shall mean a location adjacent to a road or right-of-way that abuts a Customer's property and provides access for the Contractor's Collection vehicles. If there is no public access to the Customer's property, Curbside shall mean a location that is adjacent to a public or private roadway where the Contractor may lawfully gain access and provide Collection Service to the Customer. The adjacent location shall be within five (5) feet of the road or right-of-way.

**1.31 Customer** shall mean, depending on the context, a Commercial Customer or a Residential Customer or both.

**1.32 Designated Facility** shall mean a facility designated by the City for the Recycling or disposal of the Solid Waste and Source Separated Recyclable Materials collected pursuant to this Agreement.

**1.33 Disaster Debris** shall mean debris that is produced or generated by a natural or human event which is declared a federal disaster. Disaster Debris includes but is not limited to Yard Waste, Construction and Demolition Debris, and Bulky Waste that is produced or generated by such a disaster.

**1.34 Disaster Debris Contract** shall mean the City's contract(s) with one or more contractors for the removal, transporting, processing, disposal, or Recycling of Disaster Debris.

**1.35 District Manager** shall mean the employee designated by the Contractor as the Contractor's primary representative with regard to matters involving this Agreement.

**1.36 Dwelling Unit** shall mean any type of structure or building, or a portion thereof, intended for or capable of being used for residential living. A Dwelling Unit includes a room or rooms constituting a separate, independent living area with a kitchen or cooking facilities, a separate entrance, and bathroom facilities, which are physically separated from other Dwelling Units, whether located in the same structure or in separate structures. However, a room in a licensed hotel or motel is not a Dwelling Unit.

**1.37 Effective Date** shall mean the date when this Agreement is signed and duly executed by the Commission or its designee, which shall occur after the Agreement is signed and duly executed by the Contractor.

**1.38 Electronic Equipment** shall mean large electronic devices that have been discarded, including but not limited to computers, monitors, televisions, cathode ray tubes, printers, scanners, and copying machines.

**1.39 Exempt Waste** shall mean materials that are exempt from the Contractor's exclusive franchise under this Agreement.

**1.40 Field Supervisor** shall mean the Contractor's employee that is responsible for supervising the Contractor's Collection Services in the City.

**1.41 First Operating Year** shall mean the period beginning on June 1, 2015 (i.e., the Commencement Date) and continuing through and including September 30, 2015.

**1.42 Franchise Fee** shall mean the fee paid by the Contractor for the exclusive right to provide certain Collection Services in the City, and for the other rights and benefits provided to the Contractor under this Agreement.

**1.43 Garbage** shall mean all kitchen and table food waste, and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking, or handling of food materials.

**1.44 Garbage Can** shall mean any commonly available metal or heavy-duty plastic container for Solid Waste that has an enclosed bottom and sides, a tight fitting lid or top, handles on the sides, and a capacity of approximately thirty-five (35) gallons or less.

**1.45 Garbage Cart** shall mean a Garbage container that is made with heavy-duty hard plastic or other impervious material, with an enclosed bottom and sides, mounted on two wheels, equipped with a tight-fitting hinged lid, having a capacity of approximately one hundred (100) gallons or less, and used for the automated or semi-automated Collection of Garbage and Rubbish.

**1.46 Hazardous Waste** shall mean Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Waste includes any material or substance identified as a hazardous waste, hazardous substance, or hazardous material in the Florida Administrative Code, Florida Statutes, or other Applicable Law.

**1.47 Holiday** shall mean a day when the Contractor does not need to provide Collection Service to Residential Customers. The only Holidays are Thanksgiving Day and Christmas Day (December 25), unless the City and the Contractor mutually agree to add additional Holidays.

**1.48 Improved Property** shall mean any cleared, graded or drained real property upon which a building or structure is erected and occupied or capable of being occupied (i.e., a Certificate of Occupancy has been issued) for residential, commercial, institutional or industrial use.

**1.49 Indemnified Loss** shall mean all actual costs, losses, damages, expenses, and liabilities that a City Indemnified Party incurs or suffers pursuant to or in connection with any act, omission or negligence on the part of the Contractor or any of its agents, employees, or subcontractors in the execution or performance of the Contractor's obligations under or incidental to this Agreement. Such costs include but are not limited to attorneys' fees, court costs, and expert witness fees in trial, appellate, mediation, and bankruptcy proceedings. An Indemnified Loss includes but is not limited to: (a) any bodily injury, sickness, disease, or death; (b) any violation of Applicable Law (including workers' compensation laws, environmental laws, and health and safety laws) or any common law duty; (c) any actual or alleged infringement of any intellectual rights or property of any Person; (d) any pollution in violation of Applicable Law or damage or destruction to property, natural resources, or the environment; (e) any lawsuit resulting

from or challenging the designation by the Contractor of any document or material as exempt from public disclosure; (f) any lawsuit resulting from or challenging the City's decision to award this Agreement to the Contractor; and (h) defending, settling, prosecuting, investigating, or participating in (as a witness or otherwise) any proceeding that arises out of or pertains to any of the foregoing; in each case, without regard to or limitation by the amount or type of benefits, damages, or compensation payable by or for the Contractor, any subcontractor, or any subcontractor of a subcontractor under any Applicable Law (including employee benefits, disability benefits, and workers' compensation laws).

**1.50 Interest** shall mean a payment by the City or the Contractor for the use of money, which shall be set at a percentage rate determined pursuant to Section 55.03(1), Florida Statutes.

**1.51 Land Clearing Debris** shall mean the trees, tree trunks, limbs, stumps, bushes, vegetation, rocks, soil, and other materials resulting from a land clearing or lot clearing operation.

**1.52 Legitimate Complaint** shall mean any complaint by a Customer or the City in a case where the applicable requirements of this Agreement concerning the Collection of Solid Waste and Source Separated Recyclable Material were not satisfied by the Contractor.

**1.53 Load** shall mean the Solid Waste, Recyclable Material, and other cargo that is collected and transported in a Collection vehicle.

**1.54 Materials Recovery Facility** shall mean a Solid Waste Management Facility that provides for the extraction from Solid Waste of Recyclable Materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

**1.55 Mechanical Container** shall mean a dumpster, Roll-Off Container, Compactor, or other large container that is placed on and removed from a Person's Premises with mechanical equipment, and used for the Collection of Solid Waste or Source Separated Recyclable Materials.

**1.56 Missed Collection** shall mean any occasion when the Contractor fails to provide Collection Service to a Customer on a Scheduled Collection Day in compliance with the requirements in this Agreement.

**1.57 Multi-Family Collection Service** shall mean the collection of Residential Waste from Multi-Family Dwellings pursuant to this Agreement.

**1.58 Multi-Family Dwelling** shall mean apartments, condominiums, and other structures that have five (5) or more Dwelling Units under one roof.

**1.59 New Customer** shall mean a Person occupying Improved Property that did not receive Collection Services from the City's franchised hauler during the prior year.

**1.60 Non-Collection Notice** shall mean a written form, tag, or sticker that is used by the Contractor to notify a Customer of the reason(s) why the materials Set Out by the Customer were not collected by the Contractor.

**1.61 Non-Conforming Material** shall mean any material that is Set Out for Collection in a Recycling Container, but is not a Recyclable Material.

**1.62 Operating Day** shall mean any calendar day, except Sundays and Holidays, beginning June 1, 2015 and each day thereafter throughout the term of this Agreement.

**1.63 Operating Month** shall mean a calendar month, beginning June 2015 and each month thereafter throughout the term of this Agreement.

**1.64 Operating Year** shall mean each period of twelve (12) consecutive months, beginning on October 1 and ending on September 30 of the following year, during the term of this Agreement; however, the First Operating Year shall begin on June 1, 2015 and end on September 30, 2015.

**1.65 Optional Benefits** shall mean additional benefits or services more particularly described in Exhibit 13, attached hereto and made apart hereof that the Contractor offered to the City, which are in addition to the benefits and services that must be provided to the City under the City's RFP (City RFP No. 2014-38).

**1.66 Ordinances** shall mean the City's Code of Ordinances.

**1.67 OSHA** shall mean the Occupational Safety and Health Act and all implementing regulations.

**1.68 Performance Bond** shall mean the financial security furnished by the Contractor as a guarantee that the Contractor will perform its work and pay all lawful claims in compliance with the terms of this Agreement.

**1.69 Person** shall mean any and all persons, natural or artificial, including any individual, firm, partnership, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any City or municipality; and any governmental agency of any state or the federal government.

**1.70 Plastic Bag** shall mean a heavy-duty plastic or biodegradable bag that has a drawstring at the top and a capacity of approximately forty (40) gallons or less, that is designed to be used for the Collection of Solid Waste.

**1.71 Premises** shall mean Improved Property.

**1.72 Radioactive Waste** shall mean any equipment or materials that are radioactive or have radioactive contamination, and are required by law to be stored, treated, or disposed of as radioactive waste.

**1.73 Rates** shall mean the fees and charges approved by the City for the Contractor's Collection Services.

**1.74 Recovered Materials** shall mean metal, paper, glass, plastic, textile, or rubber materials that have known Recycling potential, can be feasibly recycled and have been diverted and source separated or have been removed from the Solid Waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered Materials as described above are not Solid Waste. Recovered Materials do not include any material or substance that does not fit within one of the six categories described in this definition (metal, paper, glass, plastic, textile, or rubber). Among other things, unsorted Construction and Demolition Debris is not a Recovered Material.

**1.75 Recyclable Materials** shall mean those materials that are capable of being recycled and would otherwise be processed or disposed of as Solid Waste.



**1.76 Recycling** shall mean any process by which materials that would otherwise have been Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

**1.77 Recycling Bin** shall mean a rectangular bin that is made of heavy-duty hard plastic or other impervious material and used for the Collection of Source Separated Recyclable Materials.

**1.78 Recycling Cart** shall mean a container that is made of heavy-duty hard plastic or other impervious material, with enclosed sides and a bottom, mounted on two wheels, equipped with a tight-fitting hinged lid, and used for the automated or semi-automated Collection of Source Separated Recyclable Materials.

**1.79 Recycling Container** shall mean any container approved by the Administrator for the Collection of Recyclable Materials, including but not limited to Recycling Bins and Recycling Carts.

**1.80 Residential Collection Service** shall mean the Collection of Residential Waste from Residential Property, including Multi-Family Dwellings, pursuant to this Agreement.

**1.81 Residential Customer** shall mean a Person that is entitled to receive Residential Collection Service.

**1.82 Residential Customer List** shall mean a list that identifies the Dwelling Units in the Service Area that are entitled to receive Residential Collection Service from the Contractor.

**1.83 Residential Property** shall mean each parcel of Improved Property that is included in the Residential Customer List. Residential Property generally includes each parcel of Improved Property in the Service Area on which there is a Dwelling Unit, including a single-family Dwelling Unit, duplex, triplex, quadraplex, mobile home, or Multi-Family Dwelling; however, the Administrator may determine that some parcels of Improved Property with Dwelling Units (e.g., mixed use buildings that are predominantly commercial) will be excluded from the Residential Customer List and treated as Commercial Property.

**1.84 Residential Waste** shall mean Garbage, Rubbish, Yard Waste, Recyclable Materials, and Bulky Waste generated by a Customer upon the Customer's Residential Property.

**1.85 Roll-Off Container** shall mean a large metal container used for the Collection of Solid Waste or Source Separated Recyclable Materials, which is rolled-off of a motor vehicle when the container is placed at a Collection site and then rolled onto the vehicle when the container is ready to be transported to a Solid Waste Management Facility.

**1.86 Rubbish** shall mean waste material (other than Garbage, Yard Waste, and Bulky Waste) resulting from normal housekeeping activities on Residential Property. Rubbish includes but is not limited to discarded trash, rags, sweepings, packaging, Recyclable Materials that are not source separated, and similar materials.

**1.87 Scheduled Collection Day** shall mean a day when the Contractor is scheduled to collect a Customer's Source Separated Recyclable Materials or one of the other components of the Customer's Residential Waste.

**1.88 Service Area** shall mean the incorporated area of the City.

**1.89 Set Out** shall mean the preparation and placement of Solid Waste and Source Separated Recyclable Materials for Collection at the Customer's Premises in accordance with the requirements in this Agreement.

**1.90 Side Door Service** shall mean the Collection of Solid Waste and Source Separated Recyclable Materials from a Residential Customer's side yard, back yard, or other location that is not Curbside. Side Door Service is a Special Collection Service.

**1.91 Sludge** shall mean the accumulated solids, residues and precipitates generated as a result of waste treatment or processing including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other waste having similar characteristics.

**1.92 Solid Waste** shall mean Sludge unregulated under the federal Clean Water Act or Clean Air Act, Sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or Garbage, Rubbish, refuse, special waste, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations. Solid Waste includes but is not limited to Biomedical Waste, Bulky Waste, Commercial Waste, Construction and Demolition Debris, Disaster Debris, Electronic Equipment, Garbage, Hazardous Waste, Land Clearing Debris, Radioactive Waste, Recyclable Materials that have not been source separated, Residential Waste, Rubbish, White Goods, and Yard Waste.

**1.93 Solid Waste Management Facility** means any Solid Waste disposal area, volume reduction plant, transfer station, Materials Recovery Facility, or other facility, the purpose of which is resource recovery or the disposal, Recycling, processing, or storage of Solid Waste. The term does not include Recovered Materials processing facilities that meet the requirements of Section 403.7046, Florida Statutes, except the portion of such facilities, if any, which is used for the management of Solid Waste.

**1.94 Source Separated Recyclable Materials** shall mean Recyclable Materials that are separated from the Solid Waste at the location where they are generated (e.g., Residential Property) and then Set Out for Collection at that location.

**1.95 Special Collection Service** shall mean the Collection of discarded material in response to a Customer's request, at times other than the Customer's Scheduled Collection Day for such material, or in quantities that are greater than the amounts authorized herein for Collection on the Customer's Scheduled Collection Day. Special Collection Service also includes any services requested by a Customer that are in addition to or different than the normal Collection Service provided to similar Customers. The City also may request Special Collection Services, in addition to the Collection Services it normally receives.

**1.96 Tipping Fee** shall mean a fee that is paid for the disposal of Solid Waste.

**1.97 Transfer Station** shall mean the County's transfer station located at 1901 SW 4<sup>th</sup> Avenue, Delray Beach, Florida, which is leased to the Authority and used to receive, temporarily store, and then load Solid Waste into vehicles for transport to the Authority's facilities.

**1.98 Transition Period** shall mean the period of time between the Effective Date and the Commencement Date.

**1.99 Transition Plan** shall mean a document describing in detail the activities that will be undertaken, and the schedule that will be followed, by the Contractor to ensure that the Contractor successfully provides Collection Service in compliance with this Agreement on the Commencement Date.

**1.100 White Goods** shall mean large discarded appliances, including but not limited to refrigerators, ranges, washing machines, clothes dryers, water heaters, freezers, and air conditioners. White Goods must be generated by the Customer at the Customer's Improved Real Property where the White Goods are collected.

**1.101 Yard Waste** shall mean any vegetative matter resulting from yard and landscaping maintenance, including but not limited to shrub and tree trimmings, grass clippings, palm fronds, and branches.

## **2. CONTRACTOR'S FRANCHISE**

### **2.1 EXCLUSIVE FRANCHISE FOR RESIDENTIAL AND COMMERCIAL COLLECTION SERVICE**

Subject to the conditions and limitations contained in this Agreement, the Contractor is hereby granted an exclusive franchise to provide Residential Collection Service and Commercial Collection Service in the Service Area. The Contractor's franchise includes the exclusive right to collect: (a) Garbage, Rubbish, Yard Waste, Bulky Waste, and Source Separated Recyclable Materials that are generated on Residential Property and collected at Curbside; (b) Garbage, Rubbish, Bulky Waste, and Source Separated Recyclable Materials that are generated on Residential Property where the Garbage and Rubbish are collected in Mechanical Containers; and (c) Garbage, Rubbish, and Bulky Waste generated on Commercial Property. The Contractor shall have the sole right to provide these Collection Services in the Service Area. The Contractor shall have the sole responsibility for providing these Collection Services in compliance with the requirements set forth in this Agreement.

### **2.2 NON-EXCLUSIVE FRANCHISE FOR SOURCE SEPARATED RECYCLABLE MATERIALS GENERATED ON COMMERCIAL PROPERTY**

Subject to the conditions and limitations contained in this Agreement, the Contractor is hereby granted a non-exclusive franchise for the Collection of Source Separated Recyclable Materials generated on Commercial Property in the Service Area. At its option, the City may grant any other Person a non-exclusive franchise for the Collection of Source Separated Recyclable Materials generated on Commercial Property in the Service Area.

### **2.3 LIMITATIONS ON THE CONTRACTOR'S FRANCHISE**

This Agreement only grants a franchise for the services and types of Solid Waste that are explicitly addressed herein. No other services or materials are subject to the Contractor's franchise under this Agreement. Section 21, below, identifies some of the materials that are not subject to the Contractor's franchise.

## **3. TERM OF THIS AGREEMENT**

### **3.1 INITIAL TERM OF FRANCHISE AGREEMENT**

This Agreement shall take effect and be binding upon the parties from the Effective Date until the date when this Agreement is terminated or expires. The initial term of this Agreement shall begin on the Effective Date and continue through and including September 30, 2022, unless this Agreement is terminated earlier.

### **3.2 CITY'S OPTION TO RENEW THE AGREEMENT**

At the end of the initial term and at the end of each renewal term (if any), the City shall have the right to renew this Agreement for an additional one (1) year period, unless the Contractor gives written notice to the City Manager that the Contractor is not willing to renew this Agreement and such notice is delivered at least three hundred and sixty (360) calendar days before the end of the then current term of the Agreement. With regard to the initial term and each renewal term (if any), the City shall give written notice to the Contractor at least one hundred eighty (180) calendar days before the end of the then current term if the City wishes to renew this Agreement. Each renewal term shall be one year in duration, unless the City and Contractor mutually agree to a longer term. Notwithstanding the City's right to renew this Agreement, the cumulative duration of all renewal terms shall not exceed five (5) years. During each renewal term (if any), the City and the Contractor shall be subject to the conditions and limitations that are contained herein, unless the City and the Contractor agree otherwise.

## **4. THE SERVICE AREA**

### **4.1 DESCRIPTION OF THE SERVICE AREA**

The Service Area includes all of the land located within the incorporated areas of the City. A general map of the Service Area is provided in Exhibit 1.

### **4.2 ADJUSTMENTS TO THE SERVICE AREA**

The boundaries of the Service Area may be adjusted if lands are added to or removed from the City pursuant to an annexation, interlocal agreement, or similar change. In such cases, the rights of the Contractor may be revised in accordance with Section 171.062, Florida Statutes, or other Applicable Laws.

The annexation of lands after the Effective Date may require the Contractor to provide Collection Services in the annexed area or, in the alternative, such area may be served by another Person. In either case, the Contractor shall provide its services to the City (with or without the annexed area) for the Rates established in this Agreement. There shall be no change in the Contractor's Rates if Collection Service in the annexed area is provided by another Person.

## **5. CONTRACTOR'S OBLIGATIONS PRIOR TO COMMENCEMENT DATE**

### **5.1 CONTRACTOR'S TRANSITION PLAN**

Contractor shall ensure that there is no disruption experienced by Customers when the Contractor begins to provide its services under this Agreement on the Commencement Date. Accordingly, Contractor shall prepare and provide a Transition Plan to the Administrator promptly after the Effective Date. At a minimum, the Transition Plan shall demonstrate that the Contractor will hire and train the necessary personnel, and procure and prepare the necessary vehicles and equipment, prior to the Commencement Date. The Transition Plan also shall explain how and when the Contractor will provide Collection Containers to Customers prior to the Commencement Date. The Transition Plan is subject to the approval of the Administrator. If requested at any time, the Contractor shall provide additional information to the Administrator concerning the Transition Plan, revise the plan within twenty (20) calendar days, and resubmit the plan for the Administrator's approval.

## **5.2 DEADLINES FOR THE CONTRACTOR'S TRANSITION PLANNING**

The Contractor shall provide its Transition Plan to the Administrator on or before March 9, 2015. At a minimum, the Contractor shall address the following specific performance requirements in the Transition Plan and shall accomplish them no later than the following deadlines:

- (a) On or before March 12, 2015, Contractor and City shall meet and discuss the Contractor's Transition Plan and any other matters that will help ensure the successful implementation of the Contractor's Transition Plan.
- (b) On or before March 2, 2015, Contractor shall provide the Administrator with a Collection Plan, pursuant to Section 23, below, which shall be subject to the approval of the Administrator.
- (c) On or before March 16, 2015, Contractor shall provide the Administrator with documentation demonstrating that all necessary Collection vehicles, equipment, and Collection Containers have been ordered and will be delivered to Contractor's equipment yard no later than May 15, 2015.
- (d) On or before April 1, 2015, Contractor shall provide the Administrator with a plan for the assembly and distribution of any Garbage Carts and Recycling Carts that will be provided to the Customers.
- (e) On or before April 15, 2015, Contractor shall provide the Administrator with a written safety plan covering all aspects of the Contractor's operations under this Agreement, in compliance with the requirements of Section 22, below. The Contractor also shall provide the Administrator with a Contingency Plan, pursuant to Section 37.4, below.
- (f) On or before May 1, 2015, the Contractor shall have its supervisors, drivers, and other relevant personnel familiarize themselves with the proposed routes and schedules for providing Collection Service, and they shall drive each street on each route to ensure that the proposed routes and schedules are appropriate.
- (g) On or before May 1, 2015, the Contractor shall provide the Administrator with electronic (digital) copies of the notices, brochures, and informational material the Contractor intends to provide to Customers concerning the Collection Services it will provide under this Agreement. The notices, brochures, and informational materials shall be designed to satisfy the requirements in Section 35, below. The notices, brochures, and informational materials shall be subject to the Administrator's approval and shall be delivered in compliance with the requirements in Section 35.
- (h) On or before May 15, 2015, Contractor and the Administrator shall meet and discuss the status of Contractor's Transition Plan and its implementation.
- (i) On or before May 15, 2015, the Contractor shall confirm in writing to the Administrator that all of the vehicles and equipment necessary to provide Collection Service have been delivered to the Contractor's equipment yard. In addition, Contractor shall confirm in writing to the Administrator that all of the Collection Containers necessary to provide Collection Service have been delivered to the Contractor's equipment yard and will be delivered to Customers in accordance with the Contractor's approved schedule for the distribution of the Collection Containers. If for any reason, Contractor fails to timely

obtain any vehicles or equipment necessary or required by this Agreement to provide Collection Service by June 1, 2015, Contractor shall provide City written notice describing the vehicle(s) or equipment not delivered, the reason for the late delivery, and an explanation how Collection Services will be provided. In order remain in compliance with this Agreement, Contractor shall be required to obtain all vehicles and equipment no later than July 31, 2015 as well as meeting the requirements of Section 28.3 herein.

- (j) On or before May 20, 2015, Contractor shall confirm in writing to the Administrator that all of the vehicles necessary to provide Collection Service have been registered, licensed, tagged, and equipped, and are ready to perform in compliance with the requirements of this Agreement.
- (k) On or before May 20, 2015, Contractor shall provide the Administrator with: (a) a vehicle list that identifies the make, model, year, tare weight, license tag number, and identification number for each Collection vehicle; and (b) a list of all of the Mechanical Containers that will be used by the Contractor under this Agreement. The list of Mechanical Containers shall include the identification number and capacity of each Mechanical Container.
- (l) On or before May 27, 2015, Contractor shall confirm in writing to the Administrator that: (1) the Contractor has delivered the City-approved notices, brochures, and informational materials to all of the Customers in compliance with this Agreement; (2) Contractor has hired and trained all of the employees needed to provide Collection Service in compliance with the requirements in this Agreement; and (3) all of the Contractor's drivers have inspected their Collection routes and confirmed their ability to complete their routes on the Scheduled Collection Days.
- (m) On or before May 31, 2015, Contractor shall confirm in writing to the Administrator that it has delivered all of the Collection Containers needed to provide Collection Service in compliance with this Agreement.

## **6. GENERAL SCOPE OF CONTRACTOR'S DUTIES AFTER COMMENCEMENT DATE**

This Section 6 describes the general scope of the Contractor's duties under this Agreement. The general requirements in this Section 6 are supplemented by the specific requirements in other sections of this Agreement. Subject to the conditions contained herein, the Contractor shall:

- (a) provide Residential Collection Service and Commercial Collection Service in the Service Area;
- (b) deliver all of the Residential Waste, Commercial Waste, and Source Separated Recyclable Materials it collects under this Agreement to the Designated Facilities;
- (c) comply at all times with the requirements in this Agreement and Applicable Law;
- (d) provide all labor, services, supervision, materials, and equipment necessary to accomplish the Contractor's work under this Agreement; and

- (e) perform all of its work under this Agreement at Contractor's sole expense, in exchange for the payments by the City and Customers that are authorized herein.

## **7. CONTRACTOR'S SPECIFIC COLLECTION SERVICES**

### **7.1 GENERAL REQUIREMENTS FOR RESIDENTIAL COLLECTION SERVICE AT CURBSIDE**

The Contractor shall provide the following Residential Collection Services to each Residential Customer that resides in: (a) a single family Dwelling Unit; (b) a duplex; (c) a triplex; (d) a quadraplex; (e) a mobile home; or (f) a Multi-Family Dwelling that cannot receive Collection Service with a Mechanical Container, as determined by the Administrator.

- 7.1.1 The Contractor shall collect each Customer's Garbage and Rubbish at the Curbside twice each week. The Contractor shall provide this service by using automated or semi-automated equipment and Garbage Carts, except in the areas designated by the City for the Collection of Garbage and Rubbish in Plastic Bags. Exhibit 1 identifies the Residential Property where the Contractor shall collect Garbage and Rubbish that is Set Out in Plastic Bags.
- 7.1.2 The Contractor shall collect each Customer's Source Separated Recyclable Materials at the Curbside once each week. The Contractor shall provide this service by using Recycling Bins provided by the Authority.
- 7.1.3 The Contractor shall collect each Customer's Bulky Waste and Yard Waste at the Curbside once each week.
- 7.1.4 Except as otherwise expressly provided herein, the Contractor shall collect all of the Garbage, Rubbish, Yard Waste, Bulky Waste, and Source Separated Recyclable Materials that are Set Out at Curbside by each Customer.
- 7.1.5 The Contractor shall collect all of the Garbage and Rubbish that is Set Out at Curbside in a Customer's Garbage Cart(s). On the first Scheduled Collection Day for Garbage and Rubbish after a Holiday, the Contractor also shall collect all of the Garbage and Rubbish that is Set Out by a Residential Customer in Plastic Bags. If a Customer with a Garbage Cart Sets Out Garbage and Rubbish in Plastic Bags or Garbage Cans at other times, the Contractor may leave the Plastic Bags and Garbage Cans at Curbside. If the Contractor does, the Contractor shall place a Non-Collection Notice on the Plastic Bags and Garbage Cans and the Contractor shall comply with the requirements in Sections 15.1 and 15.5, below.

### **7.2 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR RECYCLABLE MATERIALS**

The Contractor shall collect all of the Source Separated Recyclable Materials that Residential Customers Set Out in Recycling Bins or paper bags at Curbside. The Contractor also shall collect the cardboard that is Set Out at Curbside if the cardboard is folded or cut into pieces no larger than three (3) feet by three (3) feet in size. At a minimum, the Contractor shall collect all of the following Source Separated Recyclable Materials: (a) newspapers, cardboard, magazines, phone books, paper, cereal boxes, and other similar fiber products; (b) ferrous and nonferrous cans and beverage containers; (c) plastic bottles and containers (Nos. 1 through 7); (d) glass bottles and

containers; (e) aseptic or poly-coated food and beverage containers; (f) any other Source Separated Recyclable Materials that are accepted and recycled by the Authority's facilities; and (g) other Recyclable Materials designated by the Administrator and approved by the Contractor.

The City currently collects Source Separated Recyclable Materials in a "dual stream" – i.e., paper and fiber products are collected in one Recycling Bin and a second Recycling Bin is used for the Collection of other Recyclable Materials, including aluminum cans, metal cans, plastic bottles, and glass bottles. When the Contractor collects Source Separated Recyclable Materials at the Curbside, the Contractor shall place these two different categories of Recyclable Materials into separate compartments in the Contractor's Collection vehicles.

### **7.3 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR BULKY WASTE**

7.3.1 The Contractor shall collect all of the Bulky Waste that is Set Out at Curbside by Residential Customers, except as provided in Section 7.3.2. There is no size or weight limit for any item of Bulky Waste.

7.3.2 If a Residential Customer places Construction and Demolition Debris at the Curbside, the Contractor shall collect the Construction and Demolition Debris as Bulky Waste, but the Contractor is not required to collect more than two (2) cubic yards of Construction and Demolition Debris from any Residential Customer on any Scheduled Collection Day. If a Residential Customer Sets Out more than two (2) cubic yards of Construction and Demolition Debris for Collection, the Contractor shall collect at least two (2) cubic yards of the Customer's Construction and Demolition Debris on the Scheduled Collection Day for Bulky Waste, but the Contractor may leave the remainder. If the Contractor elects to leave some of the Construction and Demolition Debris at Curbside: (a) the Contractor shall return each Scheduled Collection Day thereafter and collect a minimum of two (2) cubic yards of the Customer's Construction and Demolition Debris each time until all of the Construction and Demolition Debris is removed; and (b) the Contractor shall place a Non-Collection Notice on the remaining materials or on the Customer's door knob, in compliance with Section 15.1, below.

### **7.4 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR YARD WASTE**

7.4.1 The Contractor shall collect the Yard Waste that is Set Out at Curbside by each Residential Customer. The Contractor shall not collect Yard Waste with Bulky Waste in the same vehicle; Bulky Waste and Yard Waste shall be collected in separate vehicles.

7.4.2 The Contractor is not required to collect more than six (6) cubic yards of Yard Waste from a Residential Customer in one day. If a Residential Customer Sets Out more than six (6) cubic yards of Yard Waste for Collection, the Contractor shall collect at least six (6) cubic yards of the Customer's Yard Waste on the Scheduled Collection Day for Yard Waste, but the Contractor may leave the remainder. If the Contractor leaves some of the Yard Waste at Curbside, the Contractor shall return each Scheduled Collection Day thereafter and collect a minimum of six (6) cubic yards of Yard Waste each time until all of the Yard Waste is removed.

7.4.3 Yard Waste may be Set Out at Curbside in Garbage Cans, Garbage Carts, biodegradable bags, or Plastic Bags. Yard Waste also may be tied, bundled, or stacked in piles at Curbside.



- 7.4.4 With regard to the Yard Waste that is Set Out at Curbside, the Contractor shall collect: (a) each palm frond, regardless of the length or weight of the palm frond; and (b) each natural Christmas tree, unless the Christmas tree exceeds eight (8) feet in length or fifty (50) pounds in weight. With regard to other types of Yard Waste, the Contractor is not required to collect any single piece of Yard Waste that exceeds six (6) feet in length or fifty (50) pounds in weight. The Contractor also is not required to collect Land Clearing Debris.
- 7.4.5 If the Contractor elects to leave any Yard Waste or Land Clearing Debris at Curbside, the Contractor shall place a Non-Collection Notice on the remaining material or on the Customer's doorknob, in compliance with Section 15.1, below.

## **7.5 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR TIRES**

The Contractor shall collect automobile tires that are Set Out at Curbside for Collection as Bulky Waste, but the Contractor is not required to collect more than two (2) tires from any Residential Customer on any Operating Day. The Contractor is not required to collect more than four (4) tires from any Residential Customer in any Operating Year. A Non-Collection Notice shall be provided to the Customer in compliance with Section 15.1 if the Contractor leaves any tires at the Customer's Premises.

## **7.6 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR EXCESS AND OVERSIZED MATERIALS**

This Agreement does not require the Contractor to collect the following materials at Curbside from any Residential Customer on a single Operating Day: (a) Yard Waste that exceeds six (6) cubic yards; (b) Construction and Demolition Debris that exceeds two (2) cubic yards; (c) more than two (2) tires; or (d) any item of Yard Waste that exceeds the size and weight limits in Section 7.4.4, above. At its option, however, the Contractor may collect such materials as part of its routine Collection Service for Residential Customers. The Contractor also may collect such materials as a Special Collection Service. However, the Contractor shall not charge a separate fee for the Collection of these materials, unless the Customer agreed to pay the applicable Rate before the Contractor provided its Special Collection Service. The Contractor shall bill and collect its Rates directly with the Customer for any Special Collection Service.

## **7.7 RESIDENTIAL SIDE DOOR SERVICE**

- 7.7.1 The Contractor shall provide Side Door Service to any Residential Customer that requests and pays for such service. The Contractor shall offer Side Door Service for the Collection of Garbage, Rubbish, and Source Separated Recyclable Materials, but the Contractor is not required to offer Side Door Service for the Collection of Yard Waste or Bulky Waste.
- 7.7.2 The Contractor shall provide Side Door Service to a Residential Customer, without charging its Rate for Side Door Service, if the Administrator determines that the Residential Customer is physically unable to deliver its Garbage, Rubbish, and Recyclable Materials to the Curbside and there are no able-bodied people living with the Residential Customer. The Administrator shall require a letter or other documentation from a physician before the Administrator concludes that a Residential Customer is physically unable to use Curbside Collection Service.

## **7.8 RESIDENTIAL COLLECTION SERVICE FOR MULTI-FAMILY DWELLINGS**

The Contractor shall provide the following services to each Customer that resides in a Multi-Family Dwelling, unless the Customer receives Collection Service at Curbside:

- 7.8.1 All of the Customer's Garbage and Rubbish shall be collected at the Customer's Premises at least two (2) times each week.
- 7.8.2 Reserved.
- 7.8.3 If a Customer at a Multi-Family Dwelling generates less than two (2) cubic yards of Garbage and Rubbish each week, the Customer may Set Out its Garbage and Rubbish in Garbage Carts.
- 7.8.4 The Contractor shall provide Recycling Carts or other centrally located Recycling Containers for those Customers that reside in Multi-Family Dwellings and use Mechanical Containers for the disposal of Garbage and Rubbish. The Contractor shall collect all of the Source Separated Recyclable Materials that are placed into the Recycling Containers. The Contractor also shall collect cardboard that has been placed next to the Recycling Containers. Source Separated Recyclable Materials shall be collected at least once each week at each Multi-Family Dwelling.
- 7.8.5 The Contractor shall collect all of the Bulky Waste that is placed outside of the Mechanical Containers (if any) used at a Multi-Family Dwelling. Bulky Waste shall be collected at least once each week at each Multi-Family Dwelling.

## **7.9 COLLECTION OF GARBAGE AND RUBBISH FROM COMMERCIAL PROPERTY**

- 7.9.1 The Contractor shall collect all of the Garbage and Rubbish that is Set Out by each Commercial Customer in the Service Area. This Collection Service shall be provided at least once each week for each Commercial Customer. This service shall be provided at least twice each week for each restaurant, grocery store, and other Commercial Customer that generates significant quantities of Garbage, unless the Administrator approves a different schedule for Collection.
- 7.9.2 The Contractor shall use Mechanical Containers to provide Commercial Collection Service for Garbage and Rubbish. However, the Contractor shall allow a Commercial Customer to Set Out its Garbage and Rubbish in Garbage Carts if the Commercial Customer generates less than two (2) cubic yards of waste each week.

## **7.10 COLLECTION OF SOURCE SEPARATED RECYCLABLE MATERIALS FROM COMMERCIAL PROPERTY**

The Contractor shall collect Source Separated Recyclable Materials from Commercial Property when such service is requested by a Commercial Customer. The Contractor may offer to collect Source Separated Recyclable Materials from any Person that owns or occupies Commercial Property.

## **7.11 COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS, BULKY WASTE AND YARD WASTE FROM COMMERCIAL PROPERTY**

The Contractor shall collect Construction and Demolition Debris, Bulky Waste, and Yard Waste, if a Commercial Customer requests the Contractor to collect these materials. However, the Contractor shall not have the exclusive right to collect Construction and Demolition Debris, Bulky Waste, or Yard Waste from Commercial Customers in the Service Area.

#### **7.12 SPECIAL COLLECTION SERVICE**

The Contractor may provide Special Collection Services for Residential Customers and Commercial Customers. The Special Collection Services for Residential Customers include but are not limited to Side Door Service pursuant to Section 7.7, the collection of excess and oversized material pursuant to Section 7.6, and the collection of any type of Solid Waste on a day that is not the Customer's Scheduled Collection Day for that type of waste. Similarly, the Contractor may provide Special Collection Services for Commercial Customers, including but not limited to the services identified in Exhibit 3D.

#### **7.13 OPTIONAL BENEFITS AND SERVICES**

The Contractor shall provide additional services to the City in compliance with the requirements in Exhibit 13. These services were proposed by the Contractor in its response to the City's RFP (RFP No. 2014-38) and constitute Optional Benefits for the City. These Optional Benefits are a material inducement to the City.

### **8. HOURS AND DAYS OF CONTRACTOR'S COLLECTION SERVICES**

- 8.1** The Contractor may provide Collection Service to Residential Customers every day of the year, except Sundays and Holidays. The Contractor shall offer, and upon request shall provide, Collection Services to Commercial Customers every day of the year, except Sundays and Holidays.
- 8.2** The Contractor shall not provide Residential Collection Service or Commercial Collection Service at any location before 6:00 a.m. or after 6:00 p.m. The Contractor shall not provide Collection Service for Multi-Family Dwellings before 7:00 a.m. The Contractor shall not provide Collection Service with a Mechanical Container at any location within one hundred fifty (150) yards of a residential Dwelling Unit before 7:00 a.m.
- 8.3** If the City receives complaints about the noise or disturbance caused by the Contractor's Collection Services at a particular location, the Administrator may restrict the times for the Contractor's Collection Services at that location, without increasing the Contractor's Rates.
- 8.4** Notwithstanding anything else contained herein, the hours and days of Collection Service may be extended or modified (a) when such change is requested by the Contractor and approved in advance by the Administrator and (b) when the Administrator determines that such change is necessary or otherwise appropriate.

### **9. SCHEDULES AND ROUTES FOR COLLECTION SERVICES**

#### **9.1 SCHEDULES AND ROUTES**

The Contractor shall establish Collection routes and schedules that satisfy the requirements of this Agreement and maximize the efficiency of the Contractor's operations. The routes established under this Agreement shall be separate from the routes the Contractor uses for the Collection of Solid Waste generated outside of the Service Area (e.g., in the unincorporated area of Palm Beach County or another municipality). The Contractor shall submit its proposed routes and schedules to the Administrator as part of the Collection Plan that is required pursuant to Section 23, below. After the Contractor's Collection Plan is approved, the Contractor shall provide Collection Service in accordance with the approved routes and schedules in the Collection Plan.

## **9.2 SCHEDULED COLLECTION DAYS FOR BULKY WASTE, YARD WASTE, AND SOURCE SEPARATED RECYCLABLE MATERIALS**

The Contractor shall collect a Residential Customer's Bulky Waste on the first Scheduled Collection Day each week for the Collection of that Customer's Garbage and Rubbish. The Scheduled Collection Day for a Residential Customer's Yard Waste may be either one of the two (2) Scheduled Collection Days each week for the Collection of that Customer's Garbage and Rubbish. The Scheduled Collection Day for a Residential Customer's Source Separated Recyclable Material may be either one of the two (2) Scheduled Collection Days each week for the Collection of that Customer's Garbage and Rubbish.

## **9.3 SCHEDULES FOR TWICE WEEKLY SERVICE**

Whenever the Contractor is required to provide any Collection Service two (2) times per week pursuant to this Agreement, the Scheduled Collection Days shall be seventy-two (72) hours apart, unless the Administrator approves a different schedule.

# **10. CHANGES TO COLLECTION SCHEDULES AND ROUTES FOR RESIDENTIAL SERVICE**

## **10.1 NO CHANGES WITHOUT ADMINISTRATOR'S APPROVAL**

After the Commencement Date, the Contractor shall not change a route or a schedule for Residential Collection Service until the Contractor receives the Administrator's written approval for the proposed change. The Contractor shall submit a description of all proposed route and schedule changes to the Administrator at least thirty (30) calendar days prior to the implementation of such changes.

## **10.2 HOLIDAY SCHEDULES**

10.2.1 The Contractor is not required to provide Collection Service on Thanksgiving Day or Christmas Day.

10.2.2 If a Residential Customer receives Collection Service at Curbside, and the Customer's Scheduled Collection Day for Garbage falls on a Holiday, the Contractor may delay the Collection of the Customer's Garbage until the first Scheduled Collection Day for the Collection of the Customer's Garbage following the Holiday. Consequently, the Customer will receive Collection Service for Garbage only one time during the week of the Holiday.

10.2.3 If a Residential Customer receives Collection Services at Curbside and the Customer's Scheduled Collection Day for Bulky Waste, Yard Waste, or Source Separated Recyclable

Materials falls on a Holiday, the Contractor may delay the Collection of such material until the next Scheduled Collection Day for that type of material. Consequently, the Customer will not receive Collection Service until the week after the Holiday.

10.2.4 If a Residential Customer receives Collection Service with a Mechanical Container and the Customer's Scheduled Collection Day for Garbage or Source Separated Recyclable Materials falls on a Holiday, the Contractor shall provide Collection Service to the Customer on the first Operating Day after the Holiday.

### **10.3 PUBLIC NOTICE OF CHANGES**

If the Administrator approves a change in the Contractor's schedules or routes, the Contractor shall provide all affected Customers with a written notice of the change and shall comply with the requirements in Section 35, below, unless a different notice is authorized by the Administrator.

### **10.4 NOTICE OF TEMPORARY DELAYS**

The Contractor shall inform the Administrator about any event (e.g., disabled trucks, accidents, or shortage of staff) that will cause delays in the Contractor's normal Collection Schedule and the Contractor shall provide such notice within two (2) hours of the event.

### **10.5 NO DELAYS EXCUSED FOR FLUCTUATIONS IN SOLID WASTE QUANTITIES**

The quantity of Solid Waste generated in the City may fluctuate during an Operating Year and from year-to-year. These fluctuations will not justify or excuse a failure by the Contractor to provide Collection Service in compliance with the approved schedules and routes. The Contractor is responsible for the timely Collection of all of the Solid Waste and Recyclable Material that is Set Out on the Scheduled Collection Days, subject to the conditions herein, regardless of any fluctuations in the amount of material that is Set Out.

## **11. MANDATORY CHANGES TO COLLECTION SERVICE**

11.1 If a Customer will receive Collection Service with Mechanical Containers, the Contractor and Customer initially shall determine the size of the Collection Container that will be used and the frequency of the Collection Service; however, Collection Service shall be provided at least once per week for all Customers and at least twice per week for all restaurants, grocery stores, and other Commercial Customers that generate significant quantities of Garbage, unless the Administrator approves less frequent Collection Service. The Contractor also may provide less frequent Collection Service for the Collection of Construction and Demolition Debris.

11.2 The City shall have the right to increase or decrease the frequency of Collection Service, and the size and number of the Collection Containers, used by any Customer. The size of the Collection Container and the frequency of Collection Service provided to a Customer shall be sufficient to ensure that the Collection Container is not overfilled and Solid Waste is not placed outside the Collection Container between Scheduled Collection Days. If necessary, the City may initiate a Code enforcement proceeding against the Customer to ensure that the Customer receives an appropriate level of service. If the Contractor and the Customer cannot agree about the size of the Collection Container or the frequency of Collection Service, the Contractor or the Customer may notify the Administrator about their dispute. In such cases, the City shall determine whether it is necessary to change the frequency of service or the size of the Collection Container, and the

Contractor shall provide its service in compliance with the City's determination. The Customer shall pay the appropriate Rates for the Contractor's Collection Service, whether the level of service is increased or decreased.

## **12. THE RESIDENTIAL CUSTOMER LIST**

- 12.1** The City shall prepare a Residential Customer List, which identifies each Dwelling Unit that is entitled to receive Residential Collection Service from the Contractor pursuant to this Agreement. No later than ninety (90) calendar days before the Commencement Date, the City shall provide its preliminary Residential Customer List to the Contractor. The preliminary Residential Customer List shall be based on the City's list of people and Improved Property that currently are included in the assessment roll used by the Authority to assess and collect a non-ad valorem special assessment for disposal services. The preliminary Residential Customer List shall be subject to any additions or deletions deemed appropriate by the City. If the Contractor believes the Residential Customer List is inaccurate or incomplete, the Contractor shall promptly notify the Administrator about any proposed additions, deletions, or other revisions to the Residential Customer List.
- 12.2** The Contractor shall have an affirmative duty to help ensure that the Residential Customer List is accurate at all times. The Contractor shall notify the City within five (5) Operating Days if the Contractor begins to provide Residential Collection Service to a parcel of Improved Property that is not on the Residential Customer List. The Contractor also shall notify the City within five (5) Operating Days if the Contractor identifies a parcel of Improved Property that should be added to or deleted from the Residential Customer List.
- 12.3** The City shall notify the Contractor promptly after (a) a Certificate of Occupancy is issued by the City for a new Dwelling Unit that should be added to the Residential Customer List and (b) the City begins to provide water service to such Dwelling Unit. After receiving this notification, the Contractor shall begin to provide Residential Collection Service to the Dwelling Unit within three (3) Operating Days, except as otherwise provided herein.
- 12.4** The City shall notify the Contractor if the City wants the Contractor to terminate its Residential Collection Service to a Dwelling Unit. The Contractor shall terminate its Residential Collection Service within three (3) Operating Days after receiving the City's notice.
- 12.5** The City shall update the Residential Customer List at least once each Operating Month. The City shall adjust the Residential Customer List to correspond with the occupancy of existing and new buildings, as well as the demolition of old buildings. Further, the Residential Customer List shall be revised to show that an existing Dwelling Unit is unoccupied if the City has temporarily or permanently terminated water service to the Dwelling Unit at the Customer's request. A new Dwelling Unit shall be deemed to be occupied when a Certificate of Occupancy has been issued and water service has been provided by the City. At a minimum, the updated Residential Customer List shall identify the changes in occupancy that occurred two (2) months before the update occurred. For example, when the list is updated in June of each year, the list should at least reflect the addition of new buildings and the demolition of old buildings in April of the same year.

### **13. PROPER COLLECTION PROCEDURES FOR CONTRACTOR**

- 13.1** When providing Collection Services, the Contractor shall thoroughly empty the Customer's Collection Containers and return them in an upright position to the location where they were placed by the Customer.
- 13.2** After the Contractor empties a Collection Container that has a lid, the Contractor shall place the lid back on top of the Collection Container and close it securely.
- 13.3** The Contractor shall handle Collection Containers carefully and in a manner to prevent damage. Garbage Cans, Garbage Carts, Recycling Containers, and their lids shall not be tossed or thrown by the Contractor.
- 13.4** The Contractor shall provide Collection Service with as little noise and disturbance as possible.
- 13.5** The Contractor shall be responsible for the proper handling of any White Goods and Electronic Equipment that the Contractor collects. The Contractor shall take appropriate steps to minimize the release of Freon, coolants, and other similar materials from White Goods. Among other things, the Contractor shall not crush or compact any White Goods or Electronic Equipment that the Contractor collects, if such materials are Set Out separately for Collection. However, a Customer is not required to remove Freon, coolants, or other similar materials from White Goods before the White Goods are Set Out, and the Contractor is not required to remove such materials from the White Goods before the White Goods are collected. Any item of Bulky Waste containing chlorofluorocarbons ("CFC") shall be delivered to the Authority's landfill or a scrap metal dealer.

### **14. RESTRICTIONS ON COLLECTION OF MIXED LOADS**

- 14.1** During the Collection process, Garbage and Rubbish may be combined by the Contractor.
- 14.2** During the Collection process, the Contractor shall not combine Source Separated Recyclable Materials and Electronic Equipment with each other or with any other type of material. However, the Contractor shall have no obligation to separate these materials if the Customer placed them in a Collection Container with Garbage or other types of Solid Waste. If necessary, the Administrator may designate other materials that shall be handled separately under this Agreement.
- 14.3** During the Collection process, the Contractor shall collect Source Separated Recyclable Materials in a "dual stream" and shall keep the two different categories of Sources Separated Recyclable Materials in separate compartments of the Collection vehicle, as described in Section 7.2, above.
- 14.4** During the Collection process, Bulky Waste and Yard Waste shall be collected by the Contractor in separate vehicles. Contractor shall not combine Bulky Waste or Yard Waste with Garbage, Rubbish, Source Separated Recyclable Materials, or Electronic Equipment.
- 14.5** During the Collection process, the Contractor shall not combine Residential Waste collected in the Service Area with Solid Waste or other materials collected outside of the Service Area.

- 14.6** During the Collection process, the Contractor shall not combine Residential Waste collected in the Service Area with Commercial Waste.
- 14.7** The Contractor shall not collect Source Separated Recyclable Materials with a vehicle that is used for the Collection of Solid Waste.
- 14.8** Notwithstanding the foregoing, the Administrator may grant relief from all of the restrictions in this Section 14, and thus allow the Contractor to combine different types of Solid Waste and Recyclable Materials, if the Administrator determines that this practice will be in the public interest. In such cases, the Contractor shall file a petition with the Administrator, describing the specific procedures that will be established to properly account and pay for the management of the mixed materials. The Administrator may grant or deny the petition, in his or her sole discretion.

## **15. NON-COLLECTION PROCEDURES**

- 15.1** The Contractor shall place a Non-Collection Notice on a Customer's Collection Container if the Contractor decides that the Contractor will not collect the Customer's waste because the waste was not Set Out in compliance with the applicable requirements in this Agreement. If the Contractor does not place a Non-Collection Notice on the Customer's Collection Container, and fails to collect the materials in the Customer's Collection Container, the Administrator may require the Contractor to return to the Customer's Premises promptly and collect the waste. If the Administrator notifies the Contractor before 12 p.m. (noon), the Collection shall be completed before the end of the day. If the Administrator notifies the Contractor after 12:00 p.m. (noon), the Collection shall be completed before noon on the next Operating Day.
- 15.2** The Contractor is responsible for determining whether a Customer's Recycling Container contains Non-Conforming Material or excessively contaminated Recyclable Materials. The Contractor may leave Non-Conforming Material and excessively contaminated Recyclable Materials in the Recycling Container, but if the Contractor does, the Contractor shall immediately place a Non-Collection Notice on the container, explaining why the material was not collected.
- 15.3** The Contractor shall not collect Residential Waste or Commercial Waste from a Customer if the Contractor believes the Residential Waste or Commercial Waste contains Hazardous, Radioactive, or Biomedical Waste. In such cases, the Contractor shall place a Non-Collection Notice on the Collection Container, take photographs of the improper waste (if possible), and immediately notify the Field Supervisor. If the generator of such waste is unknown, the Contractor shall work with the Administrator to identify the generator and identify an appropriate method to remove and dispose of the waste in a lawful manner.
- 15.4** If a Collection Container is temporarily inaccessible, the Contractor shall provide Collection Service later the same day, whenever feasible. If it is not feasible, the Contractor shall leave a Non-Collection Notice and provide Collection Service on the next Operating Day.
- 15.5** If a Residential Customer routinely places Garbage-filled Plastic Bags outside of their Garbage Cart or routinely places more waste at the Curbside than is allowed under Section 7.3.2, Section 7.4.2, or Section 7.5 of this Agreement, the Contractor shall provide the Customer with educational materials concerning Recycling, in addition to providing a Non-Collection Notice. Further, the Contractor shall notify the Administrator about the Customer's failure to comply with the requirements in this Agreement.



- 15.6** The design and content of the Non-Collection Notices shall be developed by the Contractor, but shall be subject to the approval of the Administrator. At a minimum, the Non-Collection Notices shall contain the following information: the issuance date; the Contractor's reason for not providing Collection Service; information advising the Customer how to correct the problem; and the telephone number to call if the Customer has any questions for the Contractor.
- 15.7** The Contractor shall make a good faith effort to collect the Solid Waste that is Set Out for Collection, even if some inappropriate material is comingled with it. For example, if a Residential Customer places Bulky Waste or Yard Trash at the Curbside, but also places a Plastic Bag filled with Garbage on top of the Bulky Waste or Yard Trash, the Contractor shall remove the Plastic Bag and collect the other materials separately. However, if a Customer has comingled Garbage with Yard Waste or Bulky Waste to such an extent that it is not practicable to segregate the materials, the Contractor shall place a Non-Collection Notice on the materials and promptly notify the Administrator concerning the location and estimated size of the pile of combined materials. If the Contractor fails to leave a non-Collection Notice and notify the Administrator, the Contractor may be required to collect the pile of combined materials pursuant to Section 15.1, above.

## **16. PROCEDURES FOR MISSED COLLECTIONS**

If the Administrator or a Customer notifies the Contractor about a Missed Collection, the Contractor shall promptly return to the Customer's Premises and collect all of the Residential Waste, Commercial Waste, or Source Separated Recyclable Material (as the case may be) that has been Set Out for Collection. If the Contractor is notified before 12 p.m. (noon), the Collection shall be completed before the end of that day. If the Contractor is notified after noon, the Collection shall be completed before noon on the next Operating Day.

## **17. PROTECTION OF PRIVATE AND PUBLIC PROPERTY**

- 17.1** The Contractor's employees shall not trespass on private property; provided, however, the Contractor's employees may walk on a Customer's property when providing Collection Service (e.g., Side Door Service) pursuant to this Agreement. The Contractor's employees shall follow the sidewalk for pedestrians and shall not cross a Customer's property to an adjoining property, unless the occupants or owners of both properties have given permission. The Contractor's employees shall not loiter on or meddle with any property of any other Person.
- 17.2** The Contractor's employees shall not damage any public or private property, including but not limited to roads, driveways, sidewalks, utilities, trees, flowers, shrubs, grass, and Collection Containers.
- 17.3** The Contractor shall not damage trees in the City. Among other things, the Contractor shall not drive large vehicles on narrow streets, or drive tall vehicles under overhanging limbs, where the vehicles will break or damage the tree limbs. The Contractor also shall not damage tree trunks or roots when collecting Yard Waste or other materials (e.g., when Collecting Yard Waste with a clamshell bucket).
- 17.4** The Contractor shall promptly restore the soil and grade at any location where the Contractor's Collection of Yard Waste or other material creates a depression that is six (6) inches or more below the surrounding grade (e.g., when collecting Yard Waste with a clamshell bucket). The Contractor shall fill such depressions and restore the grade to match the surrounding area.

- 17.5** The Contractor shall instruct its employees concerning the proper procedures to be followed when there is an accident involving damages to public or private property. At a minimum, if the Contractor's employee causes such damage, the employee shall immediately notify the Field Supervisor and the property owner. If the property owner is not known or readily identifiable, the driver shall leave a notice that includes the Contractor's name and phone number.
- 17.6** The Contractor shall be solely responsible for all damages, costs, and liabilities associated with the repair, restoration, or replacement of any property that has been damaged by the Contractor's equipment, employees, or agents. The Contractor shall promptly investigate and respond to any claim concerning property damage. If the Administrator or a Customer notifies the Contractor before 12 p.m. (noon) concerning any such damage, the Contractor shall investigate and respond to the Administrator and Customer before the end of that day. If the Administrator or a Customer notifies the Contractor after noon, the Contractor shall investigate and respond to the Administrator and Customer before noon on the next Operating Day. The Contractor shall repair any damage within three (3) Operating Days, unless the Contractor requests and the Administrator grants approval of an extension of time. Any disputes concerning the Contractor's obligations for the repair of property damages shall be resolved by the Administrator. In all cases, the Contractor shall be required to restore the public or private property to a condition that is at least equal to the condition that existed before the damage occurred.

## **18. CONTRACTOR'S ACCESS TO STREETS AND COLLECTION CONTAINERS**

- 18.1** Except as otherwise provided herein, the Contractor shall have the right to use all of the public roadways in the City.
- 18.2** The Contractor shall use suitable vehicles and equipment (e.g., smaller trucks), as necessary, to provide Collection Service on narrow and dead-end streets, unpaved streets, private roads, and other areas where access is limited.
- 18.3** The Contractor's vehicles shall not enter or drive upon any private driveway or Improved Property, to turn around or for any other purpose, unless the Contractor has received the owner's prior written permission to do so.
- 18.4** Contractor's vehicles shall not unreasonably interfere with vehicular or pedestrian traffic. Contractor's vehicles shall not be left unattended on streets or alleys.
- 18.5** The City reserves the right to deny the Contractor's vehicles access to certain streets, alleys, bridges, and roadways when the City is repairing such areas or the City otherwise determines it is in the public's best interest to restrict access. The City shall provide the Contractor with reasonable notice of such restrictions so that the City's action does not unduly interfere with the Contractor's normal operations.
- 18.6** If the Contractor cannot provide Collection Service to a Customer because a public or private street is temporarily closed to vehicular traffic, the Contractor shall return no later than the next Operating Day to provide service to the Customer. If the street is still closed at that time, Contractor shall provide Collection Service to the Customer on the next Scheduled Collection Day.
- 18.7** If access to a street, alley, bridge, or public or private roadway becomes impassable or if access is denied for any reason, the Contractor shall work with the Customer to determine a mutually

acceptable location for the Collection of the Customer's waste. If a mutual agreement cannot be reached, the Contractor shall provide Collection Service from the nearest public roadway that is accessible by the Contractor's Collection vehicle or from a location specified by the Administrator.

- 18.8** If the Contractor encounters a Customer or situation (e.g., dogs; narrow streets; low-hanging electrical wires) that prevents the Contractor from gaining the access needed to provide the Collection Service required in this Agreement, and the Contractor is unable to resolve the issue with the Customer, then the Contractor shall report the problem to the Administrator and the Administrator shall resolve the problem. The Administrator may require the Contractor or the Customer to take such action as the Administrator deems necessary and appropriate.

## **19. THE CITY'S DESIGNATED FACILITIES**

- 19.1** The Contractor shall deliver all of the Residential Waste, Commercial Waste, and Source Separated Recyclable Materials collected pursuant to this Agreement to a Designated Facility.
- 19.2** The Designated Facility for all of these wastes and materials is the County's Transfer Station, located at 1901 SW 4<sup>th</sup> Avenue, Delray Beach, Florida 33444 or the Central County Transfer Station located at 1810 Lantana Road, Lantana, Florida 33462. If the Transfer Station is inoperable or otherwise unavailable for any reason, the Designated Facilities for Residential Waste, Commercial Waste, and Source Separated Recyclable Materials shall be all of the Solid Waste Management Facilities that are operated by the Authority and licensed to accept such waste and materials.
- 19.3** The Designated Facilities for Construction and Demolition Debris and Yard Waste collected pursuant to this Agreement shall be all of the Solid Waste Management Facilities that have the necessary permits and licenses to receive and lawfully process Construction and Demolition Debris and Yard Waste.

## **20. SPILLAGE AND LITTER BY CONTRACTOR**

- 20.1** Contractor shall not cause or allow any Solid Waste, liquid, or other material to be spilled, released, or otherwise dispersed in the City as a result of the Contractor's activities.
- 20.2** Contractor shall immediately pick up any spillage or litter from Collection Containers that is caused by the Contractor.
- 20.3** When hauling or transporting any material over public roads in the City, the Contractor shall use a covered or enclosed vehicle or other device to prevent the material from falling, blowing, or escaping from the vehicle. If Solid Waste or any other material escapes from or is scattered by Contractor's vehicle for any reason, Contractor shall immediately stop and pick up such material.
- 20.4** Contractor's vehicles shall not release or cause litter in violation of the Florida Litter Law (Section 403.413, Florida Statutes) or the Ordinances. If litter is released or falls from Contractor's vehicle for any reason, the Contractor shall immediately stop the vehicle and retrieve the litter.
- 20.5** The Contractor shall immediately clean up any oil, hydraulic fluid, or other liquid that leaks or spills from Contractor's vehicles. The Contractor shall repair any damage associated with such

leaks or spills. The Contractor shall repave the damaged area if the Administrator concludes such action is necessary to repair the damage caused by the Contractor.

- 20.6** If the Administrator or a Customer notifies the Contractor before 12 p.m. (noon) that the Contractor has caused litter, or caused a leak or spill of Solid Waste, oil, hydraulic fluid, or other liquids or materials, the Contractor shall clean up the liquids and materials before the end of the day. If the Administrator or a Customer notifies the Contractor after noon, the Contractor shall clean up the liquid or material before noon on the next Operating Day.

## **21. EXEMPT WASTES AND RECOVERED MATERIALS**

- 21.1** The following types of Exempt Waste are not subject to the Contractor's exclusive franchise under this Agreement. These Exempt Wastes may be collected by the owner or occupant of the Improved Property where the Exempt Waste is generated, or by their agent, and taken to any Solid Waste Management Facility or other facility that is licensed to receive such materials.

- (a) Land Clearing Debris.
- (b) Yard Waste generated by a Commercial Lawn Care Company or plant nursery.
- (c) Roofing materials generated, collected, and transported by a roofing company.
- (d) Construction and Demolition Debris.
- (e) Recovered Materials that are generated and Source Separated on Commercial Property.
- (f) Excavated fill and earthen material.
- (g) Solid Waste and by-products generated from an industrial process.
- (h) Liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.
- (i) Trash and debris associated with farming or agricultural operations.
- (j) Wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts, including used oil, tires (except as provided in Section 7.6), and lead-acid batteries.
- (k) Boats, boat motors, and boat trailers.
- (l) Disaster Debris.
- (m) Hazardous, Biomedical, and Radioactive Waste.
- (n) Sludge.
- (o) Materials and wastes similar to those listed above, when designated by the Administrator.

- 21.2** Pursuant to Section 403.7046(3), Florida Statutes, nothing in this Agreement requires a commercial establishment to sell or convey its Source Separated Recovered Materials to the City or a facility designated by the City. Nothing contained in this Agreement restricts the right of a commercial establishment to sell or convey the establishment's Source Separated Recovered Materials to a properly certified Recovered Materials dealer that has satisfied the requirements in Section 403.7046, Florida Statutes.

## **22. THE CONTRACTOR'S SAFETY PROGRAM**

- 22.1** The Contractor shall develop, implement and maintain a written safety plan for all of its operations under this Agreement. The safety plan shall comply with the requirements in OSHA and Applicable Laws. A written copy and an electronic copy of the safety plan shall be provided to the Administrator for informational purposes. The City's receipt of the safety plan shall not constitute the City's approval of the plan or the City's acquiescence concerning the appropriateness of such plan. The Contractor shall comply with its safety plan at all times.
- 22.2** The Contractor shall appoint an employee who is qualified and authorized, as defined by OSHA, to supervise and enforce safety compliance.
- 22.3** The Contractor shall provide routine safety training to all of its employees, in compliance with OSHA and all Applicable Laws. Refresher courses and supplemental training shall be provided as necessary. Documentation of the Contractor's training programs, and the successful training of each employee, shall be maintained on file and shall be provided to the Administrator upon request.
- 22.4** The Contractor shall follow all OSHA regulations and Applicable Laws regarding personal protective equipment.
- 22.5** The Contractor's employees shall be trained and instructed to drive in a safe, defensive manner. Among other things, the drivers of the Contractor's Collection vehicles shall be instructed that they shall not "text" or talk on their telephones while they are driving a Collection vehicle that is moving.
- 22.6** The Contractor's safety plan shall include a written procedure for the immediate removal to a hospital or a doctor's care of any employee or other Person that is injured and requires medical assistance.
- 22.7** Contractor shall regularly update its safety plan to reflect any changes in Contractor's operations. The Contractor shall deliver an updated safety plan to the Administrator with the Contractor's annual report, pursuant to Section 34.4, below.

## **23. THE CONTRACTOR'S COLLECTION PLAN**

- 23.1** The Contractor shall prepare a Collection Plan that describes in detail how the Contractor will provide Collection Service in compliance with the requirements in this Agreement. At a minimum, the Collection Plan shall identify and describe the vehicles, equipment, personnel, routes, and schedules the Contractor will use for each type of Collection Service. The Collection Plan shall include a legible map for each Collection route, which will identify the Operating Days when Collection Service will be provided, the starting and ending points for the route, and the type of Collection Service that will be provided on the route on each Scheduled Collection Day.

- 23.2** The Collection Plan shall identify each Designated Facility that will receive the materials collected by the Contractor pursuant to this Agreement.
- 23.3** The Collection Plan shall identify the procedures that will be used by the Contractor to ensure that the City is not billed inappropriately for the Collection, disposal, or Recycling of Solid Waste or other materials. Among other things, the Collection Plan shall identify the procedures that will be used by the Contractor to ensure that each Designated Facility is fully informed whenever the Contractor delivers Solid Waste or other material for which the Contractor, rather than the City, must pay the applicable Tipping Fee.
- 23.4** If requested by the Administrator, the Collection Plan shall include the manufacturer's specification sheets for the Collection Containers provided by the Contractor under this Agreement.
- 23.5** An updated Collection Plan shall be submitted to the Administrator whenever the Contractor changes the plan.
- 23.6** The Collection Plan and all revisions to the plan are subject to the Administrator's prior written approval.

## **24. OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS**

Solid Waste belongs to the Person generating such waste, until the Solid Waste is discarded by that Person (i.e., the generator) and collected by the Contractor. When the Contractor collects Solid Waste on behalf of the City, title to the waste shall pass to the Contractor when the waste is collected. The Contractor shall be solely responsible and liable for the proper handling and lawful management of such waste until it is delivered to and accepted by a Solid Waste Management Facility. Upon acceptance, title to the waste shall pass to the owner of such facility.

Source Separated Recyclable Materials shall belong to the generator until such materials are discarded by the generator and collected by the Contractor. When the Contractor collects Source Separated Recyclable Materials on behalf of the City, title to such materials shall pass to the Contractor when the materials are collected. The Contractor shall be solely responsible and liable for the proper handling and lawful management of the Source Separated Recyclable Materials until such materials are delivered to and accepted at a Solid Waste Management Facility or Recovered Materials processing facility. Upon acceptance, title to the Source Separated Recyclable Materials shall pass to the owner of such facility.

Notwithstanding anything else contained herein, with regard to the Solid Waste and Source Separated Recyclable Materials collected by the Contractor pursuant to this Agreement, the Contractor shall not take, keep, process, alter, sell, remove, or otherwise dispose of any such material without the prior written consent of the City.

## **25. RESERVED**

## **26. SET OUT PROCEDURES FOR CUSTOMERS**

The procedures and requirements established in this Section 26 shall be followed by the Contractor's Customers. However, the Contractor shall collect a Customer's Solid Waste and Source Separated

Recyclable Materials, even if the Customer fails to comply with one or more of the requirements in this Section 26, unless (a) the Administrator concurs in advance that the Contractor does not need to provide Collection Service to the Customer or (b) the Contractor places a Non-Collection Notice on the Customer's Collection Container and complies with the requirements in Section 15, above. The requirements in the City's Ordinances, including but not limited to Chapter 51 (entitled "Garbage and Trash"), shall supplement the requirements contained herein.

## **26.1 GENERAL PROCEDURES FOR ALL CUSTOMERS**

The following procedures shall apply to all Customers:

- 26.1.1 Garbage and other putrescible waste shall not be collected, stored, or Set Out in an open, uncovered box, bag, or Collection Container.
- 26.1.2 Source Separated Recyclable Materials shall be Set Out in a Recycling Container. Source Separated Recyclable Materials shall not be placed in the same Collection Container with Solid Waste.
- 26.1.3 Source Separated Recyclable Materials shall not be Set Out in a Plastic Bag.
- 26.1.4 Customers shall not overfill a Collection Container; the lid on a Collection Container shall be closed securely by the Customer.
- 26.1.5 A Customer shall not place their Solid Waste in another Person's Collection Container, unless they have received prior approval to do.
- 26.1.6 A Customer shall only Set Out for Collection the Solid Waste that the Customer generated. A Customer shall not Set Out for Collection any Solid Waste that was generated by another Person.
- 26.1.7 A Customer's Solid Waste shall be Set Out for Collection on the Premises where the Solid Waste was generated.
- 26.1.8 A Customer shall not Set Out Solid Waste for Collection on property that is not owned or occupied by the Customer, unless the Customer has received the prior approval of the owner or occupant of such property.
- 26.1.9 The weight of the materials placed in a Garbage Cart or Recycling Cart by a Customer shall not exceed the Cart's rated capacity (as shown on the lid of the cart). Garbage Cans shall not be loaded with more than fifty (50) pounds of material.
- 26.1.10 If the Customer and Contractor cannot agree upon an appropriate location to Set Out a Collection Container or non-containerized waste, the Administrator shall designate the point of Collection.
- 26.1.11 When necessary to carry out the purpose and intent of this Agreement, the Administrator may authorize the placement of a Collection Container at a location that is not on the Customer's Premises.

## **26.2 SPECIFIC PROCEDURES FOR RESIDENTIAL CUSTOMERS RECEIVING COLLECTION SERVICE AT CURBSIDE**

The following procedures shall apply to Residential Customers that receive Collection Service at Curbside.

- 26.2.1 Except as provided in Section 26.2.9, each Residential Customer receiving Collection Service at Curbside shall Set Out their Garbage and Rubbish in a Garbage Cart. However, if a Customer's Garbage Cart is full on the first Scheduled Collection Day for Garbage immediately following a Holiday, the Customer may place Plastic Bags of excess waste next to their Garbage Cart.
- 26.2.2 Residential Customers shall place their Yard Waste at Curbside for Collection. Leaves, twigs, and other small pieces of Yard Waste shall be placed in a biodegradable bag or Plastic Bag. Larger pieces of Yard Waste shall be stacked neatly in a pile at Curbside. A Residential Customer may, but is not required to, tie Yard Waste in a bundle.
- 26.2.3 Source Separated Recyclable Materials shall be Set Out for Collection in or adjacent to a Recycling Bin.
- 26.2.4 Each Residential Customer shall place their Garbage, Rubbish, Yard Waste, Bulky Waste and Source Separated Recyclable Materials at the Curbside prior to 6:00 a.m. on the Scheduled Collection Day(s) for such materials.
- 26.2.5 Any carpet Set Out for Collection at Curbside shall be rolled and tied or otherwise bound.
- 26.2.6 Each Garbage Can used by a Customer shall: be constructed so as to prevent intrusion by water and animals, and the expulsion of its contents; have a cover that is free from sharp edges; and not have inside structures that prevent the free discharge of the container's contents.
- 26.2.7 Subject to the other limitations contained herein (e.g., Sections 7.3 and 7.4), a Residential Customer may Set Out the Yard Waste and Bulky Waste that was generated by a builder, building contractor, privately employed handyman service, Commercial Lawn Care Company, or plant nursery on the Customer's Residential Property while such Person was working for the Customer. However, a Residential Customer shall not Set Out such materials if they were generated on any other property, even if the other property is owned by the Residential Customer. Further, a Residential Customer shall not Set Out more than two (2) cubic yards of Construction and Demolition Debris or a total of six (6) cubic yards of Yard Waste for Collection on any Scheduled Collection Day.
- 26.2.8 Plastic Bags and biodegradable bags shall not be loaded with materials weighing more than fifty (50) pounds or the rated capacity of the bag, whichever is less.
- 26.2.9 Notwithstanding anything else contained herein, a Residential Customer receiving Collection Service at Curbside may Set Out their Garbage and Rubbish in Plastic Bags if the Customer's Dwelling Unit is located in an area that is designated by the City for Collection Service with Plastic Bags.

**26.3 SPECIFIC PROCEDURES FOR CUSTOMERS IN MULTI-FAMILY DWELLINGS THAT USE MECHANICAL CONTAINERS**



The following requirements apply to Customers that reside in Multi-Family Dwellings and receive Collection Service with Mechanical Containers.

- 26.3.1 Each Customer in a Multi-Family Dwelling shall comply with the following Set Out Procedures: (a) Garbage and Rubbish shall be placed in a Mechanical Container located on the Customer's Premises; and (b) Source Separated Recyclable Materials shall be placed in a Recycling Container located on the Customer's Premises.
- 26.3.2 The Contractor and the Customer shall select mutually acceptable locations for the placement of the Mechanical Container(s) and Recycling Container(s) that will be used by the Customer and serviced by the Contractor at a Multi-Family Dwelling. These locations are subject to the Administrator's approval. Whenever possible, the Recycling Containers shall be placed adjacent to the Mechanical Container at the Multi-Family Dwelling.
- 26.3.3 A Customer residing at a Multi-Family Dwelling shall call the Contractor and schedule a time for the Collection of their Bulky Waste if the Customer does not have a Scheduled Collection Day for Bulky Waste. A Customer shall not Set Out their Bulky Waste more than one (1) day before the Scheduled Collection Day or the date that the Customer scheduled with the Contractor for the Collection of Bulky Waste. A Customer shall not place their Bulky Waste in a location that blocks the Contractor's access to a Mechanical Container serving the Customer's Multi-Family Dwelling.

## **26.4 PROCEDURES FOR COMMERCIAL CUSTOMERS**

- 26.4.1 Each Commercial Customer shall place their Garbage and Rubbish in their Mechanical Container or Garbage Cart, as applicable.
- 26.4.2 Commercial Customers shall not place or commingle Construction and Demolition Debris with any other type of Solid Waste in a Collection Container.
- 26.4.3 All Collection Containers shall be placed in locations that are safely and readily accessible to the Customer and the Contractor's vehicles.
- 26.4.4 Each Mechanical Container shall be placed on a paved level surface. The approaches to the Mechanical Container shall be capable of supporting the weight of the Collection vehicle.
- 26.4.5 A Commercial Customer shall call the Contractor and schedule a time for the Collection of their Bulky Waste. A Commercial Customer shall not Set Out their Bulky Waste more than one (1) day before such materials are to be collected by the Contractor. A Commercial Customer shall not place their Bulky Waste in a location that blocks the Contractor's access to a Mechanical Container serving the Commercial Customer or any other Person.

## **27. COLLECTION CONTAINERS**

### **27.1 PURCHASE AND OWNERSHIP OF CONTAINERS**

- 27.1.1 Garbage Cans, Plastic Bags, and Biodegradable Bags – Each Customer shall purchase and provide the Garbage Cans, Plastic Bags, and biodegradable bags, if any, that the Customer uses. Garbage Cans shall remain the property of the Customer.
- 27.1.2 Recycling Bins – Recycling Bins previously were purchased by the Authority and distributed to the Customers in the Service Area. These Recycling Bins are and shall remain the property of the Authority. If the Authority provides additional Recycling Bins for the Customers in the Service Area, the Recycling Bins shall remain the property of the Authority.
- 27.1.3 Garbage Carts – Garbage Carts previously were purchased by the City and distributed to Residential Customers. The City also has an inventory of spare Garbage Carts. All of these Garbage Carts are and shall remain the property of the City.

The Contractor shall be allowed to distribute and use all of the Garbage Carts in the City's inventory when the Contractor provides Garbage Carts to Residential Customers pursuant to this Agreement. When the City's inventory is depleted, the Contractor shall purchase, assemble, and deliver all of the Garbage Carts that the Contractor must provide under this Agreement.

- 27.1.4 New Garbage Carts and Recycling Bins for New and Existing Customers – During the term of this Agreement, the Contractor shall purchase, assemble, and deliver one new Garbage Cart to each New Customer that will receive Collection Service at Curbside. The cart shall be delivered within three (3) Operating Days after the New Customer or the Administrator requests the Contractor to deliver the cart. The Contractor also shall deliver a new Recycling Bin to each New Customer when the Contractor delivers the Customer's Garbage Cart. The Contractor shall request and obtain the Recycling Bin from the Authority.

During the term of this Agreement, the Contractor shall purchase, assemble, and deliver: (a) one new or refurbished Garbage Cart to each Residential Customer that needs to replace a cart because their cart has been stolen or damaged beyond repair; (b) a new Garbage Cart to each Customer that wishes to purchase a cart pursuant to Section 39.9, below; and (c) a new or refurbished Garbage Cart to each Customer that wishes to exchange their cart(s) pursuant to Section 27.4, below. In all such cases, the carts shall be delivered within three (3) Operating Days after they are requested by the Customer or the Administrator. For the purposes of this Section 27.1.4, a "refurbished" cart shall mean a cart that was exchanged pursuant to Section 27.4, below, and then cleaned and repaired to "like new" condition.

Garbage Carts purchased by the Contractor shall become the property of the City when the carts are delivered to a Residential Customer or the City. Upon termination or expiration of this Agreement, the Garbage Carts held in the Contractor's inventory for the City (e.g., carts that are hot-stamped or labeled with the City's name or logo) shall be delivered to and become the property of the City. Carts purchased by a Customer shall be the property of the Customer.

- 27.1.5 Mechanical Containers – The Contractor shall provide Mechanical Containers to any Customer that wishes to use them, and has a location where such equipment can be

used in compliance with this Agreement and the Ordinances, but the Contractor may charge the applicable Rate for the use of its Mechanical Containers. The Contractor shall be responsible for the purchase or lease of all Mechanical Containers that the Contractor is required to provide under this Agreement. Mechanical Containers purchased by the Contractor shall remain the property of the Contractor, unless sold.

A Customer may own its Compactor and attached Roll-Off Container, or lease a Compactor and attached Roll-Off Container from a Person other than the Contractor, if the Compactor and Roll-Off Container are compatible with and can be serviced by the Contractor's equipment. In such cases, the Compactor and attached Roll-Off Container shall remain the property of the Customer.

## **27.2 MAINTENANCE AND REPAIR OF CONTAINERS**

27.2.1 Garbage Cans – Each Customer shall be responsible for cleaning, maintaining, and repairing their Garbage Can (if any). Garbage Cans shall be maintained in good condition and shall be free from sharp edges or other hindrances to efficient Collection Services.

27.2.2 Recycling Bins – Each Customer shall be responsible for cleaning their Recycling Bins and maintaining them in a sanitary condition.

27.2.3 Garbage Carts and Recycling Carts – Each Customer shall be responsible for cleaning their Garbage Cart(s) and Recycling Cart(s), if any, and keeping the carts in a sanitary condition.

The Contractor shall procure, and maintain at all times, an adequate supply of spare parts (e.g., wheels, lids) for the Garbage Carts and Recycling Carts used by its Customers in the Service Area. The Contractor shall be responsible for maintaining such carts in good working condition. The Contractor shall repair or replace a Garbage Cart or Recycling Cart (a) promptly if the Contractor observes that the cart is defective or (b) within three (3) Operating Days after the Contractor is informed by the Customer or the Administrator that the Cart needs to be repaired.

27.2.4 Mechanical Containers – The Contractor shall maintain each of its Mechanical Containers in good working order at all times to ensure continuous and efficient Collection Services. The Contractor shall procure, and maintain at all times, an adequate supply of spare parts for its Mechanical Containers. The Contractor shall maintain and repair each Mechanical Container as needed to ensure that the container is free from holes, broken hinges, broken doors or door fasteners, broken wheels, broken lids, or other defects. Mechanical Containers shall be kept painted (with the exception of containers made of plastic, aluminum, stainless steel, or other materials that do not readily accept paint), and shall be kept free from graffiti, at all times so they do not become a detriment to the community. Mechanical Containers shall be washed by the Contractor on a regular basis, as necessary, to minimize the potential for odors and nuisance conditions. The Contractor shall replace, repair, paint, clean, wash, and otherwise maintain any one of its Mechanical Containers when requested to do so by the Administrator, pursuant to Section 28.9.2, below.

Each Customer shall be responsible for cleaning, maintaining, and repairing any Mechanical Container that the Customer owns, as well as any Mechanical Container the Customer leases from a Person other than the Contractor.

If a Mechanical Container is damaged or otherwise in need of repair, the Contractor shall provide a front load Mechanical Container within twenty-four (24) hours of receiving a request for service from a Customer. In the alternative, the Contractor may provide a Roll-Off Container, if the use of such container is approved by the Administrator. In all cases, the Contractor shall provide assistance to ensure uninterrupted service to the Customer. In such cases, the Contractor may charge the Customer in accordance with the Rates set forth in Exhibit 3B.

## **27.3 STORAGE, DISTRIBUTION AND REPLACEMENT OF CONTAINERS**

- 27.3.1 Garbage Cans – Each Customer shall be responsible for storing and replacing their own Garbage Cans (if any).
- 27.3.2 Recycling Bins – Each Customer shall be responsible for storing their Recycling Bin(s). Residential Customers may obtain new Recycling Bins by calling the Authority's toll-free phone number (1-866-NEW BINS). The new Recycling Bins shall be delivered to the Residential Customer, without charge, by the Contractor.
- 27.3.3 Garbage Carts and Recycling Carts – Each Customer shall be responsible for storing their Garbage Cart(s) and Recycling Cart(s), if any. The Contractor shall be responsible for purchasing, storing, assembling, and distributing new and replacement Garbage Carts and Recycling Carts to those Customers that are entitled to receive them pursuant to this Agreement. For such Customers, the Contractor shall deliver the carts within three (3) Operating Days after the carts are requested by the Administrator or Customer. The Contractor shall be responsible for procuring, maintaining at all times, and storing an adequate supply of Garbage Carts and Recycling Carts for distribution. The Contractor shall keep Garbage Carts in the Contractor's local office and shall provide them to Customers, upon request, if the Customer is entitled to receive a cart pursuant to this Agreement.
- 27.3.4 Mechanical Containers – The Contractor shall be responsible for the storage, distribution, and replacement of its Mechanical Containers. The Contractor shall provide a Mechanical Container within three (3) Operating Days after receiving a request for a Mechanical Container from the Administrator or a Customer.
- 27.3.5 Collection Containers Damaged by Contractor – The Contractor shall repair or replace a Customer's Collection Container within three (3) Operating Days after being notified by the Administrator or Customer that the Customer's Collection Container was damaged by the Contractor. Any replacement shall be similar in style, material, quality, and capacity to the Customer's original container.

## **27.4 EXCHANGE OF CARTS AND CONTAINERS**

The Contractor shall offer Garbage Carts that are approximately thirty-two (32) gallons, sixty-four (64) gallons, and ninety-six (96) gallons in size. The Contractor shall deliver a different Garbage Cart to any Customer that wishes to exchange its cart for one that is a different size. A New Customer shall be allowed to exchange their Garbage Cart for a different size, without paying any charge, if the Customer requests an exchange within ninety (90) days after the Customer receives the cart. If a Customer has received Collection Service from the Contractor for more than ninety (90) days, the Contractor may charge and collect a delivery fee for exchanging a Customer's cart; provided, however, the Contractor shall not charge or collect a delivery fee if a Customer delivers their cart to the Contractor's local office. The Contractor's delivery fee shall not exceed Twenty-Five Dollars (\$25.00). The Contractor shall be responsible for billing and collecting its delivery fee from the Customer.

The Contractor shall exchange a Mechanical Container when requested by the City or Customer, if the Contractor has the requested size in stock. The Contractor shall deliver the requested container within five (5) Operating Days after receiving the Customer's request. There shall be no charge for exchanging a Mechanical Container, unless the Customer already has exchanged its Mechanical Container two (2) or more times during the current Operating Year.

## **27.5 TECHNICAL SPECIFICATIONS FOR COLLECTION CONTAINERS**

27.5.1 Garbage Carts and Recycling Carts – The Garbage Carts and Recycling Carts provided by the Contractor shall comply with the size, color, and technical specifications established by the Administrator. In general, the carts shall: (a) have a nominal rated capacity of approximately thirty-two (32), sixty-four (64), or ninety-six (96) gallons, as applicable; (b) be hot-stamped or labeled with the City's logo, in accordance with the specifications provided by the Administrator; and (c) be compatible with the hydraulic lifting and dumping mechanism mounted on the Contractor's Collection vehicles. Each cart shall have a flat area on the top (outside) of the lid, which shall be at least eight (8) inches by sixteen (16) inches in size and suitable for the placement of informative stickers or decals. Each type of cart and each size shall be uniform with regard to color, volumetric capacity, dimensions, finished surfaces, and hot stamping/labeling, but the color and specifications for Garbage Carts may be different than the ones for Recycling Carts. Each cart shall be constructed to prevent the intrusion of water and animals, with covers that are free from sharp edges, and without any inside structures that prevent the discharge of its contents. The Contractor shall replace the labels on its Collection Containers on an as-needed basis, subject to the Administrator's approval. Upon the Administrator's request, the Contractor shall provide the Administrator with the manufacturer's specification sheets for new Recycling Carts and Garbage Carts before the Contractor orders the new carts from the manufacturer.

27.5.2 Minimum Warranty for Garbage Carts – Each Garbage Cart shall be protected by a manufacturer's warranty of at least ten (10) years duration. The warranty shall explicitly provide that the warranty is enforceable by the City, as well as the Contractor.

27.5.3 Minimum Specifications for Carts – The Garbage Carts and Recycling Carts provided by the Contractor pursuant to this Agreement shall, at a minimum, comply with the specifications set forth in Exhibit 6 ("Specifications for Garbage Carts"), unless the City waives a requirement in writing.

- 27.5.4 Mechanical Containers – Mechanical Containers supplied by the Contractor shall be in good condition and shall be subject to the approval of the Administrator. Mechanical Containers shall have attached lids, unless the Administrator approves a different design for a particular use or they are open top Roll-Off Containers used for the Collection of Construction and Demolition Debris. Mechanical Containers shall have solid, durable sides and bottoms. Each Mechanical Container (except open top Roll-off Containers) shall have a heavy-duty removable plug in the bottom. The Contractor shall provide and install casters and locking devices for a Mechanical Container, upon the request of the Administrator or a Customer.

## **28. CONTRACTOR’S VEHICLES AND COLLECTION EQUIPMENT**

### **28.1 GENERAL REQUIREMENTS FOR CONTRACTOR’S VEHICLES AND COLLECTION EQUIPMENT**

- 28.1.1 The Contractor shall purchase or lease, and maintain and repair, all of the vehicles and equipment necessary to provide Collection Service in compliance with the approved Collection schedules and otherwise promptly and efficiently comply with the requirements in this Agreement. The Contractor’s vehicles and equipment shall be compatible (in size and weight) with, and appropriate for, the areas where such vehicles and equipment are utilized. Smaller vehicles or specialty equipment shall be used in areas where narrow street, low hanging limbs, or other obstructions preclude the use of the Contractor’s normal vehicles and equipment.
- 28.1.2 Contractor’s Collection vehicles and equipment shall be a standard product of a reputable manufacturer so that continuing service, and the supply and delivery of spare parts, may be ensured. Replacement parts do not need to be a product of the same manufacturer as the original parts.
- 28.1.3 All of Contractor’s Collection vehicles shall have waterproof seals and shall be watertight to a depth sufficient to prevent the discharge or leaking of liquids that have accumulated in the vehicle’s cargo area during loading and transport operations.
- 28.1.4 Each Collection vehicle shall fully enclose the Contractor’s Load. A Collection vehicle shall have a fully enclosed metal top, a tarpaulin, or a net cover with mesh openings not greater than one and one-half (1½) inches in size. The top, tarpaulin, or cover shall be kept in good working condition and shall be free from tears and holes. The Contractor shall use the cover and shall fully enclose the Contractor’s Load at all times when the vehicle’s speed exceeds 20 miles per hour and at other times when necessary to prevent the Contractor’s Load from blowing out of the vehicle.
- 28.1.5 All Collection vehicles shall be painted a uniform color. All Collection vehicles shall have painted sides, or shall have signs affixed on each side, stating “Proudly Serving the City of Delray Beach.” Vehicles used to collect Source Separated Recyclable Materials shall have signs with the Authority’s toll-free telephone number for requesting new Recycling Bins (1-561-NEW BINS or 1-866-639-2467).

- 28.1.6 Advertising shall not be allowed on the Contractor's vehicles, Collection Containers, or equipment used to provide Collection Service in the City.
- 28.1.7 Vehicles used for the Collection of Source Separated Recyclable Materials shall be designed with two (2) or more separate compartments so that the Contractor can separately store and transport the different types of Recyclable Materials (e.g., paper and fiber products; glass, metal, plastic and other). The compartment used to collect glass bottles and containers shall not compress or compact the contents in that compartment to a level that exceeds fifty (50) pounds per square inch.

## **28.2 DEDICATED FLEET FOR CITY**

The Contractor shall maintain a dedicated fleet of vehicles for the City's benefit. The vehicles used to provide Collection Services under this Agreement shall not be used to collect Solid Waste or Recyclable Materials outside of the Service Area, and vehicles used outside of the Service Area shall not be used to provide Collection Service pursuant to this Agreement, unless the Contractor receives the Administrator's prior written approval for such activity.

## **28.3 AGE OF CONTRACTOR'S COLLECTION VEHICLES**

None of the Collection vehicles used by the Contractor under this Agreement shall be more than ten (10) years old. The Contractor's fleet of vehicles shall have an average age of seven (7.0) years or less. When calculating the average age of the Contractor's fleet, the Contractor shall include all Collection vehicles, including reserve and spare vehicles. Notwithstanding the forgoing, on the Commencement Date, the age of the Contractor's fleet shall be one (1) year or less, pursuant to Section 5 in Exhibit 13.

## **28.4 ANCILLARY EQUIPMENT IN CONTRACTOR'S VEHICLES**

- 28.4.1 All vehicles used to provide Collection Services under this Agreement shall be equipped at all times with: (a) all safety equipment required by Applicable Laws; (b) a fire extinguisher; (c) a shovel and broom; (d) a spill response kit; and (e) an audible back-up warning device. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from Contractor's Collection vehicles.
- 28.4.2 All vehicles used to provide Collection Services under this Agreement shall be equipped with a two-way radio, cellular telephone, or other equipment appropriate for communications between the vehicle operator, the Field Supervisor, and the District Manager.
- 28.4.3 If the Contractor's Collection vehicles are equipped with Global Positioning Systems ("GPS"), the Contractor shall provide its GPS logs and records to the Administrator, upon request.

## **28.5 RESERVE VEHICLES AND EQUIPMENT**

- 28.5.1 The Contractor shall have sufficient reserve vehicles and equipment available to complete daily Collection routes according to the schedules established pursuant to this Agreement. The use of reserve vehicles and equipment shall include, but not be limited to occasions when front-line vehicles and equipment are out of service, or

when delays will prevent front-line vehicles and equipment from completing their Collection route(s) within the established hours of Collection.

- 28.5.2 The reserve vehicles and equipment shall be ready to go into service within two (2) hours of any breakdown or delay experienced by a front-line vehicle. The reserve vehicles and equipment shall be similar in size and capacity to the vehicles and equipment being replaced.

## **28.6 MAINTENANCE AND CLEANING**

- 28.6.1 The Contractor shall keep all Collection vehicles, Mechanical Containers, and equipment cleaned and painted to present a pleasing appearance at all times. All Collection vehicles and Mechanical Containers used primarily for the Collection of Garbage shall be washed thoroughly and sanitized with a suitable disinfectant and deodorant at least once each week, unless the Administrator approves an alternate cleaning schedule. Other Collection vehicles and Mechanical Containers shall be cleaned and washed, as necessary, to minimize the potential for odors and nuisance conditions.
- 28.6.2 The Contractor's Collection Plan must include a schedule for cleaning, painting and maintaining each Collection vehicle and Mechanical Container. At a minimum, the Contractor shall maintain each Collection vehicle and Mechanical Container in compliance with the manufacturer's recommendations. The Collection Plan also must explain and demonstrate how the Contractor shall comply with the requirements in Section 28.6.4, below.
- 28.6.3 The Contractor shall monitor, maintain and repair its Collection vehicles and equipment to prevent fuel, lubricants, and other liquids from leaking or spilling. Oil and hydraulic systems, and waterproof seals and enclosures, on the Contractor's vehicles and equipment shall be kept in good repair at all times to prevent leaks and spills.
- 28.6.4 The Contractor shall provide at the request of the customer or City a new or reconditioned Mechanical Container to each Commercial Customer at least once every twelve (12) months. This requirement applies to all Mechanical Containers, including Roll-Off Containers. To demonstrate compliance with this requirement, the Contractor shall paint by stencil or use other permanent means to mark the date (i.e., month and year) on each Mechanical Container when the Mechanical Container was placed into service. This date shall be marked on the front upper left corner of the Mechanical Container and the size of the Mechanical Container shall be marked in the same manner on the front upper right corner of the Container.

## **28.7 IDENTIFICATION OF CONTRACTOR'S VEHICLES AND EQUIPMENT**

- 28.7.1 The Contractor's name and telephone number shall be displayed at all times, in letters at least five (5) inches high, on the driver's side and the passenger's side of each one of the Contractor's Collection vehicles. Truck identification numbers shall be displayed at all times, in letters at least five (5) inches high, on all four (4) sides of all Collection vehicles.



- 28.7.2 All of the Contractor's Collection vehicles shall display information identifying the type of material (e.g., Solid Waste or Recyclable Materials) being collected. The information shall be displayed at all times, on the driver's side and the passenger's side of the vehicle body, in letters at least five (5) inches high. Upon the Administrator's request, the Contractor's vehicles also shall display information promoting the City's Solid Waste or Recycling programs. The information displayed on the Contractor's vehicles shall be subject to the approval of the Administrator and the Contractor, which approval shall not be unreasonably withheld.
- 28.7.3 The Contractor shall label each one of its Mechanical Containers with the Contractor's name and telephone number, and the identification number for the Mechanical Container. The labels shall be comprised of letters and numbers that are at least five (5) inches high. The labels shall be placed on at least two (2) sides of each Mechanical Container. At least one label must be readily visible when the Mechanical Container is placed at the Customer's site.

## **28.8 COMPLIANCE WITH THE LAW APPLICABLE TO VEHICLES**

- 28.8.1 At all times, the Contractor and its employees shall operate and maintain all Collection vehicles and equipment in compliance with all Applicable Laws.
- 28.8.2 At all times, the Contractor shall maintain all necessary licenses and registrations, and shall timely pay all fees and taxes, on all vehicles and equipment, as required under Applicable Laws.
- 28.8.3 All equipment shall be operated in compliance with the Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes, and the Ordinance.

## **28.9 CITY'S RIGHT TO INSPECT CONTRACTOR'S VEHICLES AND EQUIPMENT**

- 28.9.1 The Administrator may inspect the Contractor's vehicles, equipment, licenses, and registrations at any reasonable time. The City reserves the right to inspect each Collection vehicle, each day, prior to its use in the City.
- 28.9.2 The Administrator shall have the authority to require the Contractor to immediately remove from service any Collection vehicle or equipment that is leaking or spilling fluids, Solid Waste, or Recyclable Materials. The Administrator also may require any Collection vehicle, Collection Container, or other equipment to be cleaned, washed, painted, repaired, or maintained immediately. In such cases, the Contractor shall comply with the Administrator's request within one (1) Operating Day or the Contractor shall take the vehicle, container, or equipment out of service until the requested work can be completed. Further, the Administrator may require the Contractor to pressure spray and promptly clean any location where one of the Contractor's Mechanical Containers has leaked fluids or spilled Solid Waste and thereby stained soils or pavement or created odorous or nuisance conditions.

## **28.10 LOCAL STORAGE AND REPAIR OF CONTRACTOR'S VEHICLES**

The Contractor shall provide a storage yard, garage, and maintenance facility that enables all-weather, year-round maintenance operations for the vehicles and equipment used pursuant to this

Agreement. By January 1, 2016, the storage yard, garage, and maintenance facility shall be located within twenty-five (25) miles of the City. The Contractor shall not use City property to store, wash, repair, or maintain any vehicles or equipment.

## **29. CONTRACTOR'S PERSONNEL**

### **29.1 GENERAL REQUIREMENTS**

The Contractor shall use competent, qualified, sober personnel to provide the services required by this Agreement. The Contractor shall devote sufficient personnel, time and attention to its operations under this Agreement to ensure that its performance will be satisfactory to the City.

### **29.2 DISTRICT MANAGER**

Contractor shall appoint an employee to serve as the District Manager. The District Manager shall be the Contractor's primary point of contact with the City for all technical and administrative matters pertaining to this Agreement. The District Manager must have at least five (5) years of prior managerial experience with programs of this nature and size. The District Manager shall have the authority to make significant decisions relevant to the day-to-day operation of Contractor's program under this Agreement. The District Manager shall have direct access to the Contractor's management for resolving problems beyond the District Manager's authority. At all times during the term of this Agreement, the Administrator shall have immediate access to the District Manager by telephone and electronic mail. The District Manager shall be responsible for overseeing and implementing the Contractor's performance under this Agreement.

### **29.3 FIELD SUPERVISOR**

The Contractor shall designate one or more Field Supervisors, who shall oversee the Collection Service provided under this Agreement. The Field Supervisor(s) shall have immediate access to an automobile or truck between 6:00 a.m. and 7:00 p.m., every Operating Day. At all times during the term of this Agreement, the Administrator shall have immediate access to the Field Supervisor(s) by telephone and electronic mail.

### **29.4 EMPLOYEE CONDUCT**

The Contractor's personnel shall maintain a courteous and respectful attitude toward the public at all times. The Contractor shall instruct its employees to avoid loud or profane language during the performance of their duties under this Agreement. Contractor's employees shall not cause any disturbance, interference, or delay to any work or service rendered to the City or by the City. Contractor's employees shall not conduct themselves in a negligent, disorderly or dishonest manner.

### **29.5 EMPLOYEE IDENTIFICATION**

The Contractor shall furnish each employee with an appropriate means of identifying him or her as an employee of the Contractor (e.g., a uniform with a name tag and company logo). The Contractor's employees shall wear the identification at all times while on duty. The Administrator has the right to approve the identifiers or identification furnished by the Contractor.

## **29.6 ATTIRE FOR EMPLOYEES**

Employees and subcontractors of the Contractor shall wear proper attire at all times when working for the City under this Agreement. Proper attire shall consist of appropriate pants or shorts, a shirt with the Contractor's name or logo, and boots or similar footwear.

## **29.7 REMOVAL OF EMPLOYEES**

The Administrator reserves the right to disapprove and request removal of any Contractor personnel assigned to the City's work. Such disapproval or request shall be for reasonable cause only and shall be addressed in writing to the Contractor's District Manager. Notwithstanding the foregoing, the Contractor shall not be required to take any action with regard to the Contractor's personnel that would violate any Applicable Law. The Contractor shall defend, save, and hold the City harmless from and against legal actions by any employees so removed.

## **29.8 EMPLOYEE TRAINING AND LICENSES**

- 29.8.1 All of the Contractor's employees shall be qualified and appropriately trained for the tasks assigned to them. The Contractor shall provide refresher courses and additional training to its employees, as needed, to ensure compliance with the requirements of this Agreement and all Applicable Laws.
- 29.8.2 At all times when operating vehicles or equipment pursuant to this Agreement, the Contractor's employees shall carry a valid Florida driver's license for the type of vehicle or equipment being operated.
- 29.8.3 The Administrator may request the Contractor's employees to produce their driver's license for inspection at any time when the employee is on duty.

## **29.9 CONTRACTOR'S COMPLIANCE WITH LABOR LAWS**

The Contractor shall comply with all Applicable Laws concerning the protection and rights of employees, including but not limited to equal employment opportunity laws, minimum wage laws, immigration laws, the Americans with Disabilities Act, and the Fair Labor Standards Act.

## **29.10 LEGAL STATUS OF CONTRACTOR'S EMPLOYEES**

A Person employed by the Contractor shall have no right or claim to any pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the City's officers and employees. The Contractor shall have the sole responsibility for paying any wages and providing any employment benefits to such Person.

## **29.11 SUBCONTRACTORS AND TEMPORARY LABOR**

To the greatest extent practicable, the Contractor shall provide all of its Collection Services within the City by using permanent employees of the Contractor. The Contractor shall minimize and, if possible, eliminate the use of subcontractors and temporary labor for the provision of Collection Services. No subcontractors or temporary labor shall be used to provide Collection Services without the prior approval of the Administrator.

## **30. CONTRACTOR'S LOCAL OFFICE**

- 30.1** The Contractor shall maintain a local customer service and dispatch office within twenty-five (25) miles of the City. The Contractor's office shall be open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays. However, the Contractor's office does not need to be open on Holidays.
- 30.2** The Contractor's office shall be equipped with sufficient personnel and equipment to document and timely respond to all inquiries, issues, and Legitimate Complaints raised by the City or Customers. A responsible, experienced person shall be present and in charge of the office during all business hours. Contractor's office staff shall be familiar with the City and the Contractor's obligations under this Agreement.
- 30.3** The Contractor shall have a toll-free telephone number for calls from Customers in the City. The Contractor's telephone system shall have the capacity to receive multiple telephone calls simultaneously. All calls concerning complaints shall be answered by a Person located in the Contractor's local office. The Contractor shall have extra staff working in the Contractor's office each Operating Day in June 2015 and as long thereafter as necessary to ensure Contractor's compliance with the requirements in Sections 30.2, 31.1.4, and 31.1.5. The Contractor's telephone number shall be listed in the Contractor's webpage and the two largest telephone directories in the City. Contractor shall use an answering machine or answering service to receive and record messages when the office is closed or the Contractor is receiving more calls than its staff can answer. The answering machine or service shall give Customers the telephone number that the Customers may use to report an emergency.
- 30.4** The Contractor shall establish a process for receiving and handling emergency calls, both during and after normal operating hours. The Contractor's process shall ensure that a Customer receives an immediate response after reporting an emergency. Such process shall be subject to the Administrator's approval.
- 30.5** The Contractor's office shall be equipped with a two-way communication system that can be used to promptly contact the Administrator, the Contractor's District Manager, the Contractor's Field Supervisor, and all of the Contractor's Collection vehicles.
- 30.6** Garbage Carts shall be stored at the Contractor's local office and made available to Customers, pursuant to Section 27.3.3, above.

## **31. CUSTOMER RELATIONS**

### **31.1 HANDLING CUSTOMER COMPLAINTS AND REQUESTS**

- 31.1.1** The Contractor shall be responsible for receiving and responding to all complaints and requests from Customers. Any complaint or request received by the Contractor shall be entered into the Contractor's electronic tracking system pursuant to Sections 31.1.4 and 31.1.5 and then the Contractor shall promptly initiate its response.
- 31.1.2** The District Manager or their designee shall determine initially whether a Customer's complaint is a Legitimate Complaint. If there is a dispute with the Customer or uncertainty, the Administrator shall make the final determination as to whether a Customer's complaint is a Legitimate Complaint. Legitimate Complaints include but are not limited to:

- Missed Collections;
- Failure to respond to Missed Collections in compliance with the requirements of this Agreement;
- Mishandling of Solid Waste, Recyclable Materials, or Collection Containers;
- Failure to maintain vehicles, Collection Containers, or equipment in compliance with this Agreement;
- Damage to public or private property;
- Failure to pick up litter;
- Failure to obey traffic regulations; and
- Discourteous treatment of Customers.

31.1.3 The Contractor shall take whatever steps are necessary to promptly remedy the cause of a Legitimate Complaint. If the Contractor is informed about a Legitimate Complaint before noon on an Operating Day, the Contractor shall remedy the complaint before the end of that day. If the Contractor is notified about a Legitimate Complaint after noon on an Operating Day, or at any time on a Sunday or Holiday, the Contractor shall remedy the complaint before noon on the next Operating Day. The Contractor may request and the Administrator shall grant additional time to remedy a Legitimate Complaint when the Contractor uses its best efforts to correct the problem, but is unable to do so within the time provided herein.

31.1.4 The Contractor shall establish a real-time system for tracking complaints no later than June 1, 2015. This real time, web based system shall be fully operational no later than October 1, 2015. The Contractor shall enter all complaints into the Contractor's electronic tracking system within one hour after the Contractor receives the complaint; however, if complaints are received when the Contractor's local office is closed, the complaint shall be entered into the electronic tracking system within two (2) hours after the office reopens on the next Operating Day. The Contractor shall configure the system in a manner that allows the Administrator to (a) access the system and monitor the complaints from the City's computers, (b) identify the locations of the Customer complaints in real time on a street map, and (c) compare current and historical complaints, by type of complaint and by location. The Contractor's system shall be designed to provide immediate notice to the Administrator when a complaint is entered into the Contractor's tracking system. However, the Administrator does not need the ability to enter or delete data in the electronic tracking system. The format of the information collected in the electronic tracking system shall be subject to the Administrator's approval. With the Administrator's approval, the electronic tracking system may be used as the Contractor's complaint log, pursuant to Section 34.2.6, below.

31.1.5 The Contractor shall establish a real-time system for receiving and tracking a Customer's request for service no later than June 1, 2015. This real time, web based system shall be fully operational no later than October 1, 2015. The Contractor's webpage shall be designed to enable Customers to easily submit requests for service and receive prompt responses from the Contractor. The web-based system shall be available to Residential Customers and Commercial Customers. The Contractor shall closely monitor such requests and shall provide initial responses within twenty-four (24) hours after receiving a Customer's request. The Contractor's system shall

be designed to provide immediate notice to the Administrator when a request is submitted to the Contractor.

## **31.2 DISPUTE RESOLUTION PROCESS FOR CUSTOMERS**

- 31.2.1 The Contractor shall promptly notify the Administrator whenever the Administrator needs to resolve a dispute between a Customer and the Contractor, including but not limited to disputes concerning the proper interpretation and implementation of this Agreement and the Ordinances. The Contractor also shall promptly notify the Administrator about any disputes with a Customer that the Contractor has not been able to resolve within two (2) Operating Days after receiving the Customer's complaint.
- 31.2.2 The Administrator shall evaluate the facts concerning such disputes and shall make a fair and impartial determination about such matters. The Administrator shall notify the Contractor and the Customer in writing concerning the Administrator's decision about the disputed issues.
- 31.2.3 The Contractor and Customer shall have three (3) Operating Days to comply with the Administrator's decision or, in the alternative, provide the Administrator with a written request for a hearing before the City Manager.
- 31.2.4 If a request is filed, the City Manager shall act upon such request within twenty (20) Operating Days. The City Manager shall provide the parties an opportunity to present their arguments and evidence concerning the relevant issues. The City Manager shall notify the Customer, the Contractor, and the Administrator in writing concerning the City Manager's decision. The City Manager may: confirm, in whole or in part, the Administrator's findings; grant relief to the Customer or the Contractor; or take whatever other action the City Manager deems necessary and appropriate. The City Manager's decision shall be final and shall not be subject to further appeal within the City.

## **32. CONTRACTOR'S RELATIONSHIP WITH THE CITY**

### **32.1 AVAILABILITY OF CONTRACTOR'S REPRESENTATIVES**

The Contractor shall cooperate with the City in every reasonable way to facilitate the successful completion of the activities contemplated under this Agreement. The City shall have twenty-four (24) hour access to the Contractor's District Manager and Field Supervisor via telephone and electronic mail from the City. Answering machines, pagers, or other devices that do not provide for immediate contact with the Contractor's District Manager and Field Supervisor shall not satisfy the requirements of this paragraph. The Contractor's District Manager shall meet with the Administrator within five (5) Operating Days after receiving a request for a meeting to discuss the Contractor's performance under this Agreement or other issues of concern to the Administrator.

### **32.2 ADMINISTRATOR'S REVIEW OF CONTRACTOR'S PERFORMANCE**

The Administrator is hereby designated as the public official responsible for the day-to-day administration of this Agreement by the City. The Contractor shall diligently work with the Administrator to formulate and adopt procedures that will facilitate the Contractor's performance

under this Agreement and the Administrator's review of the Contractor's work.

### **32.3 CITY'S RIGHT TO INSPECT CONTRACTOR'S OPERATIONS**

The City shall have the right to inspect the Contractor's facilities and operations at any reasonable time to determine whether the Contractor's performance complies with the requirements of this Agreement. The Contractor shall make its facilities and operations available for the City's inspection and shall cooperate fully.

### **32.4 CITY'S RIGHT TO APPROVE**

Whenever this Agreement authorizes the City or one of its representatives (e.g., the Administrator) to approve a request by the Contractor, the City shall have the right to withhold its approval until the Contractor submits all of the information needed to evaluate the Contractor's request. The City shall fairly and objectively evaluate the information provided by the Contractor, as well as any other relevant facts. The consent of the City shall not be unreasonably withheld or delayed, except as otherwise explicitly provided herein. However, the City shall have the exclusive right to weigh the relevant facts and determine whether the approval of the Contractor's request is consistent with the requirements in this Agreement and the public interest.

## **33. CONTRACTS FOR COMMERCIAL COLLECTION SERVICE**

### **33.1 CONTRACTS FOR COMMERCIAL COLLECTION SERVICE**

The Contractor shall enter into a service contract with each New Customer before the Contractor provides Commercial Collection Service to that Customer. The Contractor shall use its best efforts to enter into service contracts with all existing Commercial Customers (i.e., Customers already receiving Collection Service from the City's franchised hauler on May 31, 2015) before June 1, 2015.

The Contractor shall prepare a standard form that the Contractor shall use as its service contract with Commercial Customers. The proposed form shall be provided to the Administrator for approval at least thirty (30) calendar days before the Commencement Date, and whenever the Contractor proposes to change its content. The terms and conditions contained in the form shall be consistent with the requirements in this Agreement; the service contract shall not contain any requirements or fees that are not authorized in this Agreement. The term of the service contract shall not extend beyond the term of this Agreement. The Administrator shall have the authority to approve the Contractor's service contract, or require additions, deletions, or changes to the language therein, including changes to the language provided below. The Contractor's service contract shall identify the service(s) that will be provided, the size and type(s) of Collection Container(s) that will be used, the frequency of Collection, the Scheduled Collection Day(s), and the Rates for the services that will be provided to the Customer. The service contract also shall contain the following information, unless alternate language is approved by the Administrator.

#### **REGULATION BY DELRAY BEACH**

This contract for the collection of Solid Waste is regulated by the City of Delray Beach. If you have questions that you cannot resolve with the Contractor

regarding the terms and conditions in this contract, you may call the City's contract administrator at (561) 243-7219.

#### **COMPACTORS AND ATTACHED ROLL-OFF CONTAINERS**

Commercial Customers may provide their own Compactor and attached Roll-Off Container for the solid waste that they generate on their property, if their Compactor and attached Roll-Off Container is one that can be serviced by the Contractor's collection equipment. In the alternative, a Commercial Customer may obtain a Compactor and attached Roll-Off Container from the Contractor. In either case, the Compactor and attached Roll-Off Container must be maintained in a safe, sanitary, serviceable condition by the owner of the Compactor and Roll-Off Container.

#### **RATES FOR SERVICES**

The City has approved standard rates for the collection of Solid Waste and Recyclable Materials. Under this contract, you will pay the following fees for the Contractor's services. You may call the City if you have questions about any of the Contractor's rates.

### **33.2 DISCLOSURE OF FEES FOR COMMERCIAL COLLECTION SERVICE**

The Contractor's service contract shall identify all of the services that the Contractor will provide to the Commercial Customer and all of the associated Rates. No fees or charges may be collected from any Commercial Customer unless such fees and charges were disclosed to that Customer before the Contractor provided its services. With regard to existing Commercial Customers, the Contractor shall be presumed to have disclosed its Rates if the Contractor provided notice in compliance with Section 35 prior to commencing its Collection Service. This presumption shall expire on September 1, 2015. Thereafter, if a dispute arises between a Customer concerning the Contractor's Rates, the Contractor will need to demonstrate that it has a service contract with the Customer or otherwise fully disclosed its Rates to the Customer prior to providing its Collection Service.

### **33.3 RESERVED**

### **33.4 INITIATION OF SERVICE TO A COMMERCIAL CUSTOMER**

On June 1, 2015, the Contractor shall begin to provide its Collection Services to each Commercial Customer in the Service Area. Thereafter, the Contractor shall provide its Collection Services for Commercial Waste within three (3) Operating Days after the Contractor receives a request for service from a New Customer and the New Customer signs a service contract with the Contractor.

### **33.5 TERMINATION OF SERVICE TO A COMMERCIAL CUSTOMER**

The Contractor may terminate Collection Service to a Commercial Customer based on the Customer's failure to pay the Contractor's bills for Collection Service. The Contractor shall notify the Administrator at least fifteen (15) calendar days before service is terminated to a Commercial Customer. Upon being notified, the City shall take whatever action it deems appropriate to enforce compliance with the City's Ordinances.



If Collection Service is terminated, the Contractor may remove from the Customer's Premises any Collection Containers or other equipment belonging to the Contractor. Contractor may charge Interest on delinquent accounts with Commercial Customers and may charge a reasonable fee for the resumption of service, subject to Applicable Laws. The proposed fee for the resumption of service shall be subject to the Administrator's approval.

## **34. RECORD KEEPING AND REPORTING**

### **34.1 GENERAL RECORD KEEPING AND REPORTING REQUIREMENTS**

- 34.1.1 The Contractor shall be solely responsible for keeping all of the records and documents necessary to demonstrate that Contractor has performed its duties in compliance with the requirements in this Agreement. The Contractor's records shall be accurate, well-organized and up-to-date at all times. The Contractor's records concerning its performance under this Agreement shall be kept in the Contractor's local office or in another location in Palm Beach County for at least three (3) years following the termination of this Agreement.
- 34.1.2 All of the Contractor's reports to the City shall be submitted in an electronic (digital) format that is compatible with the City's software. Hard copies also shall be provided, if requested by the Administrator, or if they are expressly required herein. The format and content of the Contractor's reports are subject to the Administrator's approval. The reports shall be signed by the District Manager or other duly authorized representative of the Contractor.
- 34.1.3 The Contractor shall prepare the logs identified in Sections 34.2.1, 34.2.2, 34.2.3, 34.2.5, 34.2.6, 34.2.7 and 34.2.8 of this Agreement. The Contractor is encouraged to maintain the other log identified in Section 34.2, but the Contractor shall not be required to do so, unless the Administrator concludes that the reporting requirements in Section 34.2.4 must be enforced to ensure the Contractor's compliance with the other provisions in this Agreement.
- 34.1.4 All of the Contractor's logs shall be maintained in an electronic database that is compatible with the City's software systems. The database shall be available for inspection by the City at any time during normal business hours. Upon request, the information in the logs shall be provided to the Administrator within five (5) Operating Days. The general format and content of the Contractor's logs shall be subject to the Administrator's approval.

### **34.2 SPECIFIC RECORD KEEPING REQUIREMENTS**

- 34.2.1 Collection Service Log – The Contractor shall maintain records and a log concerning all of the Collection Services the Contractor provides to each Customer in the Service Area. At a minimum, the records shall identify: the type of service provided to each Customer; the date(s) when service was provided; the size of, and frequency of Collection for, the Mechanical Containers (if any) used by the Customer; and the Collection Services (e.g., Special Collection Services), if any, for which the Customer paid a fee directly to the Contractor. The Contractor shall maintain the same records with the same information for all of the Collection

Services that the Contractor provides to the City pursuant to Section 36. The Contractor shall summarize its records in a log.

- 34.2.2 Solid Waste Disposal Log – The Contractor shall provide records and a log concerning all of the Solid Waste it collected in the Service Area, including the materials collected for the City pursuant to Section 36. The records shall identify the amounts of Solid Waste collected and the locations where the Solid Waste was taken for disposal, as documented by scale house tickets and receipts. The records shall address each Load of Solid Waste for each Collection vehicle for each Operating Day. These records shall be summarized in a log.
- 34.2.3 Recyclable Materials Log – The Contractor shall provide records and a log concerning all of the Source Separated Recyclable Materials it collected in the Service Area, including the materials collected for the City pursuant to Section 36. The records shall identify the amounts of Source Separated Recyclable Materials collected and the locations where the Source Separated Recyclable Materials were taken for processing, as documented by scale house tickets and receipts. The records shall address each Load of Source Separated Recyclable Materials for each Collection Vehicle for each Operating Day. These records shall be summarized in a log.
- 34.2.4 Vehicle Maintenance Log – Upon request, the Contractor shall keep maintenance records and a log for each vehicle used for Collection Service. At a minimum, the log shall show: the identification number for the vehicle; the date and description of all routine maintenance activities; and the date and description of all repair activities.
- 34.2.5 Non-Collection Notice Log – The Contractor shall maintain records and a log of all occasions when the Contractor issued Non-Collection Notices. The log shall include: the date when the notice was issued; the Customer's street address; and the reason for the Non-Collection Notice.
- 34.2.6 Complaint Log – The Contractor shall maintain records and a log of all complaints. The log shall include: the date and time when the Contractor was notified by the City or Customer; the Customer's street address; a description of the complaint; whether the complaint was a Legitimate Complaint; the date and time when the complaint was resolved; and a description of how the complaint was resolved.
- 34.2.7 Property Damage Log – The Contractor shall maintain records and a log concerning all accidents and events when Contractor's employees, vehicles, or equipment caused an injury to any Person or domestic animal, or damage to any public or private property. At a minimum, the log shall include: the date and time when the event occurred; the address where the event occurred; the name of the Person that reported the event; a description of the event; the vehicle or equipment number, and/or the name of the employee involved in the event; the name and address of the Person suffering the injury or damage; a description of the injury or damage suffered; and a description of how and when the matter was resolved.
- 34.2.8 Cart Log – The Contractor shall maintain records and a log concerning the Garbage Carts and Recycling Bins that are provided by the Contractor pursuant to this Agreement. At a minimum, the log shall identify: the location of the Residential Property occupied by each Customer that received a Garbage Cart or Recycling Bin;

whether the Customer received a replacement cart or purchased a new cart; and the size of the cart that was provided.

### **34.3 QUARTERLY REPORT**

- 34.3.1 The Contractor shall submit a quarterly report to the Administrator no later than the fifteenth (15th) day of each calendar quarter (i.e., January 15; April 15; July 15; October 15). At a minimum, the quarterly report shall contain the following information for the previous quarter: (a) the total quantity of each type of Residential Waste (e.g., Garbage; Bulky Waste) delivered to each Designated Facility pursuant to this Agreement; (b) the total quantity of Source Separated Recyclable Material delivered to each Designated Facility; (c) the amount of Solid Waste and Source Separated Recyclable Material (if any) delivered to other facilities; (d) the number of Missed Collections; (e) a summary of each accident involving personal injuries or property damage; and (f) the total number of Legitimate Complaints.
- 34.3.2 The quarterly report shall include any information requested by the Administrator to enable the City to comply with Chapter 403, Florida Statutes, or other Applicable Laws concerning Recycling rates, Recycling goals, Solid Waste management programs, or similar matters.
- 34.3.3 Whenever the Contractor submits a quarterly report to the City, the Contractor also shall submit a signed written statement from the District Manager or their designee, verifying that the quarterly report is accurate in all respects. The District Manager or their designee also shall verify in each quarterly report that (a) all of the Solid Waste and Source Separated Recyclable Material collected by the Contractor under this Agreement has been delivered to a Designated Facility, and (b) the Contractor's quarterly report accurately accounts for all such deliveries.

### **34.4 ANNUAL REPORT**

Contractor shall submit an annual report to the Administrator no later than sixty (60) calendar days after the end of each Operating Year. At a minimum, the annual report shall include the following information: (a) annualized information for all items required in the quarterly reports; (b) updated lists of all vehicles and equipment used to provide Collection Service under this Agreement; (c) a description and inventory of the equipment, facilities, manpower, and other resources available for emergency conditions; (d) a trend analysis and overall evaluation of the number and types of Legitimate Complaints received by the Contractor on a monthly and annual basis during the term of this Agreement; (e) a corrective action plan for systemic and chronic problems, if any; (f) an updated Collection Plan; (g) an updated Contingency Plan; (h) an updated Safety Plan; (i) a summary of all accidents and Legitimate Complaints involving personal injuries or damage to public or private property during the prior year; and (j) a list of the vehicles, if any, that will be replaced in the upcoming year to comply with the requirements in Section 28.3 herein.

### **34.5 ACCIDENT REPORTS**

The Contractor shall notify the Administrator of any accidents involving the Contractor's staff, vehicles, or equipment that occur while the Contractor is performing services under this Agreement and require notification to OSHA or any other regulatory agency under Applicable

Laws. The Contractor also shall notify the Administrator of accidents involving personal injuries or damage to public or private property. In all such cases, oral notice shall be provided within six (6) hours of the accident and a written report shall be provided to the Administrator within one (1) Operating Day of the accident. If any issues are unresolved at that time, a subsequent report shall be provided to the Administrator within two (2) Operating Days following the ultimate disposition of the case. The oral and written reports shall include the date and time of the event, a description of the event, an estimate of the damages and injuries (if any) caused by the event, and a description of how the event and any associated damages and injuries were handled or will be handled.

#### **34.6 CITY'S RIGHT TO INSPECT AND AUDIT CONTRACTOR'S RECORDS**

Contractor shall cooperate with the Administrator and provide every reasonable opportunity for the City to ascertain whether the duties of the Contractor are being performed properly. Contractor shall promptly provide any information regarding the services provided by the Contractor under this Agreement, in addition to the information required explicitly by this Agreement, that the Administrator or the Contractor deem relevant under the circumstances.

The City shall have the right to inspect, copy, and audit, at the City's expense, all of the Contractor's records concerning the Contractor's services under this Agreement, except confidential personnel records. The Contractor's records shall be made available for inspection in the City during normal business hours, within five (5) Operating Days after the City requests the records. The Contractor may provide electronic copies of the records, in lieu of hard copies.

#### **34.7 PUBLIC'S RIGHT TO INSPECT CONTRACTOR'S RECORDS**

The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes.

To the extent that the Contractor and this Agreement are subject to the requirements in Section 119.0701, Florida Statutes, the Contractor shall:

- (a) keep and maintain all records that ordinarily and necessarily would be required to be kept by the City in order to perform the services provided hereunder;
- (b) provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost specified in Chapter 119, Florida Statutes, or other laws;
- (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- (d) comply with all requirements for retaining public records and transfer, at no cost, to the City all records in the possession of the Contractor at the expiration or termination of this Agreement, and destroy all public records that are confidential and exempt from public records disclosure requirements.

If the Contractor fails to comply with the requirements in this Section 34.7, the City may enforce these provisions in accordance with the terms of this Agreement.

## **35. PUBLIC NOTICES AND EDUCATIONAL SERVICES**

The Contractor shall provide the following notices and educational services to help inform the public about the City's Solid Waste management system. The Contractor shall work closely with the City when preparing the notices, educational materials, and promotional information required pursuant to this Section 35. The design and content of the notices, educational materials, and promotional information shall be subject to the Administrator's prior approval. The Contractor shall be responsible for all expenses associated with the notices and educational services required herein.

### **35.1 NOTICE FOR COMMENCEMENT OF SERVICE**

At least thirty (30) calendar days before the Commencement Date, the Contractor shall design, print, and deliver a notice to each Commercial Customer concerning the Contractor's Collection Services. Notice shall be provided to Residential Customers approximately two (2) weeks before the Commencement Date and again approximately one week before the Commencement Date. The notice shall be delivered by the U.S. Postal Service or hand delivered via door hangers. At a minimum, the notice to Residential Customers shall (a) identify each of the Scheduled Collection Days for the Customer receiving the notice, (b) summarize the applicable Set Out requirements, and (c) include other educational and promotional information provided to the Contractor by the City. The notice also may provide any other relevant information concerning the Contractor's services.

### **35.2 ANNUAL NOTICE TO CUSTOMERS**

The Contractor shall design, print, and mail or deliver an annual notice to all Residential Customers within the Service Area. The notice shall include the same basic information provided for the commencement of service pursuant to Section 35.1, above, but shall be updated as necessary. The Contractor shall provide the annual notice in December of each Operating Year.

### **35.3 NOTICES FOR NEW CUSTOMERS**

The Contractor shall design, print, and mail or deliver appropriate informational materials for each New Customer. At a minimum, the notice shall include the same information that is contained in the annual notice pursuant to Section 35.2.

### **35.4 NOTICES CONCERNING CHANGES IN COLLECTION SCHEDULES**

The Contractor shall design, print, and deliver a notice to each Customer that will be affected by a change in the Scheduled Collection Days. An electronic (digital) copy of the draft notice shall be submitted to the Administrator for review and approval at least three (3) weeks prior to the printing and delivery of the notice. The approved notice shall be delivered to the affected Customers before the Contractor changes its Scheduled Collection Days. Notice shall be provided twice to Residential Customers that receive Collection Service at Curbside. Such Customers shall receive notice approximately two (2) weeks prior to the change and then they shall receive notice again approximately one (1) week prior to the change.

### **35.5 NOTICES FOR HOLIDAYS**

In accordance with the procedure in Section 35.4, the Contractor shall provide notice to Customers that will be affected by a change in their Scheduled Collection Days because of a Holiday.

## **36. CONTRACTOR'S COLLECTION SERVICES FOR THE CITY**

### **36.1 GENERAL REQUIREMENTS**

Subject to the conditions contained herein, the Contractor shall provide Collection Services for the City at certain City facilities and public locations designated by the City. The Contractor shall be solely responsible for all of the costs and expenses associated with these services, including the cost of Collection, Tipping Fees, and the cost of purchasing, delivering, and using Collection Containers, except as otherwise explicitly set forth herein.

With regard to the Contractor's services for the City, the City shall determine: (a) the size of the Collection Containers that shall be provided by the Contractor; (b) the frequency of Collection Service for each Collection Container; (c) the location where the Collection Container will be placed by Contractor; and (d) the types of Collection Containers to be used. The City shall have the right to increase or decrease the number of Collection Containers at any location, as well as the right to add new locations for the placement of Collection Containers.

At a minimum, the Contractor's Collection Services for the City's properties and facilities shall be provided in compliance with the following requirements:

- (a) Garbage shall be collected twice each week;
- (b) Source Separated Recyclable Materials shall be collected once each week; and
- (c) Mechanical Containers used for the Collection of Yard Waste and/or Construction and Demolition Debris shall be emptied by the Contractor whenever the Mechanical Containers are full.

If the Administrator notifies the Contractor before 12 p.m. (noon) that a Mechanical Container used by the City is full, the Contractor shall empty the container on the same day. If the Administrator notifies the Contractor after noon, the Contractor shall empty the Mechanical Container before noon on the next Operating Day. In addition, the Contractor shall increase the size of the Collection Container or the frequency of Collection Service for any Collection Container if the Administrator determines the current level of service is inadequate.

### **36.2 COLLECTION OF SOLID WASTE AND SOURCE SEPARATED RECYCLABLE MATERIALS AT CITY FACILITIES**

The Contractor shall provide for the Collection of Solid Waste and Source Separated Recyclable Materials from any property that is owned, occupied, or controlled by the City, including any such property that is acquired during the term of this Agreement. Exhibit 9 identifies the City properties that shall receive Collection Service, and it identifies the type and level of Collection Service to be provided to each City property, beginning on June 1, 2015. The Contractor's obligation under this Section 36.2 includes the Collection of Solid Waste and Source Separated

Recyclable Materials that are collected by the City at other locations as a result of City operations and then transported to the City properties identified in Exhibit 9.

### **36.3 COLLECTIONS FROM TRASH RECEPTACLES AND RECYCLING CONTAINERS AT BUS SHELTERS, PARKS, AND OTHER PUBLIC LOCATIONS**

The Contractor shall provide Collection Service for all of the Garbage and Rubbish discarded in: (a) the trash receptacles located adjacent to the public bus shelters that are identified in Exhibit 7; (b) the trash receptacles located along Atlantic Avenue, the Beach area, and Pineapple Grove, which are identified in Exhibit 11; and (c) the trash receptacles that the City will purchase and install in the locations where the City currently has “Big Belly” solar-powered trash compactors, which are identified in Exhibit 8. At all of these locations, the Contractor shall collect and remove all of the Garbage and Rubbish that has been placed in the trash receptacle. The Contractor also shall replace the Plastic Bag in each receptacle, and pick up all of the litter within ten (10) feet of the trash receptacle, each time the receptacle is emptied. The Contractor shall provide these services at each location, at least two (2) times each week. The Contractor shall provide these services at each location identified in Exhibit 11 at least six (6) times each week.

The City intends to install containers for the Collection of Source Separated Recyclable Materials at twenty (20) or more of the locations identified in Exhibit 11 for trash receptacles. The Contractor shall collect and remove the Source Separated Recyclable Materials from each of these Recycling Containers at least two (2) times each week. The Contractor also shall replace the Plastic Bag (if any) in each Recycling Container, as necessary.

The Contractor shall be responsible for purchasing and replacing all of the Plastic Bags used when providing Collection Service pursuant to this Section 36.3.

The City shall be responsible for purchasing, installing, maintaining, and replacing the trash receptacles and Recycling Containers that will be used pursuant to this Section 36.3. Each trash receptacle and Recycling Container shall be approximately forty (40) gallons or less in capacity. The Contractor shall promptly notify the Administrator if one of the City’s trash receptacles or Recycling Containers needs to be repaired or replaced.

Exhibit 3C contains “per unit” Rates (\$ per month) for providing Collection Service to a trash receptacle located in any one of the areas identified in Exhibits 7, 8, and 11. If the City increases or decreases the number of trash receptacles located in these areas, the City’s payments to the Contractor shall increase or decrease, as applicable, based on the per unit Rate set forth in Exhibit 3C. In the same manner, the City’s payments to the Contractor shall be increased or decreased, as applicable, if the City increases or decreases the number of Recycling Containers located in the areas identified in Exhibits 7, 8, and 11.

### **36.4 COLLECTION OF SOURCE SEPARATED RECYCLABLE MATERIALS AT PUBLIC DROP-OFF FACILITIES**

The Contractor shall collect the Source Separated Recyclable Materials that are delivered to the City’s public drop-off facilities. The locations of the City’s public drop-off facilities are identified in Exhibit 10. At each of these facilities, the Contractor shall provide separate Collection Containers for (a) paper and cardboard, and (b) plastics, metal, and glass. The Authority currently collects the paper and cardboard at each of the City’s public drop-off facilities. As long as the Authority provides Collection Service for paper or cardboard, the Contractor shall not be required to collect such materials from the City’s public drop-off

facilities. Subject to this exception for paper and cardboard, the Contractor shall collect all of the Source Separated Recyclable Materials at each drop-off facility at least once each week. If necessary, the Contractor shall provide larger Collection Containers or increase the frequency of Collection Service, without increasing the Rate charged to the City.

### **36.5 COLLECTION OF BULKY WASTE AND YARD WASTE**

The Contractor shall assign a driver and a clamshell truck to work with the Administrator on a full-time basis, five (5) days each week. This driver and vehicle shall be used primarily to collect piles of Bulky Waste and Yard Waste that have been placed at the Curbside before a Customer's Scheduled Collection Day. This driver and vehicle also may be used to collect debris from illegal dumping. This driver and truck shall be in addition to the equipment and personnel used to collect Bulky Waste and Yard Waste on Scheduled Collection Days under this Agreement.

### **36.6 COLLECTION OF BIOLOGICAL WASTE**

The Contractor shall provide Collection Service for dead animals, fish, and birds (collectively, "Biological Waste"), when requested to do so by the Administrator. Collection Service shall be provided if such Biological Waste is located on a public right-of-way, park, or other City property. The Contractor shall provide such Collection Service within two (2) hours after the Administrator requests service from the Contractor. In addition, each driver of the Contractor's Collection Vehicles shall be instructed to promptly notify the Field Supervisor if the driver sees Biological Waste in any of the City's roadways or public areas. The Field Supervisor shall promptly dispatch an employee to collect the Biological Waste after receiving notice from one of the Contractor's drivers. Notwithstanding the foregoing requirements in this Section 36.6, the Contractor is not required to collect and remove dead horses, cows, whales, porpoises, or other equally large animals.

### **36.7 COLLECTIONS FOR SPECIAL PROJECTS**

The Contractor shall collect and dispose of the Construction and Demolition Debris and other Solid Waste generated by the City's employees when the City's employees undertake special construction projects in the City's parks or undertake similar projects on other City properties. However, the Contractor is not obligated to collect or dispose of Solid Waste generated by a third party contractor when the third party contractor is constructing or renovating the City's buildings or performing other similar work for the City.

### **36.8 COLLECTION FOR COMMUNITY EVENTS**

The Contractor shall provide Collection Service for certain Community Events (e.g., community clean-ups, parades, and other special events) that are designated by the Administrator. It is anticipated that the Contractor will be required to provide Collection Service for at least six (6) Community Events, including but not limited to the City's First Night celebration, the annual Christmas Tree Lighting, the Fourth of July celebration, the Chris Evert Tennis Tournament, the Delray Beach Open Tennis Tournament, and other professional tennis tournaments, when scheduled. If the City requests the Contractor to provide Collection Service for more than six (6) Community Events, the City and the Contractor shall negotiate mutually acceptable Rates before the additional Community Events occur, but the Rates charged to the City shall not exceed the Rates in Exhibit 3C.



The Contractor also shall provide Collection Service for Garbage, Rubbish, Source Separated Recyclable Materials, Bulky Waste, Yard Waste, and other debris collected when the City conducts a neighborhood or lot clean-up program for illegal dumping. In cases involving illegal dumping or other conditions that pose a nuisance or danger to the public, the Contractor shall provide its Collection Service within one (1) Operating Day after receiving a request for Collection Service from the Administrator.

### **36.9 CITY'S INTEGRATED SOLID WASTE MANAGEMENT PROGRAM AND PUBLIC EDUCATIONAL ACTIVITIES**

The City supports the integrated Solid Waste management plan adopted by the Authority and the City wishes to implement the plan in the Service Area. The City also wants to enhance the City's Recycling programs. The Contractor shall help the City by providing technical advice and assistance concerning these activities. The Contractor also shall help the City develop educational programs and materials concerning integrated Solid Waste management practices, including Recycling. However, the Contractor is not obligated to make any out-of-pocket expenditures to comply with the requirements in this Section 36.9.

## **37. CONTRACTOR'S EMERGENCY SERVICES**

### **37.1 COLLECTION OF GARBAGE AFTER A DISASTER**

Following a hurricane, tornado, or other natural or human event that is declared a federal disaster, the Contractor shall use its best efforts to immediately collect, by any means available, all of the Garbage that is Set Out by Customers. This shall be the Contractor's primary responsibility until the Contractor is able to provide Collection Services on a routine basis, as mutually determined by the Administrator and Contractor. The Contractor shall use its best efforts to resume its Collection Services for Bulky Waste, Yard Waste, and Source Separated Recyclable Materials on the Scheduled Collection Days as soon as possible after the disaster. Until the Contractor resumes normal Collection Service, the Contractor's work for the City shall be the Contractor's highest priority and it shall take priority over the Contractor's work for Commercial Customers and other members of the private sector.

### **37.2 EMERGENCY VARIANCES IN ROUTES AND SCHEDULES**

In the event of a hurricane, tornado, or other natural or human event that is declared a federal disaster, the Administrator may grant the Contractor a variance from the Contractor's regular routes and schedules. Requests for a variance shall be submitted in writing to the Administrator. If the Contractor's request is granted, the Contractor shall furnish a map depicting the revised routes and shall provide the revised schedules in writing. Thereafter, the Contractor shall contact the Administrator on a daily basis and describe the status of the Contractor's efforts to provide Collection Service and resume the use of normal routes and schedules. The Contractor shall provide the Administrator with any requested information so that the Administrator can evaluate and respond to the disaster.

### **37.3 COLLECTION OF DISASTER DEBRIS**

This Agreement does not give the Contractor the right to collect Disaster Debris. The City will enter into a separate contract with the Contractor if the City wishes to utilize the Contractor's services for the Collection of Disaster Debris. Nothing herein shall require the City to utilize the services of Contractor, or prevent the City from hiring another Person, to collect Disaster Debris.

Among other things, the City may utilize the City's Disaster Debris Contract in accordance with the City's emergency management plan, or the City may utilize City personnel and equipment, for the Collection of Disaster Debris.

#### **37.4 CONTRACTOR'S CONTINGENCY PLAN**

The Contractor shall develop a Contingency Plan, which shall describe the Contractor's plan of action in the event that an emergency or other situation renders the Contractor's operations yard or equipment unusable. The Contingency Plan shall describe the steps that the Contractor shall take to avoid interruptions or reductions in Collection Service under such circumstances. The Contingency Plan shall be submitted to the Administrator on or before April 15, 2015, in compliance with the schedule in Section 5.2(e). The Contingency Plan shall be updated annually and resubmitted to the Administrator (a) with the Contractor's annual report and (b) within five (5) Operating Days after the plan is revised by the Contractor. The Contingency Plan and all revisions to the plan are subject to the Administrator's approval.

#### **37.5 CITY'S EMERGENCY MANAGEMENT MEETINGS**

If requested by the Administrator, the Contractor shall attend the City's emergency management and disaster preparedness meetings and shall provide the City with any materials that may be useful to the City's efforts, including but not limited to Collection schedules and routes. The Administrator shall notify the Contractor of the date, time, and location of the meetings, and shall identify any necessary materials that are to be provided by the Contractor.

### **38. RATES FOR CONTRACTOR'S SERVICES**

#### **38.1 UNIFORM RATES FOR ALL COLLECTION SERVICES**

The Rates in Exhibit 3 are the maximum amounts that shall be charged for the Collection Services provided by the Contractor pursuant to this Agreement. The Rates shall be applied uniformly to all Customers receiving Collection Services from the Contractor within the City after the Effective Date. The Contractor shall utilize the Rates in Exhibit 3, and no others, when billing its Customers or the City.

#### **38.2 RATES FOR SPECIFIC COLLECTION SERVICES**

The Rates for Residential Collection Services are set forth in Exhibit 3A. The Rates for Commercial Collection Services are set forth in Exhibit 3B. The Rates for the services provided to the City are set forth in Exhibit 3C. The Rates for Special Collection Services are set forth in Exhibit 3D. The Rates identify the Collection component and the fuel component, if any, that are applicable to each Collection Service.

#### **38.3 CPI ADJUSTMENTS TO COLLECTION COMPONENT OF RATES**

On October 1, 2015 and each October 1 thereafter during the term of this Agreement, the Collection component of the Rates may be adjusted upward or downward to reflect the changes in the cost of Collection during the previous year due to inflation or deflation. Specifically, the Collection component of the Rates in Exhibit 3 may be adjusted by an amount that is equal to the percentage change in the Consumer Price Index ("CPI") during the most recent twelve consecutive month period beginning on April 1 and ending on March 31. For example, with

regard to the CPI adjustment on October 1, 2015, the relevant period will be April 1, 2014 through March 31, 2015.

The percentage change in the CPI shall be calculated by using the following formula:

$$PC = \text{CPI 1 divided by CPI 2, minus 1.0, multiplied by 100}$$

Where:

PC is the percentage change in the CPI from one year to the next

CPI 1 is the CPI index number for the most recent April (e.g., April 2015)

CPI 2 is the CPI index number for April in the year before CPI 1 (e.g., 2014)

Notwithstanding anything else contained herein, a single CPI adjustment to the Rates shall not exceed four percent (4%) and there shall be no “catch up” adjustment to the Rates in future years (i.e., there will not be an adjustment to the Rates in the future to offset or mitigate the effect of the four percent (4%) “cap” in a year when the CPI adjustment would exceed four percent (4%), but for the four percent (4%) limitation contained herein). If the CPI is discontinued or substantially altered, the City may select another relevant price index published by the United States government or by a reputable publisher of financial and economic indices.

Notwithstanding anything else contained herein, a CPI adjustment to increase the Rates shall occur only if the Contractor delivers a written request for a CPI adjustment to the Administrator on or before July 1 of the then current Operating Year. If the Contractor fails to make a timely request for a CPI adjustment, there shall be no CPI adjustment to increase the Rates on October 1 of the next Operating Year. Further, there shall be no “catch up” adjustment to the Rates in future years to off-set or mitigate the effect of failing to request the adjustment.

Exhibit 12 contains sample calculations that demonstrate how the CPI adjustments will be calculated under hypothetical circumstances.

#### **38.4 RESERVED**

#### **38.5 ADJUSTMENTS TO DISPOSAL COMPONENT OF COMMERCIAL RATES**

The disposal component of the Rates shall be adjusted to reflect any changes in the Tipping Fees charged at the Designated Facility. The Contractor shall provide the City and its Customers with advance notice of any pending changes in the Tipping Fees. The Rate adjustment shall be effective on the date of the change in the Tipping Fee at the Designated Facility or the date when the Contractor gave notice of the Rate adjustment to its Customers and the City, whichever occurs later.

#### **38.6 RATE ADJUSTMENTS FOR CHANGES IN LAW**

If a Change in Law will directly and materially affect the Contractor's cost of providing its services under this Agreement, the Contractor may request the City to adjust the Rates. If the Contractor wishes to exercise this option, the Contractor shall prepare and submit a schedule of proposed Rates that will distribute the increased costs in a fair and non-discriminatory manner. The Contractor's request shall be accompanied by all data and analyses necessary for the City to fairly evaluate the proposed Rate increase. The City Manager may request, and upon request the Contractor shall provide, additional information as necessary. After receiving the requested information, the City Manager shall present the Contractor's request and the City Manager's

recommendations to the City Commission. The Contractor shall be given a reasonable opportunity to explain the basis for its request at a duly noticed public meeting of the Commission.

The City Manager and the City Commission shall fairly evaluate the Contractor's request in a timely manner and in compliance with the requirements in Section 32.4, above. Subject to the provisions of Section 32.4, the Contractor's request shall be approved if the request complies with the requirements in this Section 38.6 and the Agreement. The City Commission's decision to grant or deny the Contractor's request shall constitute final action by the City.

If any adjustments to the Rates are approved, the adjusted Rates shall become effective upon the date designated by the Commission. Adjustments (if any) to the Rates shall be designed to compensate the Contractor for the increased costs incurred by the Contractor after the Change in Law took effect.

If a Rate adjustment is approved pursuant to this Section 38.6 and the adjustment will cause the Rate for any Collection Service to increase by an amount that is equal to or greater than twenty percent (20%) of the Rate in effect before the adjustment took effect, or cause the Rate for any Collection Service to be greater than one hundred fifty percent (150%) of the Rate on the Effective Date (adjusted by the CPI), the Commission may terminate this Agreement at any time after providing one hundred eighty (180) days' notice to the Contractor.

### **38.7 EXTRAORDINARY RATE ADJUSTMENTS**

38.7.1 Once each Operating Year, before April 1, the Contractor may petition the City Manager for a Rate adjustment on the basis of extraordinary or unusual changes in the cost of its operations that could not reasonably be foreseen by a prudent Person. Contractor's petition shall contain a detailed justification for the Rate adjustment. Among other things, the Contractor's petition shall include an audited statement of Contractor's historical and current expenses, demonstrating that Contractor has incurred an extraordinary increase in Contractor's costs due to factors beyond the Contractor's control, which have occurred through no fault or negligence of the Contractor. The audited statement shall be prepared by a certified public accountant that is licensed in the State of Florida and not an employee of the Contractor or its affiliates. At its expense, the City may audit the Contractor's records to evaluate the Contractor's request. The City Manager may request from the Contractor, and the Contractor shall provide, all of the information that is reasonably necessary for the City Manager to evaluate the Contractor's petition.

38.7.2 The Contractor shall be given a reasonable opportunity to explain the grounds for its petition at a public meeting conducted by the Commission. The Commission shall approve or deny the Contractor's request in a timely manner after the City Manager receives all of the information requested from the Contractor. The Commission may deny the Contractor's request for any reason or no reason, in its sole discretion, as the Commission deems appropriate. The Commission's decision shall be final and non-appealable.

38.7.3 If the Contractor's request is granted in whole or in part, the Commission shall have the right to reduce the Contractor's Rates, if and to the extent that the factors causing the Contractor's price increase have been ameliorated or eliminated. Every twelve (12) months after a request is granted, the City Manager shall have the right to

request, and the Contractor shall prepare promptly upon request, an updated audit and explanation of whether the extraordinary Rate increase should remain in effect. The City Manager may reduce the Contractor's Rates to the levels that were in effect before the extraordinary Rate increase was granted, if the Contractor does not timely submit adequate information to justify the continued payment of the extraordinary Rate increase.

### **38.8 RATES FOR DISASTER DEBRIS**

If the Administrator wishes to have the Contractor collect Disaster Debris following a federally declared disaster, the City and the Contractor shall enter into a separate contract and the City shall pay the Contractor in accordance with the terms, conditions, and Rates that are mutually agreed upon by the City and Contractor before the commencement of the Contractor's work under that contract. This Agreement does not authorize any payments for the Collection of Disaster Debris.

### **38.9 ADJUSTMENTS TO FRANCHISE FEE**

Whenever any Rate is adjusted, the Franchise Fee shall be recalculated and then paid based on the adjusted Rate. The adjusted Rate shall include the Franchise Fee in those cases where the original Rate included the Franchise Fee. When the adjusted Rate (including the Franchise Fee) takes effect, the Contractor may bill and collect the adjusted Rate from its Customers. It is intended that the Franchise Fee will be set by the City and then passed through to the Contractor's Customers.

## **39. PAYMENTS TO CONTRACTOR FOR COLLECTION SERVICES**

### **39.1 GENERAL BILLING AND PAYMENT PROVISIONS**

The City and the Customers shall have no obligation to pay any fee, charge, cost, or other sum to the Contractor unless such payment is explicitly authorized in this Agreement and the fee is identified in Exhibit 3. The Rates for Collection Services in Exhibit 3 shall constitute full and complete compensation to the Contractor for the services provided by the Contractor under this Agreement. In all cases, the City shall have the sole authority to determine whether and the extent to which the Contractor is entitled to payment for services it provided under this Agreement.

### **39.2 PROHIBITIONS ON PAYMENTS FROM CUSTOMERS TO CONTRACTORS**

Neither the Contractor nor its agents, subcontractors, employees or other representatives shall solicit or accept any payment or monetary remuneration from any Customer for the provision of any Service described in this Agreement, unless such payments are explicitly authorized in this Agreement and the payments are less than or equal to the amounts authorized. If a Customer or other Person delivers any money to the Contractor for any service provided in the Service Area, and such payment is not explicitly required in this Agreement, the Contractor shall return the money to the Customer within five (5) Operating Days after the money is received by the Contractor.

### **39.3 PAYMENTS FROM CITY FOR RESIDENTIAL COLLECTION SERVICE**

Subject to the conditions and exceptions contained herein, the City shall pay the Contractor for the Residential Collection Service that is provided by the Contractor in compliance with this Agreement. The City's payments will be based on the Rates set forth in Exhibit 3A.

On or before the tenth day of each Operating Month, the Contractor shall provide the City with an invoice for the Residential Collection Services that were provided by the Contractor during the prior Operating Month. The format of the Contractor's invoice shall be subject to the approval of the City's Chief Financial Officer. The Contractor's invoice shall identify the type of Residential Collection Service provided (i.e., Curbside Collection with Garbage Carts; Curbside Collection with Plastic Bags; Collection with Mechanical Containers) and the number of Dwelling Units that received each type of Collection Service. The amount of the City's payments to the Contractor shall be calculated by multiplying the applicable monthly Rate for a Residential Service times the number of Dwelling Units on the Residential Customer List that received that specific type of Collection Service. For the purposes of calculating the amount of the City's payments, the Contractor shall use the Residential Customer List as it existed on the first day of the Operating Month for which payment is being made.

The City shall pay the Contractor within thirty (30) days after the City receives the Contractor's invoice, but the City may deduct any unpaid Franchise Fees from its payment, pursuant to Section 40.1, below. The City shall have the right to request and obtain additional information from the Contractor concerning the Contractor's invoice. The City also has the right to contest the amounts requested in the Contractor's invoice. However, the City shall pay all undisputed amounts within thirty (30) days after receiving the Contractor's Invoice.

At its option, the City may pay the Contractor by using the City's credit card for any amount owed pursuant to this Section 39.3. The City also may use its credit card to pay any amount owed to the Contractor pursuant to Sections 39.4, 39.5, and the other provisions in this Agreement.

#### **39.4 CITY'S PAYMENTS FOR COLLECTION SERVICES PROVIDED TO CITY PROPERTIES, TRASH RECEPTACLES, AND RECYCLING CONTAINERS**

Subject to the conditions and exceptions contained herein, the City shall pay the Contractor for the Collection Services that the Contractor provides to the City's properties, facilities, trash receptacles, and Recycling Containers in compliance with Section 36 of this Agreement. The City's payments will be based on the Rates set forth in Exhibit 3C. The Contractor's invoice shall identify the specific services that were provided and the applicable Rate for each service. The invoice shall be submitted with the Contractor's invoice for Residential Collection Services and it shall be reviewed and paid in the same manner, subject to the requirements and limitations set forth above in Section 39.3.

#### **39.5 CITY'S PAYMENTS FOR DISPOSAL COSTS**

The Authority collects non-ad valorem special assessments to pay for the disposal of Solid Waste generated on Residential Property and the City's property. The Authority then issues "disposal credits" that the City may use to pay the Authority's Tipping Fees when the City is delivering its Solid Waste to the Authority's facilities for disposal. Under this Agreement, the City shall give and assign its rights in the disposal credits to the Contractor. Accordingly, for each Operating Month, the Contractor shall receive the City's disposal credits for the Solid Waste generated on the Residential Property in the Service Area, as well as the disposal credits for the Solid Waste that is generated on the City's property and delivered to the Authority's facilities. Except for the

assignment of its disposal credits, the City shall have no obligation to pay the Contractor for the disposal of any Solid Waste collected when providing Residential Collection Service or when providing the Collection Services required pursuant to Section 36 of this Agreement, with one exception, which is described below.

Under this Agreement, the Contractor is obligated to collect Solid Waste from trash receptacles that are located along Atlantic Avenue, the Beach area, and Pineapple Grove and identified in Exhibit 11. Approximately eighty-four (84) of these receptacles do not have property control numbers and, therefore, the City does not pay disposal costs to the Authority for these receptacles. Since the City does not have disposal credits to assign to the Contractor for the disposal of the Solid Waste collected in these trash receptacles, the City shall pay the Contractor for the cost of disposing of the material collected in these trash receptacles. The amount of the City's payments shall be calculated in the manner described in Exhibit 3C. The City's payment of these monthly disposal costs shall be itemized and submitted with the City's payment for Residential Collection Services.

### **39.6 CITY'S UNDERPAYMENTS AND OVERPAYMENTS TO CONTRACTOR**

If the City pays the Contractor in error, for whatever reason, the Contractor shall promptly notify the Administrator to rectify the mistake. The City shall make appropriate adjustments to the Contractor's payments under this Agreement to off-set past underpayments and overpayments resulting from any error. However, the City shall not be obligated to make any adjustments to correct for underpayments that occurred more than three (3) months before the City received the Contractor's notice of the error.

### **39.7 LIMITATIONS ON CONTRACTOR'S RIGHT TO PAYMENT FROM CITY**

The City shall have no obligation to pay for any of the Collection Services provided by the Contractor, except as provided in Sections 39.3 and 39.4, above. The Contractor shall have no right to any revenues or funds obtained by the City from any other sources, including but not limited to funds distributed to the City by the Florida Department of Environmental Protection or any other Person.

### **39.8 PAYMENT FOR COMMERCIAL COLLECTION SERVICES**

The Contractor shall be solely responsible for billing its Commercial Customers and collecting the Rates, fees, and other charges for the Commercial Collection Services the Contractor provides under this Agreement. The Contractor also shall be responsible for the payment of all Tipping Fees associated with the disposal of the Solid Waste and other material collected by the Contractor when providing its Commercial Collection Services. The Contractor shall bill its Commercial Customers in arrears for the Commercial Collection Services the Contractor provided during the prior Operating Month.

Part of the cost of disposing of Commercial Waste will be billed and collected by the Authority through the use of non-ad valorem special assessments. Any disposal costs for Commercial Waste that are not covered by the Authority's special assessment may be billed by the Contractor to its Commercial Customers. The Contractor shall be solely responsible for paying the Authority for any Tipping Fees or other disposal costs incurred by the Contractor when providing Commercial Collection Services.

The Contractor may bill a Commercial Customer the applicable Rates set forth in Exhibit 3B, including: (a) a fee for the disposal of the Solid Waste generated by the Commercial Customer; (b) a fee for the Collection of the Commercial Customer's Solid Waste and/or Source Separated Recyclable Materials; (c) a fee for each Special Collection Service; and (d) a Franchise Fee, which shall be based on the total of the fees described in (a) through (c), above.

The Contractor's charges for waste disposal shall be based on the Tipping Fees established by the Authority. The Contractor's disposal charges shall increase or decrease whenever the Authority's fees increase or decrease.

### **39.9 PAYMENTS FOR GARBAGE CARTS AND RECYCLING CARTS**

Pursuant to Section 27.1.4, the Contractor shall provide each Residential Customer with one free replacement of their Garbage Cart if the Customer's cart is stolen or damaged beyond repair. Except for these replacement carts, the Contractor may charge a reasonable fee to a Residential Customer that wishes to purchase a Garbage Cart. The Contractor's fee for purchasing and assembling a Garbage Cart for a Residential Customer shall not exceed Fifty Dollars (\$50.00). The Contractor may charge an additional fee if the Customer requests the Contractor to deliver the Garbage Cart to the Customer's Premises, but the delivery fee shall not exceed Twenty-Five Dollars (\$25.00). The Contractor shall be solely responsible for billing and collecting the fees for selling and delivering Garbage Carts pursuant to this Section 39.9. Except for the fees authorized in this Section 39.9 and the fees authorized in Section 27.4 for exchanging carts, the Contractor shall not charge or collect any separate fee for purchasing, assembling, or delivering Garbage Carts to any Residential Customer.

### **39.10 PAYMENTS FOR SPECIAL COLLECTION SERVICES**

The Rates for Special Collection Service shall be paid in addition to the Rates for the routine Collection Service received by the Customer. The Contractor shall be solely responsible for billing its Customers and collecting the applicable Rates for any Special Collection Services the Contractor provides pursuant to this Agreement. The Contractor also shall be responsible for the payment of all Tipping Fees associated with the disposal or processing of Solid Waste collected by the Contractor when providing Special Collection Services. In cases where there are no established Rates in this Agreement for the requested service, the Contractor and the Customer shall negotiate a mutually acceptable price for the Contractor's services. The Contractor shall not be entitled to any compensation for a Special Collection Service unless the Customer agreed to pay the applicable Rate before the Contractor provided its service.

### **39.11 PAYMENTS FOR DISPOSAL OF UNACCEPTABLE WASTE**

The Contractor may collect its actual damages and out-of-pocket expenses from any Customer that places Hazardous Waste or other unacceptable materials in the Solid Waste or Source Separated Recyclable Materials that the Customer Set Out for Collection by the Contractor. For example, the Contractor may require a Customer to reimburse the Contractor if the Customer places excessive amounts of Solid Waste in the Customer's Recycling Container and thereby causes the Contractor to incur disposal costs when the Contractor delivers the Source Separated Recyclable Materials to the Designated Facility.

## **40. PAYMENTS TO THE CITY**

### **40.1 FRANCHISE FEES**



The Contractor shall pay Franchise Fees to the City in exchange for the rights and privileges granted to the Contractor pursuant to this Agreement. More specifically, the Contractor shall pay a Franchise Fee for the Contractor's exclusive right to provide Residential Collection Services and Commercial Services in the City. The Franchise Fee for Residential Collection Services shall be equal to five percent (5%) of the Contractor's gross billings for all of the Collection Services provided by the Contractor to Residential Property pursuant to this Agreement. With regard to Residential Collection Services, gross billings include the Contractor's billings for Collection costs, but do not include disposal costs, Franchise Fees, or administrative fees imposed pursuant to Section 40.2, below. The Franchise Fee for Commercial Collection Services shall be equal to ten percent (10%) of the Contractor's gross billings for all of the Collection Services provided to Commercial Property by the Contractor pursuant to this Agreement. With regard to Commercial Collection Services, gross billings include the Contractor's Collection Costs and disposal costs (e.g., Tipping Fees), but do not include Franchise Fees or administrative fees imposed pursuant to Section 40.2, below. The Contractor shall not be required to pay Franchise Fees for the Collection Services provided to the City pursuant to Section 36 of this Agreement. The Contractor also shall not be required to pay Franchise Fees for the payments it receives pursuant to Section 39.9, above, or administrative fees imposed pursuant to Section 40.2, below. The Contractor's gross billings shall include the billings for Special Collection Services. Gross billings shall be determined based on the invoices that are sent to the Contractor's Customers, not the revenues received by the Contractor.

On or before the tenth (10<sup>th</sup>) day of each Operating Month, the Contractor shall deliver to the City's Chief Financial Officer a report that summarizes the Contractor's Residential Collection Services and Commercial Collection Services during the prior Operating Month and shows the amount of the Franchise Fee to be paid to the City. The report also shall identify the amount of the administrative fees that shall be paid to the City pursuant to Section 40.2, below. The format and content of the report shall be subject to the approval of the City's Chief Financial Officer. The report shall include, but is not limited to: the name of each Commercial Customer; the service address of each Commercial Customer; the account number of each Commercial Customer; the exact services rendered to each Commercial Customer; the amounts billed to each Commercial Customer; the Special Collection Services provided to Residential Customers; and the amounts billed to each Residential Customer. The report shall be submitted with an Excel spreadsheet or in another format that is compatible with the City's computer software programs.

The City shall deduct the Franchise Fees and administrative fees for Residential Collection Services from the revenues the City collects from Residential Customers. The Contractor shall pay the Franchise Fees and administrative fees for Commercial Collection Services each month, within ten (10) days after the end of the month in which the Commercial Collection Service was provided. If the Contractor fails to timely pay the Franchise Fees and administrative fees for Commercial Collection Service, the City may deduct those Franchise Fees and administrative fees from the City's monthly payment to the Contractor for Residential Collection Services.

The exact nature and amount of the Franchise Fees and administrative fees for Residential and Commercial Collection Services may be changed by the Commission from time-to-time, but any changes shall warrant a corresponding change in any Rates or calculations that include the Franchise Fee or administrative fee.

Following each Operating Year, the City may hire an independent, third party accountant to conduct an audit of the Contractor's records concerning the Franchise Fees and administrative fees paid to the City during the prior Operating Year.

## **40.2 OTHER PAYMENTS**

The Contractor shall pay an administrative fee to the City for each Commercial Customer that receives Collection Services from the Contractor pursuant to this Agreement. The City shall bill and collect the administrative fee from Residential Customers. The administrative fee currently is Thirty Five Cents (\$0.35) per Customer. The amount of the administrative fee was set by the Commission and shall be revised when the Commission deems it appropriate. It is intended that this administrative fee shall be passed on to and paid by the Contractor's Customers; the fee is independent of and separate from the Contractor's Rates.

The City shall submit invoices to the Contractor for any fee or charge that is due and owed to the City from the Contractor, except for the payments otherwise addressed in this Section 40. The Contractor shall pay the City's invoice within thirty (30) calendar days after receipt.

## **41. RECYCLING REVENUES FOR CITY**

The City shall receive all of the revenues (if any) derived from the sale of the Source Separated Recyclable Materials that are collected by the Contractor under this Agreement. The Contractor shall not sell such materials, but if it does, Contractor shall submit the sales proceeds to the City within thirty (30) days. The Contractor shall not keep any revenues derived from the sale of Source Separated Recyclable Materials that the Contractor collects from any Customers. However, the provisions of this Section 41 do not apply to the sale of Recovered Materials that are generated and Source Separated on Commercial Property.

## **42. PAYMENT OF TIPPING FEES**

**42.1** Subject to the conditions and limitations contained herein, the Contractor shall pay the Tipping Fees for the disposal of any Solid Waste that is collected by the Contractor under this Agreement. The Contractor shall receive the City's disposal credits and a disposal fee from the City pursuant to Section 39.5, but if these credits and payments are insufficient to pay the Tipping Fees or other costs of disposal, the Contractor shall pay those costs. Among other things, the Contractor also shall pay the Tipping Fees and disposal costs for any Solid Waste that: (a) is collected from a Commercial Customer; (b) is collected outside of the Service Area; (c) is not Residential Waste; or (d) is not collected pursuant to this Agreement.

**42.2** When the Contractor delivers any Solid Waste to a Designated Facility, the Contractor shall tell the scale house operator whether the Tipping Fees shall be paid by the Contractor or the City. The Contractor shall use its best efforts to ensure that the scale house operator is properly informed so that the Disposal Facility will charge the City for Tipping Fees only when such charges are appropriate. Among other things, the Contractor shall not tell the scale house operator to charge the City for the disposal of any Solid Waste (a) that was generated outside of the Service Area; (b) that was generated by a Person who is not a Residential Customer; or (c) when the Contractor is obligated by this Agreement to pay the Tipping Fees.

## **43. VERIFICATION OF PAYMENT AMOUNTS**

**43.1** The City's acceptance of any payment from the Contractor, or the City's deduction of any amount from any payment due to the Contractor, shall not be construed as an accord that the amount paid is the correct amount, nor shall it be construed as a release of any claim the City may have for additional sums payable from the Contractor.

- 43.2** At any time within the applicable statute of limitations, the City may recalculate and collect any amounts that are payable to the City under this Agreement, plus Interest, and all costs of collection, including attorneys' fees and court costs.
- 43.3** At its expense, the City may inspect, copy and audit any books, records and documents of the Contractor, whether kept in an electronic (digital) format or otherwise, that are relevant to the calculation of the amounts due and payable under this Agreement.

## **44. ADMINISTRATIVE CHARGES**

### **44.1 BASIS FOR ADMINISTRATIVE CHARGES**

The City and Contractor acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would or might be incurred by the City due to those failures or circumstances described in this Section 44 and for which the Contractor would otherwise be liable. Accordingly, the Contractor and the City have established the terms and amounts of the administrative charges set forth herein, and the parties agree that the administrative charges are reasonable under the circumstances. The Contractor and City also have consulted with their legal counsel and confirmed that these administrative charges are appropriate. Therefore, the following administrative assessments shall constitute liquidated damages, not penalties, for the Contractor's breach of this Agreement.

### **44.2 PROCEDURE FOR ASSESSING ADMINISTRATIVE CHARGES**

- 44.2.1** The Administrator shall conduct a preliminary evaluation of the relevant facts before the Administrator decides whether administrative charges should be assessed against the Contractor. At a minimum, the Administrator shall provide written notice to the Contractor, and offer to discuss the relevant facts with the Contractor within five (5) Operating Days after the date of the notice. Following this discussion (if any) or the expiration of the five (5) Operating Day period, whichever occurs first, the Administrator shall determine whether administrative charges should be assessed. However, the City shall not assess and the Contractor shall not be required to pay administrative charges in those cases where the delay or failure in the Contractor's performance was (a) excused in advance by the Administrator or (b) due to unforeseeable causes that were beyond the Contractor's reasonable control, and without any fault or negligence of the Contractor.
- 44.2.2** Prior to assessing administrative charges, the Administrator shall provide written notice to the Contractor, indicating the City's intent to assess administrative charges and the basis for the City's position.
- 44.2.3** After receiving the Administrator's letter, Contractor shall have ten (10) Operating Days to file a written letter of protest with the Administrator.
- 44.2.4** If a protest is timely filed, the matter shall be referred to the City Manager for resolution. The City Manager shall review the issues in a timely manner and then provide a written decision to the Contractor. The City Manager's decision shall be final and non-appealable, except as provided in Section 44.2.6.
- 44.2.5** If a protest or petition is not timely filed by the Contractor, or if the City Manager concludes that administrative charges should be assessed, the Contractor shall

deliver its payment of administrative charges to the Administrator within twenty (20) days of receiving the written decision of the Administrator or City Manager, as applicable. If the Contractor fails to pay an administrative charge when due, the City may deduct the administrative charge from the City's monthly payments to the Contractor.

- 44.2.6 The procedures in this Section 44 shall be used in lieu of the procedures in Section 49 when resolving disputes concerning administrative charges, unless the administrative charges assessed in one month will exceed Five Thousand Dollars (\$5,000).

#### **44.3 ADMINISTRATIVE CHARGES BEFORE COMMENCEMENT DATE**

The Administrator shall impose administrative charges for the Contractor's actions during the Transition Period in the amounts set forth in Sections 44.3.1 through 44.3.5, below:

- 44.3.1 Failure to hire the Contractor's District Manager by April 15, 2015. For each calendar day of delay, One Thousand Dollars (\$1,000) shall be assessed against the Contractor.
- 44.3.2 Failure to provide purchase orders or other documentation to the City by March 16, 2015, confirming that all necessary Collection vehicles, equipment, and Collection Containers have been ordered and will be delivered to the Contractor's equipment yard no later than May 15, 2015. For each calendar day of delay, Two Thousand Dollars (\$2,000) shall be assessed against the Contractor.
- 44.3.3 Failure to mail or deliver the City-approved brochures and informational materials to all Customers in compliance with the schedules in Section 35.1. For each calendar day of delay, Three Thousand Dollars (\$3,000) shall be assessed against the Contractor.
- 44.3.4 Failure to have all of the necessary Collection vehicles delivered to the Contractor's equipment yard by May 15, 2015, and ready for service (i.e., registered, licensed, tagged and equipped) by May 20, 2015. For each calendar day of delay, Four Thousand Dollars (\$4,000) shall be assessed against the Contractor.

#### **44.4 ADMINISTRATIVE CHARGES DURING TERM OF AGREEMENT**

On the Commencement Date and throughout the remainder of the term of the Agreement, the Administrator shall assess administrative charges as follows:

- 44.4.1 Failure to clean up spilled liquids, Solid Waste, litter, or other material in compliance with the requirements in this Agreement, within the deadlines set forth herein, after receiving oral notification by the Administrator or a Customer. Each failure shall result in the imposition of a One Hundred Fifty Dollar (\$150) assessment per event.
- 44.4.2 Failure to collect the Garbage, Rubbish, Yard Waste, Bulky Waste, or Source Separated Recyclable Material that was properly Set Out for Collection by a Customer on the Scheduled Collection Day, within the deadlines set forth herein, after receiving oral notification by the City or Customer. Each failure shall result in

the imposition of a One Hundred Dollar (\$100) assessment. After the initial failure, if the Contractor fails to meet the deadlines contained in this Agreement, each additional Operating Day of Delay shall result in the imposition of an additional assessment of Two Hundred Fifty Dollars (\$250).

- 44.4.3 Failure to complete a route on the Scheduled Collection Day, within the deadlines set forth herein, after receiving oral notification by the City or the Customer. A route shall be considered incomplete if five (5) or more Dwelling Units or two (2) or more streets or roadways are not provided Collection Service. Each failure shall result in an assessment of One Thousand Dollars (\$1,000) per route, per Operating Day. This assessment shall be used in lieu of Section 44.4.2 in cases involving incomplete routes.
- 44.4.4 Mixing Source Separated Recyclable Materials with Solid Waste, or mixing any other materials that are required to be collected separately, shall result in the imposition of a Five Hundred Dollar (\$500) assessment per occurrence.
- 44.4.5 Failure to maintain a Collection vehicle or equipment in a clean and sanitary manner within the deadlines set forth herein, after receiving oral notification from the Administrator, shall result in the imposition of an assessment of One Hundred Dollars (\$100) per incident per Operating Day.
- 44.4.6 Failure to respond to a Legitimate Complaint, within the time frame specified herein, shall result in a Fifty Dollar (\$50) assessment per occurrence.
- 44.4.7 Failure to resolve a Legitimate Complaint, other than a Missed Collection, within seven (7) Operating Days of notification shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment per Operating Day until such complaint is resolved to the satisfaction of the City.
- 44.4.8 Failure to timely file any report, plan, or other document required herein shall result in the imposition of a One Hundred Dollar (\$100) assessment for each Operating Day that each report, plan, or document is late.
- 44.4.9 Failure to dispose of any Residential Waste or Commercial Waste collected in the Service Area at a Designated Facility shall result in the imposition of an assessment equal to the current Tipping Fee at the Designated Facility times the amount (tonnage) disposed at the non-Designated Facility. If the tonnage is unknown, the assessment shall be Two Thousand Dollars (\$2,000) per occurrence.
- 44.4.10 Failure to deliver Source Separated Recyclable Materials to a Designated Facility for such materials pursuant to Section 19, or delivering Source Separated Recyclable Materials to a Solid Waste disposal facility, shall result in the imposition of an assessment of Two Thousand Dollars (\$2,000) per occurrence.
- 44.4.11 Failure to correct chronic Collection problems shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment. Chronic shall mean three (3) or more Legitimate Complaints at the same Premises for the same issue within a twelve (12) month period. The first assessment shall be imposed for the third Legitimate Complaint. Additional assessments may be imposed for each Legitimate Complaint thereafter. If the Contractor has more than five (5) Customers with chronic

problems within one Operating Year, there shall be an additional Five Hundred Dollar (\$500) assessment.

- 44.4.12 Failure to correct chronic equipment problems shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment. Chronic shall mean three (3) instances of the same or similar problem with the same equipment or vehicle within a twelve (12) month period. The first assessment shall be imposed for the third problem. Additional assessments shall be imposed for each problem thereafter.
- 44.4.13 Failure to properly and legibly label a Collection Vehicle or Collection Container in the manner required herein, within five (5) Operating Days after receiving notice from the Administrator, shall result in the imposition of a One Hundred Dollar (\$100) assessment for each vehicle and each container not properly labeled.
- 44.4.14 Failure to have a vehicle operator properly licensed, or failure of the operator to carry his license while on duty, shall result in a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.15 Failure to maintain office hours in the manner specified in this Agreement shall result in a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.16 Failure to replace or repair a damaged Collection Container, or failure to replace a stolen Collection Container, or failure to exchange a Collection Container, within the deadlines specified in this Agreement, shall result in a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.17 If the Contractor notifies the Administrator that a complaint has been resolved, when the complaint has not been resolved, there shall be a Two Hundred Dollar (\$200) assessment per occurrence.
- 44.4.18 Collecting Solid Waste or Source Separated Recyclable Materials at times that are outside of the hours specified in this Agreement, without prior approval of the Administrator, shall result in a One Hundred Dollar (\$100) assessment per occurrence per vehicle.
- 44.4.19 Leaving Collection Containers where they block driveways, streets, or roads shall result in the imposition of a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.20 Failure to provide timely notices and educational materials, as required pursuant to Section 35, shall result in the imposition of a One Thousand Dollar (\$1,000) assessment per occurrence.
- 44.4.21 Damage to public or private roadways, including but not limited to spills of oil and hydraulic fluids, shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment per occurrence.
- 44.4.22 Failure to repair damage to a Customer's property within the deadlines set forth in this Agreement, after receiving notification by the Customer or Administrator, shall result in the imposition of an assessment of Two Hundred Fifty Dollars (\$250) per occurrence.

- 44.4.23 Soliciting or accepting an unauthorized fee or monetary compensation from a Customer shall result in the imposition of a Five Hundred Dollar (\$500) assessment per occurrence.
- 44.4.24 Failure to respond to the Administrator by 5:00 p.m. on the first Operating Day following a telephone call, voice message, facsimile transmission, or electronic message requesting a response from the District Manager, shall result in the imposition of an assessment of One Hundred Dollars (\$100), which shall be increased by another One Hundred Dollars (\$100) for each additional Operating Day of delay.
- 44.4.25 Failure to comply with the deadlines and requirements in Section 50 concerning the Contractor's obligations prior to the termination of this Agreement, shall result in the imposition of an assessment of Two Thousand Dollars (\$2,000) per Operating Day per occurrence.
- 44.4.26 Failure to pay the applicable Tipping Fee for Solid Waste the Contractor delivered to a Designated Facility, in each instance where the Contractor was obligated to pay the Tipping Fee pursuant to this Agreement, shall result in an assessment of One Thousand Dollars (\$1,000) per occurrence.
- 44.4.27 Failure to follow the procedures in the Contractor's Collection Plan for notifying a Designated Facility that the Contractor is obligated to pay the applicable Tipping Fee, in each instance where the Contractor delivered Solid Waste to the Designated Facility but failed to follow the approved procedures in the Collection Plan. Each failure shall result in an assessment of Two Hundred Dollars (\$200).
- 44.4.28 Failure to adhere to the approved routes in the Collection Plan, without receiving the Administrator's prior approval for the deviation. Each failure shall result in an assessment of Five Hundred Dollars (\$500) per occurrence.
- 44.4.29 Failure to cover or enclose Solid Waste and Source Separated Recyclable Materials in the Contractor's Collection vehicles, as required herein, shall result in an assessment of Two Hundred Fifty Dollars (\$250) per occurrence.
- 44.4.30 Failure to return a Collection Container to the location where the Customer placed it for Collection shall result in an assessment of Fifty Dollars (\$50) per occurrence.
- 44.4.31 Failure to provide accurate information to the City concerning the Contractor's Collection Services or the calculation of the Franchise Fees for such Services, shall result in the imposition of an assessment of One Thousand Dollars (\$1,000) per occurrence.
- 44.4.32 Failure to close the gate on an enclosure for a Mechanical Container, or failing to close the lid on a Mechanical Container, or failing to lock all of the locks on a Commercial Customer's Mechanical Container, shall result in an imposition of an assessment of One Hundred Dollars (\$100) per occurrence.
- 44.4.33 Failure to collect Biological Waste, within two (2) hours after the Administrator requests such service, shall result in the imposition of an assessment of One Hundred Dollars (\$100) per occurrence.

- 44.4.34 Failure to respond to a Customer's request for service, within the deadline set forth in Section 31.1.5, shall result in the imposition of an assessment of Fifty Dollars (\$50) per occurrence.

## **45. PAYMENTS WITHHELD FROM CONTRACTOR**

In addition to the remedies provided elsewhere in this Agreement, the City may withhold part or all of any payment otherwise due the Contractor from the City if the Administrator concludes that the Contractor's actions or inactions have resulted in the following:

- (a) The Contractor's failure to carry out lawful instructions or orders from the Administrator, when required by this Agreement;
- (b) Failure of the Contractor to make payments to any Subcontractor, which results in a claim against the City;
- (c) Unsafe working conditions allowed to persist by the Contractor, after receiving notice from the City or OSHA;
- (d) Failure of the Contractor to provide routes, schedules, data, documents or reports requested by the City in compliance with this Agreement; or
- (e) Failure to pay an administrative charge when due.

If the foregoing problems are corrected, payment shall be made to the Contractor for the amounts withheld, but the City shall not be liable to the Contractor for Interest on any delayed payment. The Administrator shall not exercise the City's right to withhold payments under this Section 45 unless the Administrator concludes that such action is reasonable and necessary in light of the Contractor's repeated problems or persistent failure to perform in compliance with the requirements herein. The City shall not withhold more than a total of Fifty Thousand Dollars (\$50,000) from any single payment or from multiple payments.

## **46. NO LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO FORCE MAJEURE EVENTS**

- 46.1** If the City or Contractor is unable to perform, or is delayed in the performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused for any time during which compliance is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Contractor to correct the adverse effect of such event of force majeure.
- 46.2** The Contractor shall not be entitled to compensation from a Customer or the City for such period of time when the delay or non-performance occurs, but the Contractor will be entitled to pro-rata compensation after the Contractor's work has been completed. The City shall not be liable for any loss suffered by Contractor as a result of an event of force majeure.
- 46.3** An event of "force majeure" shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligation) under this Agreement:



- (a) An act of God, tornado, hurricane, flood, fire, explosion (except those caused by the negligence of Contractor, its agents, and assigns), landslide, earthquake, epidemic, and extremely abnormal and inclement weather;
- (b) Acts of a public enemy, acts of war, terrorism, insurrection, riots, civil disturbances, or national or international calamities;
- (c) Suspension, termination, or interruption of utilities necessary to the Contractor's operations or duties under this Agreement;
- (d) An injunction, or a legal or equitable proceeding brought against the City or Contractor, or a Change in Law; and
- (e) Any act, event, or condition, which is determined by mutual agreement of the City and the Contractor to be of the same general type as the events of force majeure identified in Sections 46.3(a) through (d).

**46.4** Labor disputes, labor shortages, changing economic conditions, and the economic hardship of the Contractor shall not be considered an event of force majeure.

**46.5** To be entitled to the benefit of this Section 46, a party claiming an event of force majeure shall give prompt written notice to the other party, specifying in detail the event of force majeure, and shall diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Section 46, time is of the essence.

## **47. BREACH AND TERMINATION OF AGREEMENT**

### **47.1 TERMINATION BY EITHER PARTY FOR CAUSE**

Subject to the other provisions contained herein, either party may terminate this Agreement if the other party fails to perform any of its material obligations hereunder. A default by Contractor shall include but not be limited to the following:

- 47.1.1 Refusing to comply with any lawful order of the City Manager.
- 47.1.2 Failing to begin work within the time specified in this Agreement.
- 47.1.3 Discontinuing operations without prior authorization from the Administrator.
- 47.1.4 Failing to resume work that has been suspended within a reasonable time, not to exceed two (2) Operating Days, after being notified to do so.
- 47.1.5 Failing to obey any Applicable Law.
- 47.1.6 Soliciting or accepting any Rates, charges or fees from Customers for the Collection, disposal, or processing of Solid Waste or Source Separated Recyclable Materials collected within the Service Area, except when such actions are explicitly authorized herein.
- 47.1.7 Failing to deliver Residential Waste, Commercial Waste, or Source Separated Recyclable Materials collected in the Service Area to a Designated Facility.

- 47.1.8 Failing to pay any Tipping Fee that the Contractor is obligated to pay to a Designated Facility pursuant to this Agreement.
- 47.1.9 Failing to comply with the procedures in the Contractor's Collection Plan.
- 47.1.10 Failing to obtain or continuously maintain insurance policies in the manner required herein.
- 47.1.11 Failing to pay, when due, any sums owed to a subcontractor for services or materials provided pursuant to this Agreement.
- 47.1.12 Failing to provide or continuously maintain the Performance Bond required pursuant to Section 53.
- 47.1.13 A Parent Corporation Guarantee provided pursuant to Section 54 is revoked.
- 47.1.14 A representation or warranty provided by the Contractor in this Agreement is or becomes inaccurate in any material respect.
- 47.1.15 Failing to comply with the requirements and deadlines established in Exhibit 13 ("Optional Benefits and Services").

Before a party may terminate this Agreement pursuant to this Section 47.1, the non-defaulting party shall give written notice to the other party that a default exists which will, unless corrected, constitute an event of default on the part of the defaulting party. The notice shall inform the defaulting party that this Agreement shall be terminated unless the default is cured within seven (7) calendar days following the defaulting party's receipt of the notice. If a cure cannot reasonably be effected within seven (7) days despite the exercise of due diligence, the time to cure the default shall be extended to include such additional time as is reasonably necessary to effect a cure, provided that the defaulting party exercises continuous diligent efforts to cure the default during the extended cure period. If the defaulting party fails to cure the default within the cure period, the non-defaulting party may terminate this Agreement. The termination shall take effect as of the date specified by the non-defaulting party. Upon termination, the non-defaulting party may cure the default at the expense of the defaulting party, and have recourse to any other right or remedy to which the non-defaulting party may be entitled under this Agreement, at law, or in equity.

Notwithstanding anything else contained herein, each of the events described in Sections 47.1.15, 47.1.16, 47.1.17, and 47.1.18, below shall constitute an event of default for which there shall be no opportunity to cure. For such events, termination shall be effective three (3) calendar days after the non-defaulting party gives notice to the defaulting party or at such other time designated by the non-defaulting party.

47.1.15 Voluntary Bankruptcy

Written admission by a party that it is bankrupt; or filing by a party of a voluntary petition under the Federal Bankruptcy Act; or consent by a party to the court appointment of a receiver or trustee for all or a substantial portion of its property or business; or the making of any arrangement by a party with, or for the benefit of, its creditors or assigning to a trustee, receiver, or similar functionary (regardless of how

designated) all or a substantial portion of a party's property or business; or by becoming insolvent.

47.1.16 Involuntary Bankruptcy

Final adjudication of a party as bankrupt under the Federal Bankruptcy Act.

47.1.17 Public Entity Crime

The Contractor is placed on a convicted vendor list following a conviction for a public entity crime; or

47.1.18 Fraud

The Contractor commits an act or omission constituting fraud, gross negligence, or willful misfeasance toward the City.

## **47.2 INTERIM OPERATIONS**

In the event that this Agreement is terminated before the end of any term, the Contractor shall continue its operations for an interim period of up to one hundred eighty (180) calendar days if requested to do so by the City. The Contractor shall be paid for its services during said interim period at the rates in effect prior to issuance of the notice of termination.

Notwithstanding anything else contained herein, the City may hire an alternate Person to provide Collection Services in the City if the Contractor fails to provide Collection Service for a period of two (2) consecutive Operating Days. The City's interim service provider shall continue to provide Collection Service until the Contractor demonstrates to the City's satisfaction that the Contractor is able to resume work in compliance with the requirements in this Agreement. However, if the Contractor is unable for any reason to resume performance within thirty (30) calendar days, the City may terminate this Agreement, effective as of the date designated by the City.

## **47.3 EFFECT OF TERMINATION**

If this Agreement is terminated pursuant to the provisions of this Section 47, neither the City nor the Contractor shall have any further duty, right, liability, or obligation under this Agreement, except that: (a) a party will not be relieved from liability for a breach of a warranty, obligation, or representation under this Agreement that occurred before the effective date of the termination; (b) the City shall pay all amounts owed to the Contractor, and the Contractor shall pay all amounts owed to the City, pursuant to this Agreement, through the date of the termination; (c) the Contractor shall deliver to the City all reports concerning the Contractor's activities through the end of the month in which termination occurs; (d) at a minimum, the provisions of Sections 34.1, 34.6 and 51 shall survive the expiration or termination of this Agreement; and (e) any term, condition, covenant, or obligation which requires performance by a party subsequent to the termination of this Agreement shall remain enforceable against such party subsequent to such termination.

## **47.4 SETTLEMENT AND RELEASE**

If this Agreement is terminated, the City shall pay to the Contractor any and all sums due, owing, and unpaid to the Contractor by the City for work performed through the date of termination, less any and all sums owed by the Contractor to the City, and less any and all deductions or other offsets the City may have. In exchange for these payments, the Contractor shall execute and deliver to the City a general release of the City, its elected officials, employees, representatives, and agents. This payment to the Contractor shall constitute Contractor's full and final compensation under this Agreement and the Contractor shall have no right to receive any further payments. This provision does not limit the right of the City to receive indemnification in the future.

## **48. OPERATIONS DURING DISPUTE**

If a dispute arises between the City, the Contractor, or any other Person concerning the Contractor's performance, rights, or compensation under this Agreement, the Contractor shall continue to perform its duties in strict compliance with the requirements of this Agreement, regardless of the pending dispute.

## **49. DISPUTE RESOLUTION PROCESS**

- 49.1** The City and Contractor agree to cooperate and act in good faith at all times when dealing with each other. If a dispute arises between the parties, the parties shall attempt to resolve their differences quickly and informally. If they are unable to do so, they shall seek relief by following the procedures set forth below.
- 49.2** All claims, disputes and controversies arising out of or related to the performance, interpretation, application or enforcement of this Agreement, including but not limited to claims for payment and claims for breach of this Agreement, shall be referred to non-binding mediation before initiation of any adjudicative action or proceeding at law or in equity, unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise. All applicable statutes of limitations and defenses based on the passage of time shall be tolled while the mediation process is pending. The parties will take all reasonable measures necessary to effectuate such tolling.
- 49.3** Either party may initiate the mediation process by delivering written notice to the other party that sets forth with particularity the nature of the party's claim or demand, the authority for making the claim or demand, a proposed remedy, the nature and extent of any monetary claim, and a request for mediation. The Contractor and City shall then participate fully in the mediation process and conscientiously attempt to resolve their dispute. The mediation shall be conducted in Palm Beach County, Florida, in accordance with the Florida Supreme Court's mediation rules, within sixty (60) days after the appointment of a certified civil mediator who is mutually acceptable to the parties. After consultation with the parties and their counsel, the mediator shall fix a reasonable time and place in Palm Beach County for the mediation conference within the time limits prescribed by this Section 49.3. The mediation conference shall be scheduled for no less than one full working day, and each party and its primary counsel shall attend the mediation conference. If either a party or its primary legal counsel fails to attend the mediation conference, that party shall be liable for the other party's reasonable cost of attending the mediation conference, including the mediator's fee and the other party's attorney fees and costs. Except as provided in the preceding sentence, the parties shall share equally the costs of mediation, including the fees of the mediator and any rental or other cost of obtaining a place for the mediation, but excluding their own expenses and attorney fees. If the parties reach a mutually acceptable settlement of the dispute during the mediation, they shall record the settlement in a written settlement agreement that will be binding on both of them. Neither party shall terminate

the mediation unless each of them has participated (or been afforded an opportunity to participate) in the mediation and is unable to agree on a settlement. Mediation discussions between parties and opinions of the mediator are confidential and are not permitted to be relied on, referred to, or introduced as evidence in any subsequent litigation or other legal proceeding. If a dispute is not resolved pursuant to mediation within sixty (60) days after the initiation of the mediation conference, either party to the dispute may elect to resolve the dispute by initiating litigation, after providing ten (10) days' advance written notice to the other party.

- 49.4** Notwithstanding the foregoing, if either party terminates this Agreement for cause, the terminating party shall have the right, in its sole discretion, to proceed directly with litigation of any claims or disputes relating to the termination for cause and may include other claims and disputes unrelated to the termination, and shall not be required to submit such claims or disputes to mediation.
- 49.5** The parties agree that any claim filed in state or federal court concerning this Agreement shall be heard by a judge, sitting without a jury.
- 49.6** THE CITY AND THE CONTRACTOR HEREBY KNOWINGLY, VOLUNTARILY, AND PERMANENTLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL CONCERNING THE PERFORMANCE, INTERPRETATION, APPLICATION OR ENFORCEMENT OF THIS AGREEMENT.
- 49.7** When a dispute between the City and the Contractor is pending or threatened, the Contractor shall attempt to resolve the dispute with the Administrator. If this attempt is unsuccessful, either party may initiate a non-binding mediation process, in accordance with the provisions of Sections 49.2 and 49.3, above. In addition, at any time during the dispute resolution process, the Contractor may request the City Commission to consider the disputed issue. The Contractor's written request shall be delivered to the City Manager and it shall describe the Contractor's proposed solution for resolving the dispute. The City Manager may request, and the Contractor shall timely provide, any additional information that is reasonably necessary to evaluate the disputed issue and the Contractor's proposal. The City Manager shall present the matter to the City Commission at a duly noticed public meeting. The Contractor also shall be given an opportunity to present any relevant information to the City Commission at the public meeting. The City Commission shall fully and fairly consider the Contractor's proposal in a timely manner. If the City Commission rejects the Contractor's proposal in whole or in part, the Contractor may pursue any dispute resolution mechanism, subject to the provisions in this Section 49.

## **50. CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF THIS AGREEMENT**

### **50.1 CONTINUATION OF CONTRACTOR'S SERVICE**

If the City does not exercise its right to renew this Agreement or if there are no renewal options remaining, the City will attempt to award a new agreement to a Person at least six (6) months prior to the expiration of this Agreement. In the event a new agreement has not been awarded in a timely manner, Contractor shall provide its Collection Services in compliance with this Agreement for an additional ninety (90) calendar days after the expiration of this Agreement, at the then current Rates, if the City requests this service.

### **50.2 SALE OR LEASE OF CONTRACTOR'S MECHANICAL CONTAINERS**

Upon request, Contractor shall enter into good faith negotiations to allow the City or the City's newly selected franchise hauler to purchase, or rent for up to ninety (90) days, the Mechanical Containers (if any) used and owned by the Contractor in the Service Area. The purchase price and rental fee shall be negotiated, but shall not be greater than the fair market value.

### **50.3 SCHEDULE FOR TERMINATION OF CONTRACTOR'S SERVICE**

Prior to the termination of this Agreement, Contractor shall work with the City to ensure that there is no interruption or reduction of service when the Contractor ends its services to the City. If a new franchise agreement is awarded to a Person other than the Contractor, the Contractor shall coordinate and cooperate with the newly selected franchise hauler, as well as the City, to minimize any disruptions in the service provided to the public. At a minimum, the Contractor shall comply with the following performance requirements and deadlines:

180 calendar days prior to expiration of Agreement	If requested, the Contractor shall provide to the Administrator and the selected franchise hauler a Mechanical Container inventory, in a format acceptable to the City that includes each container's location (street address), capacity, identification number, and Collection frequency. Thereafter, the Contractor shall not replace or exchange any Contractor-owned Mechanical Container listed in the inventory, without the Administrator's approval.
150 calendar days prior to expiration of Agreement	The Contractor shall attend a coordination meeting with the selected franchise hauler and the City. At or before the coordination meeting, the Contractor shall provide the City with a list of Contractor-owned containers that may be purchased by the City or the selected franchise hauler.
120 calendar days prior to expiration of Agreement	The Contractor shall work with the selected franchise hauler to develop a mutually agreeable schedule for the removal of Contractor-owned Collection Containers and placement of the selected franchise hauler's containers.
30 calendar days prior to expiration of Agreement	The Contractor shall begin to implement the schedule in cooperation with the selected franchise hauler. The Contractor shall take all steps necessary to ensure there is no interruption in the Collection Service provided to Customers.

### **50.4 CITY'S RIGHT TO PROCURE NEW SERVICES**

At any time, the City may issue a request for proposals, or commence negotiations with a Person other than the Contractor, or take any other step deemed necessary by the City to obtain the services of a Person who will collect Solid Waste for the City after this Agreement expires or is terminated.

## **51. DAMAGES AND INDEMNIFICATION**

### **51.1 LIABILITY**

The Contractor shall be liable for all injuries and conditions that are caused by or result from the Contractor's actions, including but not limited to the Contractor's failure to perform in accordance with the terms of this Agreement. To the extent that the City and Contractor are joint tortfeasors, losses shall be apportioned in the manner described in Section 51.3, below.

### **51.2 CONTRACTOR'S INDEMNIFICATION OF CITY**

To the greatest extent allowed by Applicable Law, the Contractor releases and shall indemnify, hold harmless, and, if requested by the City, defend, each of the City Indemnified Parties from and against every Indemnified Loss that is caused by or results from, directly or indirectly, in whole or in part, any act, omission, or negligence of the Contractor, any tier of subcontractor to the Contractor or any subcontractor to a subcontractor of the Contractor, or anyone employed by any of those Persons for whose acts or omissions any of them may be liable, except to the extent resulting from the acts, omissions, or negligence of the City Indemnified Party. The obligation of the Contractor under this Section 51.2 is absolute and unconditional; it is not conditioned in any way on any attempt by a City Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contractor might have against the City Indemnified Party.

It is the intent of this Section 51.2 that the Contractor's indemnification obligations include all joint and several liability of the Contractor, any subcontractor to the Contractor, or any subcontractor to a subcontractor of the Contractor, and anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

The City may employ any attorney of its choice or may use its in-house counsel to enforce or defend the City's right to indemnity provided by this Agreement. If a City Indemnified Party requests that the Contractor defend it with respect to any Indemnified Loss, the City Indemnified Party may participate in the defense at its sole cost and expense. The Contractor shall advance or promptly reimburse to a City Indemnified Party any and all costs and expenses incurred by the City Indemnified Party in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which the City Indemnified Party is entitled to indemnification under this Agreement.

### **51.3 CONTRIBUTION**

In the event of joint negligence on the part of the City and the Contractor, any loss and costs shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the Effective Date, subject to the recovery limits set forth in Section 768.28, Florida Statutes, in effect on the Effective Date.

### **51.4 DAMAGES**

The measure of damages to be paid by the Contractor to the City or by the City to the Contractor, due to any failure by the Contractor or the City to meet any of its obligations under this Agreement, shall be the actual damages incurred by the City or the Contractor. Neither party shall have any liability under this Agreement for consequential, delay, special, indirect, or punitive damages. The foregoing shall apply without regard to either party's rights to the Performance Bond, insurance proceeds, or other factors.

If the Contractor fails to comply with any Applicable Law, the Contractor shall promptly pay to the City the following:

- (a) All lawful fines, penalties, and forfeitures charged to the City by any judicial order or by any governmental agency responsible for the enforcement of the Applicable Law; and
- (b) The actual costs incurred by the City as a result of the Contractor's failure to comply with the Applicable Law, including any costs incurred in investigating and remedying the

conditions which led to or resulted from the Contractor's failure to comply with the Applicable Law.

#### **51.5 NO PERSONAL LIABILITY**

Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the City or the Contractor.

#### **51.6 COLLECTION OF OVERDUE PAYMENTS AND INTEREST**

If the Contractor fails to pay any Franchise Fee or other amount that is owed to the City under this Agreement, the Contractor shall pay Interest on the outstanding debt and the Contractor shall pay any expenses the City incurs in its efforts to recover the unpaid debt. Interest shall begin to accrue on the first calendar day after the payment is due and it shall compound daily. The Contractor's liability for expenses shall include but not be limited to any court costs, filing fees, witness fees, and attorneys' fees that the City incurs in any civil or administrative proceeding, appeal, or settlement.

### **52. CONTRACTOR'S INSURANCE**

The Contractor shall provide and maintain, on a primary basis and at its sole expense, at all times after the Effective Date until this Agreement expires or is terminated, policies of insurance that insure the Contractor against any and all claims, demands, or causes of action for injuries received or damages to people or property relating to the Contractor's acts and omissions under this Agreement. At a minimum, the Contractor shall maintain at all times the following insurance coverage, with the limits and endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by the Contractor, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement.

#### **52.1 COMMERCIAL GENERAL LIABILITY**

Contractor shall maintain Commercial General Liability with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/\$2,000,000
Products – Completed Operations	\$2,000,000
Personal and Adv. Injury	\$1,000,000
Fire Damage	\$ 50,000
Contractual Liability	Included

The General Liability insurance form shall be no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent, without restrictive endorsements. Coverage shall not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability. The coverage shall include: (1) Bodily Injury and Property Damage; (2) Premises and Operations; (3) Independent Contractors; (4) Products and Completed Operations; (5) Broad Form or equivalent Contractual Coverage applicable to the Agreement and specifically confirming the indemnification and hold harmless provisions in the Agreement; (6) Broad Form or equivalent Property Damage Coverage; and (7) Personal Injury Coverage with employment and contractual exclusions removed and deleted.



## **52.2 BUSINESS AUTOMOBILE LIABILITY**

Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Combined Single Limit / Each Accident. Coverage shall include liability for Owned, Non-Owned & Hired automobiles.

## **52.3 POLLUTION LIABILITY**

Contractor shall maintain Pollution Liability at a minimum limit not less than \$2,000,000 Each Occurrence / \$2,000,000 Aggregate including all sudden and non-sudden events.

## **52.4 EXCESS LIABILITY**

Contractor shall maintain Excess Liability at a limit of liability not less than \$10,000,000 Each Occurrence / \$10,000,000 Aggregate. Contractor shall include each required policy herein as an underlying policy on the Excess Liability, unless the total combined limit of the Excess Liability is satisfied in the required policy. Contractor shall endorse the City as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Excess Liability provides coverage on a "True Following-Form" basis. This liability may be satisfied by the Umbrella Liability form, and the limit may be satisfied by multiple layers of coverage.

## **52.5 WORKER'S COMPENSATION INSURANCE & EMPLOYERS LIABILITY**

Contractor shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Chapter 440, Florida Statutes. Contractor shall maintain Employers' Liability Limits not less than \$1,000,000 Each Accident, \$1,000,000 Disease Each Employee, and \$1,000,000 Disease Policy Limit.

## **52.6 ADDITIONAL INSURED ENDORSEMENTS**

Contractor shall endorse its insurance with the City as an Additional Insured as follows: (1) for the Commercial General Liability, the Contractor shall endorse the City with either a CG 2026 Additional Insured – Designated Person or Organization endorsement or CG 2010 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement, or similar endorsement; (2) for the Business Automobile Liability, the Contractor shall endorse the City with a CA 2048 – Designated Insured, or similar endorsement; (3) for the Pollution Liability, the Contractor shall endorse the City with the standard Additional Insured endorsement filed by the insurer for use in the State of Florida; and (4) for the Excess Liability, the Contractor shall endorse the City as an "Additional Insured" on the Umbrella or Excess Liability, unless the policy provides coverage to the underlying policies on a "True Following-Form" basis. The Additional Insured shall read "City of Delray Beach, a municipal corporation of the State of Florida, and the City Commission," for all endorsements. These endorsements shall specifically state that the coverage afforded by the endorsement shall be provided on a primary and non-contributory endorsement. This primary and non-contributory language can be included in the additional insured endorsement, can be provided in a separate stand-alone endorsement, or this language can be included in the actual liability coverage form for the line of insurance coverage that is being evidenced to the City. A copy of any endorsement issued to extend coverage to the City must be provided when evidencing insurance to the City.

## **52.7 WAIVER OF SUBROGATION**

Contractor agrees to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Contractor to enter into an pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis. A copy of any endorsement issued to extend coverage to the City must be provided when evidencing insurance to the City.

## **52.8 CERTIFICATE(S) OF INSURANCE**

At least five (5) days prior to the Effective Date, Contractor shall provide the City with a Certificate of Insurance evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect. Said Certificate of Insurance shall provide for a minimum of thirty (30) days prior written notice to the City of any cancellation or non-renewal of coverage. The Contractor shall ensure that such notice is provided to the City. The Certificate of Insurance shall identify the City's RFP (No. 2014-38) and this Agreement in the Description of Operations section of the Certificate. The Certificate Holder shall be identified as:

City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

The Certificate of Insurance shall evidence a waiver of subrogation in favor of the City, that coverage shall be primary and noncontributory, and that each policy includes a Cross Liability or Severability of Interests provision, with no requirement for premium payments by the City. The Certificate of Insurance shall be provided to the City Attorney's Office, at the address provided above. Copies shall be provided to the City Manager and the City's Risk Management Division, also at the address shown above. The Contractor shall ensure that current Certificates of Insurance are on file with the City at all times during the term of this Agreement and such certificates comply with the requirements herein.

## **52.9 DEDUCTIBLES, SELF-INSURED RETENTIONS, AND SUPPLEMENTAL COVERAGE**

Contractor shall be solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention. When a self-insured retention or deductible exceeds Two Hundred Fifty Thousand Dollars (\$250,000) for any of the foregoing required policies, the City reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statements to determine the reasonability of the retention levels, based on the financial capacity of Contractor. At the City's option, the Contractor may be required to reduce the self-insured retentions, or the Contractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Contractor and any subcontractor providing the insurance.

For policies written on a "Claims-Made" basis, Contractor shall maintain a Retroactive Date prior to or equal to the Effective Date of this Agreement. In the event the policy is canceled, non-

renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggers the right to purchase a Supplemental Extended Reporting Period (SERP) coverage during the term of this Agreement, Contractor agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.

#### **52.10 RIGHT TO REVISE OR REJECT**

The City reserves the right, but not the obligation, to reject any insurance policies that fail to meet the criteria stated herein. Additionally, the City reserves the right, but not the obligation, to review or reject any insurer providing coverage due to its poor financial condition or failure to operate in compliance with Applicable Laws. Neither the City's approval of any insurance provided by the Contractor or a subcontractor, nor the City's failure to disapprove such insurance, shall relieve the Contractor or a subcontractor of any part or all of its responsibility for any liability, damages, or accidents, as set forth herein.

#### **52.11 MINIMUM REQUIREMENTS FOR INSURANCE COMPANIES**

All of the insurance provided by the Contractor pursuant to this Agreement shall be issued by an insurance company or companies licensed to do business in the State of Florida with a minimum rating of "A" in accordance with the latest edition of A.M. Best's Insurance Guide. Additionally, the Financial Category Size must be X or greater.

#### **52.12 OTHER INSURANCE REQUIREMENTS**

At its option, the City may allow the Contractor to be self-insured for one or more lines of coverage. In such circumstances, the Contractor shall be required to demonstrate to the satisfaction of the City that the Contractor has adequate financial resources to defend and cover all claims in the amounts and categories required by the City.

The Contractor shall immediately advise the City of pending or threatened litigation that will reduce the coverage provided to the City.

An insurer shall have no right of recovery against the City. The required insurance policies shall protect the Contractor and the City, and they shall be the primary coverage for any losses covered by the policies. The Contractor shall confirm that any company issuing insurance pursuant to this Agreement agrees it has no recourse against the City for payment of premiums or assessments in any form for such insurance.

The Contractor shall be responsible for all of its subcontractors (if any) and their insurance. Each subcontractor shall provide certificates of insurance to the Contractor that demonstrate coverage and terms in compliance with the requirements applicable to the Contractor.

### **53. PERFORMANCE BOND**

The Contractor shall furnish to the City an irrevocable Performance Bond for the faithful performance of this Agreement and all of the Contractor's obligations hereunder. The Performance Bond shall be in the amount of Two Million Dollars (\$2,000,000). The form and content of the Performance Bond shall be substantially the same as the draft bond in Exhibit 5, and shall be subject to the approval of the City Attorney. The Performance Bond shall be issued by a surety company that is acceptable to the City. At a minimum, the surety company shall be rated "A" or better as to management and "FSC X" or better as to

strength by Best's Insurance Guide or Surety, and shall be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds. The Surety shall have been in business and have a record of successful and continuous operation for at least five years. The Performance Bond shall: (a) contain any provisions required by Applicable Law; (b) guarantee the performance of the Agreement; (c) serve as security for the payment of all Persons performing labor and furnishing materials in connection with this Agreement; and (d) not be canceled or altered without at least thirty (30) calendar days prior notice to the City. The Contractor shall furnish the Performance Bond to the City at least five (5) calendar days before the Effective Date.

Maintenance of the Performance Bond and the performance by the Contractor of all of the obligations under this Section 53 shall not relieve the Contractor of liability under the default and termination provisions set forth in this Agreement or from any other liability resulting from any breach of this Agreement. The Performance Bond may be "called" and used if there is any default or breach of this Agreement by the Contractor. Calling or using the Performance Bond shall not restrict or preclude the use of any other remedies available to the City against the Contractor for breach, default, or damages.

In the event of a strike of the employees of Contractor or any other labor dispute which makes performance of this Agreement by the Contractor substantially impossible, the City shall have the right to call the Performance Bond three (3) days after giving notice and may engage another Person to provide necessary services.

## **54. PARENT CORPORATION GUARANTEE**

The Contractor shall provide a corporate guarantee from the Contractor's parent company ("Guarantor"), whereby the Guarantor shall guarantee the performance of the Contractor's obligations under this Agreement. The form and content of the corporate guarantee shall be substantially the same as the draft guarantee in Exhibit 4 and shall be subject to the City Attorney's approval. The form must be executed by the Contractor's parent company (i.e., the corporate entity that is at the top of any chart showing the Contractor's corporate organization), not an intermediary between the Contractor and its parent. The corporate guarantee shall be delivered to the City at least five (5) days before the Effective Date

## **55. ASSIGNMENT OF AGREEMENT**

- 55.1** No assignment of this Agreement or any right or responsibility occurring under this Agreement, shall be made in whole or in part by the Contractor without the express written consent of the City. The City shall have the right to approve or deny, with or without cause, any proposed or actual assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement.
- 55.2** In the event that the City's consent to any proposed assignment is denied, Contractor shall continue to provide all of the services required herein for the remainder of the term.
- 55.3** If any assignment is approved by the City, the assignee shall fully assume all of the liabilities of the Contractor.
- 55.4** The requirements of this Section 55 shall include, but not be limited to cases where the Contractor hires a subcontractor to undertake any of the Contractor's obligations to provide Collection Services under this Agreement.

## **56. TRANSFER OF AGREEMENT**

The transfer of this Agreement, by transfer of ownership or control, or any other means to effect a change in the ownership or control of the Contractor, shall be effective only after approval by the City. A transfer includes but is not limited to a one-time change that results in a transfer of twenty-five percent (25%) or more of the ownership or controlling interests of the Contractor, or a series of changes that result in a cumulative change of fifty percent (50%) or more of the ownership or controlling interests of the Contractor. Any transaction that results in the Contractor or its assets being purchased by or merged with another Person shall constitute a transfer of this Agreement, which is subject to the City's approval. An application to transfer this Agreement shall be submitted jointly by the proposed transferor and transferee, and shall contain the same type of information about the transferee that was provided by the Contractor before the City granted this franchise. At a minimum, the proposed transferee shall (a) verify in writing that it will comply with all of the requirements in this Agreement and (b) demonstrate that it has the financial resources, expertise, personnel, equipment and other capabilities necessary to do so. The application shall be accompanied by a non-refundable application fee in the amount of Twenty Thousand Dollars (\$20,000.00). The Commission may grant or deny the application for transfer, or may grant the application with conditions, subject to the provisions in Section 32.4. Among other things, the Commission's approval may be subject to conditions requiring an increase in the amount of the Performance Bond, an increase in the levels and types of insurance coverage, and other safeguards designed to ensure that the City's work will be completed in compliance with the requirements in this Agreement.

Notwithstanding the other provisions in Section 55 and Section 56 of this Agreement, the City shall cooperate with the Contractor in the event that a strike, lockout, or similar labor dispute results in the Contractor's use of a subcontractor to provide the Collection Services required under this Agreement. In such circumstances, the provisions of Section 55 and Section 56 shall be waived by the City for a period not to exceed ninety (90) days.

## **57. SUBSEQUENT CITY ORDINANCES**

Nothing contained in any City ordinance hereafter adopted shall be construed to affect, change, modify or otherwise alter the duties, responsibilities, and operations of the Contractor under this Agreement, unless it is agreed to in writing by both the Contractor and the City and this Agreement is amended accordingly.

## **58. AMENDMENTS TO THE AGREEMENT**

### **58.1 GENERAL REQUIREMENTS**

This Agreement constitutes the entire Agreement and understanding between the parties hereto. This Agreement shall not be considered modified, altered, changed or amended in any respect unless the Agreement is amended in writing and the amendment is signed by the Contractor and the Commission or its designee.

### **58.2 CITY POWER TO AMEND AGREEMENT**

The City shall have the power to make changes in this Agreement relative to the scope and method of providing Collection Service, when the City deems it necessary and desirable for the public welfare. The Administrator shall give the Contractor notice of any proposed change and an opportunity to be heard concerning any relevant matters. In all cases involving changes to this Agreement, the City and Contractor shall enter into good faith negotiations to modify this

Agreement and the Rates, as necessary. The scope and method of providing Collection Service, as referenced herein, shall be liberally construed to include, but not be limited to all procedures, operations, and obligations of the Contractor. Among other things, the City and the Contractor may wish to amend this Agreement if the Authority begins to accept Source Separated Recyclable Materials that are collected in a “single stream” – i.e., all of the Recyclable Materials are collected and handled together in one bin or cart.

In the future, the City may wish to obtain new services that are not addressed under this Agreement. For example, the City may wish to expand its Recycling program in ways that have not yet been identified. If the City and the Contractor are unable to agree upon the terms and conditions governing such services, including but not limited to the Rates for such services, the City shall have the right to procure such services from other Persons, notwithstanding the Contractor’s exclusive franchise under this Agreement.

### **58.3 AMENDMENTS DUE TO CHANGES IN LAW**

The City and the Contractor understand and agree that changes in the Applicable Laws may require amendments to some of the conditions or obligations of this Agreement. In the event any future change in any Applicable Law materially alters the obligations of the Contractor or the City, then the provisions and Rates in this Agreement may need to be modified. The City and Contractor agree to enter into good faith negotiations regarding amendments to this Agreement, which may be required in order to implement changes for the public welfare or due to a Change in Law.

## **59. WAIVER OF RIGHTS**

No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the City or Contractor at any time to require performance by the other party of any term in this Agreement shall in no way affect the right of the City or Contractor thereafter to enforce same. Nor shall waiver by the City or Contractor of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

## **60. WAIVER OF FLOW CONTROL CLAIMS**

The Contractor has voluntarily entered into this Agreement for the purpose of enjoying the economic and other benefits conferred upon the Contractor by this Agreement. To ensure that the City also enjoys the benefits of this Agreement, the Contractor hereby knowingly, voluntarily, and permanently waives its right to challenge, contest, or invalidate the provisions in this Agreement that require the Contractor to use a Designated Facility for the disposal or processing of Solid Waste collected by the Contractor in the Service Area. This waiver includes but is not limited to any claim that this Agreement implements an inappropriate form of Solid Waste “flow control”, regardless of whether the claim is based on local, state, or federal law, or the Florida or U.S. Constitution, or any other grounds, and regardless of whether the claim seeks damages, injunctive relief, or other remedies at law or in equity.

## **61. GOVERNING LAW AND VENUE**

The laws of the State of Florida shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. Any and all legal or equitable actions necessary to enforce this Agreement shall be held and maintained solely in the state and federal courts in and for Palm Beach County, Florida. Venue shall lie exclusively in Palm Beach County.

## **62. COMPLIANCE WITH LAWS AND REGULATIONS**

Contractor shall at all times comply with all Applicable Laws now in effect or hereafter enacted, which are applicable in any way to Contractor, its officers, employees, agents, or subcontractors, except as provided in Section 57.

## **63. PERMITS AND LICENSES**

Contractor, at its sole cost and expense, shall obtain and maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for Contractor to perform the work and services described herein.

## **64. EQUAL OPPORTUNITY EMPLOYMENT**

Contractor agrees that it shall not discriminate against any employee or applicant for employment for work under this Agreement because of handicap, race, color, religion, sex, age, or national origin and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment by Contractor without regard to race, color, religion, sex, age or national origin. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor agrees to furnish the City with a copy of its non-discrimination and equal employment opportunity policy, upon request.

## **65. AGREEMENT DOCUMENTS**

This Agreement and the following documents comprise the entire Agreement between the City and Contractor. The following documents are attached to this Agreement and they are incorporated in this Agreement by this reference:

Exhibit 1 through Exhibit 13

After the Effective Date, the Agreement shall be supplemented with the following:

Performance Bond and Insurance Certificates

Any amendments to this Agreement that are approved by the Commission and Contractor

There are no Agreement documents other than those listed above.

## **66. ALL PRIOR AGREEMENTS SUPERSEDED**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this

Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

This Agreement shall supersede the City's RFP (No. 2014-38) and the Contractor's response to the RFP. In the event of any conflict, the provisions of this Agreement shall govern and shall supersede anything contained in the City's RFP or the Contractor's response.

## **67. HEADINGS**

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

## **68. CONSTRUCTION OF AGREEMENT**

Both parties are represented by legal counsel and they waive any rule of law that would require any vague or ambiguous provisions herein to be construed against the party that physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

## **69. SURVIVABILITY**

Any term, condition, covenant, or obligation which requires performance by a party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

## **70. SEVERABILITY**

The definitions and provisions contained in this Agreement shall not be construed to require the City or the Contractor to take any action that is contrary to any local, state or federal law. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect. This Agreement shall be construed as if such invalid, illegal, void or unenforceable provision had never been contained herein.



## **71. FAIR DEALING**

The Contractor declares and warrants that the Contractor enters into this Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no Commission member, City officer, or City employee, directly or indirectly owns more than five percent (5%) of the total assets or capital stock of the Contractor, nor will any such Person directly or indirectly benefit by more than five percent (5%) from the profits or emoluments of this Agreement, nor has the Contractor provided any gift to any such Person or their family. The Contractor warrants that it has not employed or retained any company or Person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and the Contractor has not paid or agreed to pay any Person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this Agreement.

## **72. SOVEREIGN IMMUNITY**

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

## **73. REMEDIES NOT EXCLUSIVE**

The remedies specified in this Agreement shall supplement, and not be in lieu of, any other remedies provided at law or in equity. The payment of any administrative charges by the Contractor shall not constitute a defense for the Contractor, nor an election of remedies by the City, nor serve as the basis for a claim of estoppel against the City, nor prevent the City from terminating this Agreement. The City's decision to refrain from assessing administrative charges, or suspending or terminating this Agreement, or seeking any other relief from any failure in the Contractor's performance, shall not constitute a waiver of the City's right to pursue any other remedy or a waiver of its right to pursue a remedy for any future failure by the Contractor. No remedy conferred by this Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **74. NOTICES TO PARTIES**

All notices, requests, authorizations, approvals, protests, and petitions provided for herein shall be in writing. Such documents shall be addressed as shown below and either (a) hand delivered, (b) mailed by registered or certified mail (postage prepaid), return receipt requested, or (c) sent by telecopy. The documents shall be deemed to have been duly delivered when personally delivered, or when transmitted by telecopier and receipt is confirmed by telephone, or when delivered by U.S. Mail or courier service, as shown by the return receipt. For the present, the Contractor and the City designate the following as the appropriate people and places for delivering notices and other documents:

As to City:

City Manager  
City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: (561) 243-7010  
Facsimile: (561) 243-7199

Copy to: City Attorney  
City of Delray Beach  
200 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: (561) 243-7090  
Facsimile: (561) 278-4755

As to Contractor: Charles Gusmano  
President and CEO  
Southern Waste Systems LLC  
2380 College Avenue  
Davie, FL 33317  
Phone: (954) 615-4139  
E-mail: [cgusmano@southernwastesystems.com](mailto:cgusmano@southernwastesystems.com)

Copy to: John Casagrande  
Vice President of Business Development  
Southern Waste Systems LLC  
2380 College Avenue  
Davie, FL 33317  
Phone: (954) 444-7457  
E-mail: [Jcasagrande@southernwastesystems.com](mailto:Jcasagrande@southernwastesystems.com)

Both parties reserve the right to designate a different representative or representatives in the future, or to change the address(es) for notice, by providing written notice to the other party of such change.

## **75. COOPERATION WITH THE INSPECTOR GENERAL**

Palm Beach County has established the Office of the Inspector General, which is authorized to review City contracts and records. The City has entered into an agreement with Palm Beach County for the services of the Inspector General. The Contractor shall fully cooperate with the Inspector General and shall provide access to the Contractor's records in the manner provided herein for the City to inspect such records. Failure to cooperate with the Inspector General, or interfering with or impeding any investigation of the Inspector General, shall be a violation of County Ordinance 2009-049 and shall be punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

## **76. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor represents and warrants to the City that:

- (a) The Contractor is a corporation existing in good standing under the laws of the state of its formation, is in good standing under the laws of the State of Florida, and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

- (b) The Contractor has the requisite power, authority, and legal right to enter into and perform its obligations under this Agreement and possesses all orders, permits, consents, licenses, approvals, franchises, certificates, registrations, and other authorizations from third parties and governmental authorities that are necessary to conduct its current business and to satisfy its duties and obligations under this Agreement.
- (c) This Agreement has been duly executed and delivered by the Contractor and, as of the Effective Date, constitutes a legal, valid, and binding obligation of the Contractor, enforceable by the City against the Contractor in accordance with its terms, except to the extent its enforceability is limited by (1) the application of general principles of equity and by bankruptcy, insolvency, moratorium, debtor relief, and similar laws of general application affecting the enforcement of creditor rights and debtor obligations, and (2) public policy limitations on the enforceability of indemnification provisions.
- (d) The execution, delivery, and performance of this Agreement by the Contractor: (1) have been duly authorized; (2) do not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained after the Effective Date; (3) have been duly authorized by all requisite action of the Contractor, and no other proceedings on the part of the Contractor, its officers, partners or managers are necessary to authorize this Agreement or to perform the duties and obligations of the Contractor contemplated by it; (4) will not violate any law applicable to the Contractor or its property or any provisions of the Contractor's articles of incorporation or by-laws; (5) do not constitute a default under or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of the Contractor under any agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound or affected in any manner that prohibits or otherwise adversely affects the Contractor's ability to perform its obligations under this Agreement; and (6) do not and will not violate any copyrights, patents, or other intellectual or proprietary rights of any Person.
- (e) To the best of the Contractor's information and belief, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority pending against the City or the Contractor, in which an unfavorable decision, ruling, or finding would materially and adversely affect the performance by the Contractor of its obligations under this Agreement, or that in any way would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Contractor or any of its affiliates in connection with this Agreement.
- (f) The Contractor will be in compliance at all times with the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, as amended, because the Contractor does not on the grounds of race, color, national origin, religion, sex, age, handicap, or marital status, discriminate in any form or manner against the Contractor's employees or applicants for employment. This statement of assurance shall be interpreted to include Vietnam-Era Veterans and Disabled Veterans within its protective range of applicability. The Contractor understands and agrees that this Agreement is conditioned on the veracity of this Section 76(f) and that a breach of this condition will constitute a material breach of this Agreement.
- (g) The Contractor shall comply with Applicable Law concerning the protection and rights of employees, including but not limited to equal employment opportunity laws, minimum

wage laws, immigration laws, the Americans with Disabilities Act, and the Fair Labor Standards Act.

- (h) The Contractor did not engage, directly or indirectly, in any collusion, bribery, deception, or fraud in connection with its efforts to procure the work awarded under this Agreement.
- (i) None of the agents, members, managers, partners, officers, directors, employees, or executives of the Contractor, or any affiliate that is active in the management of the Contractor, has been convicted of a public entity crime, as defined in Section 287.133(g), Florida Statutes.
- (j) The personnel employed by the Contractor have the proper skill, licenses, training, background, knowledge, experience, authorizations, integrity, and character necessary to perform the Contractor's obligations in accordance with this Agreement.
- (k) No City employee received or will receive, directly or indirectly, any benefit, interest, or profit out of the procurement process pursuant to which this Agreement was awarded or in connection with this Agreement or the services to be provided pursuant to this Agreement, and no City employee has or will have any direct or indirect financial interest in the award of this Agreement or any of the services to be provided pursuant to this Agreement.
- (l) The Contractor acknowledges that Section 287.135, Florida Statutes, prohibits agencies from contracting with companies for goods or services of \$1,000,000 or more, that are on either the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List, both lists of which are created pursuant to Section 215.473, Florida Statutes, and certifies, represents, and warrants to the City that the Contractor is not on either of those lists.
- (m) The Contractor will exercise its best efforts, including the expenditure of its funds, to do "whatever it takes" to ensure that the Contractor has enough vehicles and drivers available at all times to provide Collection Services in compliance with the requirements in this Agreement. The Contractor recognizes and agrees that this representation is a material inducement to the City, which the City has relied upon as a basis for entering into this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Agreement, as attested to by the signature of their duly authorized officers or representatives and their official seals affixed hereon, the day and year first above written.

Attest:

CITY OF DELRAY BEACH, by and through its  
City Commission

\_\_\_\_\_  
Chevelle D. Nubin, City Clerk

By: \_\_\_\_\_  
Cary Glickstein, Mayor

\_\_\_\_ day of February, 2015

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
Noel M. Pfeffer, City Attorney

\_\_\_\_ day of February, 2015

(CITY SEAL)

WITNESSES:

CONTRACTOR

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_ day of February, 2015

\_\_\_\_ day of February, 2015

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_ day of February, 2015

ATTEST:

\_\_\_\_\_  
SECRETARY

STATE OF FLORIDA            )  
  ) SS:  
CITY OF                            )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_, of \_\_\_\_\_, an organization authorized to do business in the State of Florida, and he/she executed the foregoing Agreement as the proper official of \_\_\_\_\_ for the uses and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

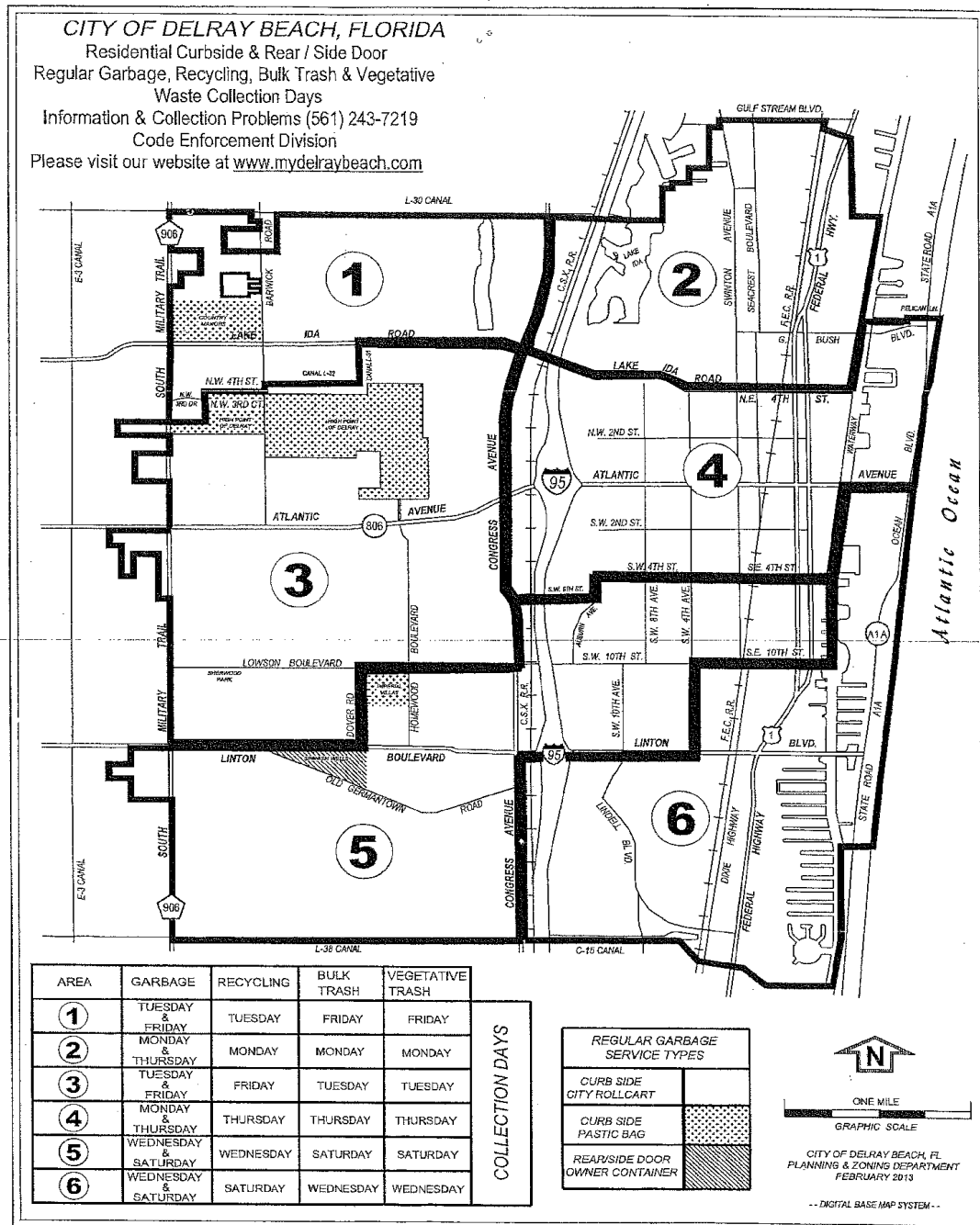
IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and City aforesaid on this \_\_\_\_\_ day of February, 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

## EXHIBIT 1

# GENERAL MAP OF SERVICE AREA, INCLUDING AREAS RECEIVING SIDE DOOR SERVICE OR SERVICE WITH PLASTIC BAGS



## **EXHIBIT 2**

**RESERVED**



**EXHIBIT 3A**  
**RATES FOR RESIDENTIAL COLLECTION SERVICES**

	Curbside Collection with Garbage Carts	Curbside Collection with Plastic Bags
Garbage	\$ 4.57 (2x/wk)	\$ 4.57 (2x/wk)
Yard Waste	\$ 1.19 (1x/wk)	\$ 1.19 (1x/wk)
Recyclable Material	\$ 2.00 (1x/wk)	\$ 2.00 (1x/wk)
Bulky Waste	\$ 1.19 (1x/wk)	\$ 1.19 (1x/wk)
Total Monthly Cost per Dwelling Unit	\$ 8.95	\$ 8.95

### EXHIBIT 3A

(continued)

	Side-Door Service	Collection Service with Mechanical Containers
Garbage	\$ 11.00 (2x/wk)	\$ 2.95 (2x/wk)
Yard Waste	Not Applicable	Not Applicable
Recyclable Material	\$ 2.00 (1x/wk)	\$ 2.00 (1x/wk)
Bulky Waste	Not Applicable	Not Applicable
Total Monthly Cost	\$ 13.00	\$ 4.95

## **EXHIBIT 3A**

**(continued)**

### Explanatory Notes

1. All Rates are fixed through September 30, 2015, and are based on the service requirements specified in the Agreement. The Rates are expressed as the cost that the City must pay per Dwelling Unit per month.
2. If the Contractor furnishes a Garbage Cart to a Residential Customer in a Multi-Family Dwelling, the Contractor may charge the Customer a monthly fee of One Dollar (\$1.00) per cart.
3. The Rate for Residential Collection Service shall apply to each Customer that receives such service, regardless of the number of Garbage Cans, Garbage Carts, Recycling Bins, or Recycling Carts that are used by the Customer.
4. Customers receiving Side Door Service shall pay the Rate for Side Door Service, in addition to the Rate for Curbside Collection Service.
5. These Rates do not include Franchise Fees or administrative fees.

**EXHIBIT 3B**  
**RATES FOR COMMERCIAL COLLECTION SERVICES**

Rate for Collection of Commercial Waste with Mechanical Containers (i.e., other than Compactors and Roll-Off Containers)	<p>\$ 4.45 per cubic yard for Collection</p> <p>\$ 2.81 Disposal</p> <p>Total per cubic yard \$ 7.26</p>
Rate for Collection of Commercial Waste in Compactors (8 cubic yards or less)	<p>\$ 5.56 per cubic yard for Collection (1.25x the Collection cost for Mechanical Containers, above)</p> <p>\$ 5.62 Disposal</p> <p>Total per cubic yard \$ 11.18</p>
Rate for Collection of Recyclable Materials in Mechanical Containers	<p>\$ 4.45 per cubic yard</p>
Rate for Collection of Commercial Waste with 96 Gallon Garbage Cart collected one time per week (Customers generating less than 2 cubic yards per week)	<p>\$ 25.00 per month for Collection</p> <p>\$ 6.08 per month for Disposal</p> <p>Total monthly \$ 31.08</p>
Rate for Collection of Recyclable Materials with 96 Gallon Recycling Cart collected one time per week	<p>\$ 25.00 per month for Collection</p>

## **EXHIBIT 3B**

**(continued)**

Rate for Collection of Commercial Waste in Compactors (greater than 8 cubic yards – Roll-Off Compactors)	<p>\$ 210.00 per pull for Collection</p> <p>Disposal is a pass thru cost paid by the Customer</p>
Rate for Collection of Commercial Waste in Roll-Off Containers	<p>\$ 210.00 per pull for Collection</p> <p>Disposal is a pass thru cost paid by the Customer</p>

### Explanatory Notes

1. All Rates are fixed through September 30, 2015, and are based on the service requirements specified in the Agreement.
2. The Rates for Commercial Collection Service include all charges and fees for the rental of Mechanical Containers, except Compactors. The Rate for leasing a Compactor shall be negotiated by the Contractor and the Customer.
3. These Rates do not include Franchise Fees or administrative fees.

## EXHIBIT 3C

### RATES FOR COLLECTION SERVICES FOR THE CITY

Rate for Collection of Solid Waste with Mechanical Containers (i.e., other than Compactors and Roll-Off Containers)	\$ 3.25 per cubic yard for Collection
Rate for Collection of Solid Waste in Compactors (8 cubic yards or less)	\$ 4.06 per cubic yard for Collection (1.25x the Collection cost for Mechanical Containers, above)
Rate for Collection of Recyclable Materials in Mechanical Containers	\$ 3.25 per cubic yard
Rate for Collection of Garbage with 96 Gallon Garbage Cart collected one time per week (locations generating less than 2 cubic yards per week)	\$ 25.00 per month

## EXHIBIT 3C

(continued)

Rate for Collection of Recyclable Materials with 96 Gallon Recycling Cart (1 time per week)	\$ 25.00 per month
Rate for Collection of Solid Waste in Compactors (greater than 8 cubic yards – Roll-off Compactors)	\$ No Charge per pull for Collection
Rate for Collection of Solid Waste in Roll-Off Containers	\$ No Charge per pull for Collection
Rate for Clamshell Truck and Driver, five (5) days per week	\$ 11,250.00 per month
Rate for Collection of Recyclable Materials in a 40 gallon Recycling Container (2 times each week) at a location in the areas identified in Exhibits 7, 8, and 11	\$ 4.57 per month
Rate for Collection of trash in a 40 gallon receptacle (2 times each week) at a Bus Shelter, Park, or other location in the areas identified in Exhibits 7 or 8	\$ No Charge per month
Rate for Collection of trash in a 40 gallon receptacle (6 times each week) at a location identified in Exhibit 11	\$ No Charge per month

## EXHIBIT 3C

(continued)

### Explanatory Notes

1. All Rates are fixed through September 30, 2015, and are based on the service requirements specified in the Agreement.
2. The City may increase or decrease the number of Recycling Containers and trash receptacles it uses in the general areas identified in Exhibits 7, 8, and 11. The City's payments to the Contractor shall increase or decrease, as the case may be, when the City increases or decreases the number of Recycling Containers and trash receptacles it uses in the Service Area. The adjustments to the City's payments shall be based on the "per unit" Rate set forth above in this Exhibit 3C.
3. The Rate for providing Collection Service for Community Events shall depend on the services requested by the City. For such events, the City shall pay the Rates set forth in this Exhibit 3C for a Mechanical Container, Compactor, Garbage Cart, or Recycling Cart.
4. The City shall not pay any disposal costs to the Contractor, except as provided in Paragraph 5, below.
5. The City shall pay the Contractor for the disposal of the trash and other Solid Waste collected from eighty-four (84) of the trash receptacles located along Atlantic Avenue, the Beach area, and Pineapple Grove. The amount of the City's payment to the Contractor shall be calculated in the following manner:

Assume there are eighty-four (84) trash receptacles, each receptacle is approximately thirty (30) gallons in capacity, and each receptacle is picked up six (6) times each week.

Assume the Authority's Tipping Fee is forty-two dollars (\$42.00) per ton, which is equal to two dollars and eighty-one cents (\$2.81) per cubic yard.

Assume each thirty (30) gallon container holds 0.15 cubic yards.

Eighty-four (84) containers x 0.15 cubic yards per container x six (6) pick-ups per week x fifty-two (52) weeks per year x two dollars and eighty-one cents (\$2.81) per cubic yard = eleven thousand forty-six dollars and sixty-seven cents (\$11,046.67) per year.

This annual disposal fee shall be billed in arrears in twelve (12) equal monthly installments of nine hundred twenty dollars and fifty-six cents (\$920.56) each month. If the Authority's Tipping Fee changes in the future, this calculation shall be performed with the new Tipping Fee and the City's payments to the Contractor will be adjusted accordingly.



## EXHIBIT 3D

### RATES FOR SPECIAL COLLECTION SERVICES

SERVICE	RATE PER SERVICE
Rolling Out Commercial 95 or 101 Gallon Carts, with 10 or more feet per direction	\$1.00 (no charge for Residential Customers regardless of distance; no charge for Commercial Customers for less than 10 feet per direction)
Rolling Out Mechanical Container (and returning it to original location)	\$8.00 per month per container times frequency of collection
Side-Door Service (Residential Curbside Only)*	\$11.00 per dwelling unit
Opening (and closing) Doors or Gates	No Charge
Locks for Containers	\$9.00 (one time) Charge for Replacements based on cost + 10%
Unlocking Containers	\$1.35
Supplying (and retrofitting) locking mechanism on container per customer request only	\$55.00 one-time installation charge
Adding wheels to or changing wheels on Mechanical Containers	No Charge
Adding lids to or changing lids on Mechanical Containers	No Charge
Moving Container Location Per Customer Request	No Charge
Changing Out sizes (more than twice per Operating Year)	\$25.00
Additional Scheduled Pick-ups for Residential Customers using Mechanical Containers	Same as Applicable Commercial Collection Rates (No Disposal Charges)
Additional Unscheduled (picked up by end of business the following day but not including “on-call”) Pick-ups for Commercial and Residential Customers using Mechanical Containers	\$25.00 Special Service Fee Plus Applicable Commercial Collection and Disposal Rates Per Dumpster (No Disposal Charges for Residential)
Special Service or special equipment required because of impaired accessibility	Negotiable
Turn around compactors (Commercial Customer only)	\$10.00 per pull (No Charge for Multi-family)
Stump/Land Clearing Collection	Negotiable
Residential Yard Waste Collection for special pickup at the request of the Residential Customer for oversized piles	\$9.00 Per CY
Residential Mixed Collection (Yard Waste with C&D and/or Bulky Waste)	\$22.00 Per CY
Lease of Compactor	Negotiable

\*No charge for Residential Customers physically unable to bring Solid Waste or Recovered Materials to Curbside.

## EXHIBIT 4

### **PARENT CORPORATION GUARANTEE**

THIS GUARANTEE ("Guarantee") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Guarantor"), to and for the benefit of the City of Delray Beach, Florida (the "City") (each capitalized term used and not defined herein shall have the meaning ascribed to such term in the Agreement).

WITNESSETH:

WHEREAS, \_\_\_\_\_ (the "Contractor"), a \_\_\_\_\_ corporation and a wholly-owned subsidiary of the Guarantor, is entering into an "Exclusive Franchise Agreement ("Agreement") with the City;

WHEREAS, the Guarantor is willing to guarantee the performance of the Contractor under the Agreement, pursuant to the terms of this Guarantee; and

WHEREAS, the execution of this Guarantee is a condition precedent to the execution by the Contractor and the City of the Agreement, and the City would not enter into the Agreement unless the Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the Guarantor agrees as follows:

1. The Guarantor hereby irrevocably, absolutely and unconditionally guarantees the full, prompt and timely performance and discharge of all of the duties, obligations, covenants and agreements of the Contractor pursuant to and in accordance with the terms and provisions of the Agreement, including but not limited to, the full, prompt and timely payment when due of all sums and amounts payable by the Contractor, including without limitation, the payment of any and all fines, damages, indemnification obligations, costs, and expenses, including without limitation, reasonable fees and expenses of attorneys (collectively, the "Obligations").

2. All Obligations of the Guarantor under this Guarantee shall be irrevocable, absolute, unconditional and continuing, and shall remain in full force and effect until all of the Obligations now existing or hereafter incurred have been performed, discharged and paid in full in accordance with the terms of the Agreement. The Obligations of the Guarantor under this Guarantee shall not be released, discharged, affected, modified or impaired by reason of the happening from time to time of any event or circumstance, including, without limitation, any one or more of the following:

(i) the compromise, settlement, release, discharge or termination of any or all of the Obligations, by operation of law or otherwise, except by payment and performance in full of the Obligations pursuant to the terms of the Agreement;

## **EXHIBIT 4**

### **(continued)**

(ii) the failure of the City to give notice to the Contractor or the Guarantor of the occurrence of any Event of Default under the Agreement;

(iii) the waiver by the City of any payment, performance, or observance of any of the Obligations;

(iv) the extension of the time (whether one or more) for payment or performance of the Obligations, or the extension or the renewal of any thereof;

(v) the invalidity or unenforceability of any term or provision of the Agreement based on the lack of authority, insolvency, bankruptcy or reorganization of the Contractor;

(vi) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Contractor, or its assets, or the Guarantor, or its assets, or any allegation of invalidity or contest of the validity of this Guarantee in any such proceedings;

(vii) the default or failure of the Guarantor to fully perform any of its obligations set forth in this Guarantee, or the occurrence of any events of default under the Agreement;

(viii) the failure of any agreement, instrument, certificate, or other document to be executed or delivered in connection with the Agreement; or

(ix) any assignment, amendment, modification, or waiver of, or change in any of the terms, covenants, conditions or provisions of any of the Obligations or the Agreement, or the invalidity or unenforceability of any of the foregoing.

3. This Guarantee shall be construed in accordance with and governed by the laws of the State of Florida, without giving effect to any choice or conflict of law provisions or rules (whether of the State of Florida or any other jurisdiction).

4. Subject to the provisions of Section 7 hereof, this Guarantee shall be binding upon and enforceable against the Guarantor, its successors, or permitted assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties or capital stock of the Guarantor), whether or not the Guarantor's obligations hereunder are expressly assumed by such successor, assignee, or transferee, and is for the benefit of the City and any of its successors and assigns under the Agreement.

5. Each and every event of default under the Agreement shall give rise to a separate cause of action hereunder, and separate claims may be brought hereunder by the City as each cause of action arises. The Guarantor waives to the greatest extent permitted by law: notice of acceptance hereof; presentment and protest of any instrument, and notice thereof; notice of default; notice of foreclosure; notice of any modification, release or other alteration of any of the

## **EXHIBIT 4**

### **(continued)**

Obligations or of any security therefor and all other notices to which the Guarantor might otherwise be entitled. Should the Contractor default in the payment or performance of any of the Obligations, the obligations of the Guarantor hereunder with respect to such Obligations in default shall become immediately due and payable to the City without demand or notice of any nature, all of which are expressly waived by the Guarantor. Payments by the Guarantor hereunder may be required by the City on any number of occasions.

6. No failure, omission or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege of the City. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom any such waiver, amendment, release or modification is sought to be enforced.

7. The Guarantor shall not assign its obligation hereunder nor substitute any Person in place of itself hereunder without first obtaining the express prior written consent of the City, which consent may be withheld by the City in its sole and absolute discretion. Any attempted assignment in violation of this Guarantee shall be null and void.

8. The obligations of the Guarantor to the City set forth in this Guarantee are direct, absolute and unconditional without regard to the liability of any other Person; and shall not be subject to any requirement that the City first enforce any remedies it may have against the Contractor or any other Person, or any requirement to seek to recover from the Contractor hereunder before proceeding against the Guarantor hereunder, and shall not be subject to any claim of the Guarantor against any other Person including the City. No setoff, counterclaim, reduction, or diminution of any obligation, or any other defense of any kind of nature (excepting payment or performance in fact and any other defenses the Contractor has under the Agreement) which the Contractor or the Guarantor has or may have against the City shall limit or in any way affect the Guarantor's obligations under this Guarantee.

9. Each of the Guarantor and the City irrevocably (i) consents that any action or proceeding against it under, arising out of or in any manner relating to this Guarantee shall be brought in the state or federal courts in and for Palm Beach County, Florida, and consents to the exclusive jurisdiction of such courts; (ii) consents and submits to the personal jurisdiction of any such court in any such action or proceeding; (iii) consents to the service of summons, notice, or other process relating to any such action or proceeding by delivery thereof by hand or by mail in the manner provided for in Section 13 of this Guarantee and consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Florida, in accordance with applicable laws; (iv) waives any objection, claim or defense which it may have at any time to the laying of venue of any such action or proceeding in any such court; (v) waives any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; (vi) waives the right to object, with respect to any such action or proceeding brought in any such court, that such court does not have jurisdiction over such party; and (vii) permanently, voluntarily, and with the advice of counsel, waives any rights it may have to a jury trial concerning any dispute involving or arising out of the Agreement or this Guarantee.

**EXHIBIT 4**  
**(continued)**

10. Upon payment by the Guarantor of any sum to the City hereunder, all rights of the Guarantor against the Contractor arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinate, junior in right of payment to, and not exercisable until, the prior indefeasible payment and performance in full of all Obligations.

11. This Guarantee may be executed in multiple counterparts, including by way of facsimile or other electronic transmission (i.e., pdf), each of which shall be deemed an original, but all of which taken together shall constitute one instrument. If any provision of this Guarantee is determined to be unenforceable, the City and the Guarantor hereby agree that such provision may be reformed so that it is enforceable to the maximum extent permitted by applicable laws. In the event that any provision of this Guarantee cannot be reformed, such provision shall be deemed to be severed from this Guarantee, but every other provision of this Guarantee shall remain in full force and effect. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of the City and may be enforced against Guarantor by the City and any of its successors and assigns. This Guarantee contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements, representations and understandings of the parties with respect to the subject matter herein.

12. The Guarantor hereby expressly waives notice from the City of its acceptance of and reliance upon this Guarantee, and of any future creation, renewal or accrual of any of the Obligations.

13. All notices hereunder shall be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission or other electronic transmission service is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

If to the City:

City Manager  
City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: (561) 243-7010  
Facsimile: (561) 243-7199

**EXHIBIT 4**  
**(continued)**

Copy to:

City Attorney  
City of Delray Beach  
200 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: (561) 243-7090  
Facsimile: (561) 278-4755

If to the Guarantor:

Copy to:

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice given to the other party in accordance with this Guarantee.

14. Any termination of this Guarantee shall be applicable only to transactions having their inception after the effective date of such termination and shall not affect rights and obligations arising out of transactions having their inception prior to such date.

IN WITNESS WHEREOF, the Guarantor has executed this instrument the day and year first above written.

ATTEST: \_\_\_\_\_ (Guarantor)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Seal]

**EXHIBIT 4**  
**(continued)**

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

**EXHIBIT 5**  
**PERFORMANCE BOND**

**CONTRACTOR** (name, principal place of business, and phone number):

XYZ Company  
Address

**SURETY** (name, principal place of business, and phone number):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY:**

City Manager  
City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: (561) 243-7010

BOND No. \_\_\_\_\_

Date: \_\_\_\_\_

Amount: Two Million Dollars (\$2,000,000)

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_  
(hereinafter "CONTRACTOR"), as Principal, and \_\_\_\_\_, hereinafter "SURETY"), as  
Surety, are held and firmly bound unto the City of Delray Beach, Florida (hereinafter "CITY"), as  
Obligee, in the amount of Two Million Dollars (\$2,000,000.00), for the payment whereof  
CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and  
assigns, jointly and severally, firmly by these presents.

WHEREAS, the SURETY states that it has read all of the "Exclusive Franchise Agreement"  
(hereinafter "Agreement") that is attached hereto and incorporated herein by reference, and SURETY has  
carefully considered the CONTRACTOR's obligations and duties under the Agreement, including but not  
limited to the provisions of Sections 47 ("Breach and Termination of Agreement") and 51 ("Damages and  
Indemnification"); and

WHEREAS, the CITY's issuance of an exclusive franchise to the CONTRACTOR, and the  
CITY's execution of the Agreement with the CONTRACTOR, are contingent upon the execution of this  
bond (hereinafter "BOND") and these presents.



## **EXHIBIT 5**

### **(continued)**

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, if the CONTRACTOR shall in all respects promptly and faithfully perform and comply with all of the terms and conditions of the Agreement, and CONTRACTOR's obligations thereunder, then this obligation shall be void; otherwise, the BOND shall remain in full force and effect, in accordance with the Agreement and the following terms and conditions:

1. The SURETY, for value received, as hereby acknowledged, stipulates and agrees that no change, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the requirements for the same shall in any way affect the SURETY's obligations on the BOND, and SURETY does hereby waive notice of any change, alteration, or addition to the terms of the Agreement or to the work.

2. The SURETY, for value received, as hereby acknowledged, further stipulates and agrees that it will pay the CITY all losses, damages, expenses, costs, and attorneys' fees, including fees incurred in appellate proceedings, the CITY sustains because of a default by the CONTRACTOR under the Agreement, up to the maximum amount of the BOND.

3. The fact that the CITY may extend the time within which the CONTRACTOR may perform its obligations shall not release the SURETY from its obligations under this BOND, whether such extension is made after notice to the SURETY or not, and the SURETY hereby consents that the CITY may extend the time for the CONTRACTOR's performance, without providing notice to the SURETY.

4. In the event that the CONTRACTOR defaults in the performance of any of the terms, covenants, or conditions of the Agreement, the CITY shall promptly give notice of such default to the SURETY in writing by certified mail, return receipt requested, addressed to the SURETY at its principal place of business, as identified above.

5. In the event that the CONTRACTOR defaults in the performance of any of the terms, covenants, or conditions of the Agreement, the SURETY shall have the right to complete the work or performance on behalf of the CONTRACTOR, and for that purpose shall have all of the rights of the FRANCHISEE under the Agreement for the completion of performance.

6. In the event that the CONTRACTOR defaults in the performance of any of the terms, covenants, or conditions of the Agreement, the SURETY shall remedy the default or otherwise satisfy its obligations under this BOND.

7. In the event there is a failure to perform the conditions of this obligation, the CITY may bring any and all actions, suits, or proceedings, or otherwise take such steps as it deems appropriate, to enforce the obligation of the SURETY, and the CITY may do so without joining the CONTRACTOR in any such actions, suits, or proceedings. Thereafter, whether judgment is obtained against the SURETY or not, successive actions can be brought against the CONTRACTOR, and this BOND shall remain a continuing obligation on the part of the SURETY and the CONTRACTOR until the conditions of this BOND have been fully performed, including the resolution of third party lawsuits.

8. It is understood and agreed that the obligation of the CONTRACTOR under this BOND continues from day to day until paid, and a new cause of action arises thereon daily with the result that the statute of limitations of the State of Florida does not run against the entire claim. The obligation of the SURETY under this BOND, therefore, continues in this manner, and no action, suit, or proceeding against the CONTRACTOR or the SURETY hereunder shall be barred, except under such conditions as would bar it under the said statute of limitations.

## **EXHIBIT 5**

### **(continued)**

9. Any proceeding, legal or equitable, under this BOND shall be instituted only in a court of competent jurisdiction in and for Palm Beach County, Florida, and shall be instituted within the statute of limitations after the CONTRACTOR's default or within the statute of limitations after the SURETY refuses or fails to perform its obligations under this BOND, whichever occurs later. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the State of Florida shall be applicable.

10. Notices to the SURETY, the CITY, and the CONTRACTOR shall be mailed or delivered to the addresses shown above.

11. The SURETY represents and warrants to the CITY that it has a rating of "A" or better as to management and "FSC X" or better as to strength by Best's Insurance Guide or Surety; (b) it is listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds; (c) it has been in business continuously for at least five years; and (d) it will not cancel or alter this BOND without providing at least 30 days advance notice to the CITY.

**EXHIBIT 5**  
**(continued)**

CONTRACTOR AS PRINCIPAL  
Company: (Corporate Seal)

SURETY  
Company: (Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

FLORIDA RESIDENT AGENT FOR SURETY

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

## EXHIBIT 6

### SPECIFICATIONS FOR GARBAGE CARTS

1. **MINIMUM REQUIREMENTS:** The following specifications describe the minimum acceptable features and performance requirements for the Garbage Carts the Contractor will provide under the Agreement.
2. **MANUFACTURING PROCESSES AND MATERIALS:** Each cart shall consist of a body, lid, wheels, axle, and necessary accessories. The plastic resin material and the finished cart must meet the minimum specifications herein.

2.1	<b>MANUFACTURING PROCESS:</b> Each cart body must be manufactured by a rotational or injection molding process.
2.2	<b>PLASTIC MATERIAL:</b> Base plastic resin must be first quality linear polyethylene or high-density polyethylene (HDPE) supplied by a national petrochemical producer. Off-spec material is not acceptable.  Contractor must submit technical data sheet(s) from the resin producer.
2.3	<b>RESIN ADDITIVES:</b> All plastic parts shall be specifically prepared to be colorfast so that the plastic material does not alter or fade appreciably in normal use. The plastic resin must be enhanced with color pigment and ultraviolet inhibitor, which must be used at a rate that is no less than 1.5% by weight, and which must be uniformly distributed throughout the finished cart. To ensure thorough distribution of these additives, the resin and additives must be mixed in a molted state using a hot-melt blending process. Contractor must submit a statement certifying that all of the plastic resin and additives will be hot-melt blended.

3. **CART REQUIREMENTS:** The carts must be compatible with standard American semi-automated bar-locking lifters (ANSI type B) as well as automated arm lifters (ANSI type G) and function as follows:

3.1	<b>ANSI CONFORMANCE:</b> Carts must meet the requirements of ANSI Z245.30-2008 and ANSI Z245.60-2008 standards for "Type B/G" carts.  Contractor must submit independently certified copies of all ANSI test results. Test results must state the load (in pounds) under which the tests were conducted. The load under which the tests were conducted must be the same as the load rating stated in the cart manufacturer's sales literature and specifications. The ANSI Appendix D test for "Loading and Unloading Test for Carts" must clearly state that the required 520 dump cycles under the cart's full rated load were performed on both a Semi-Automated Cart Lifter <u>and</u> a Fully Automated Grabber Arm.
3.2	<b>LOAD RATING:</b> Carts must be designed to regularly receive and dump the following amount of waste material, excluding the weight of the cart, without permanent damage or deformation. The load rating must conform with ANSI Standard Z245.30-2008.

**EXHIBIT 6**  
**(continued)**

	<p style="text-align: center;">32 Gallon – 122 pounds 64 Gallon – 224 pounds 96 Gallon – 330 pounds</p> <p>Contractor must submit a normal printed color sales brochure which shows the exact products being proposed and the corresponding load ratings. Contractor must mark the location of the load ratings on the brochure with bold red arrows so as to aim directly at the load ratings. The load rating in the sales literature must match the specifications and ANSI certification submitted by the Contractor, and the load rating permanently marked on the cart.</p>
3.3	<p><b>RESIN WEIGHT:</b> The carts must be manufactured to achieve a minimum resin weight as follows:</p> <p style="text-align: center;">32 Gallon – 17.9 pounds minimum 64 Gallon – 23 pounds minimum 96 Gallon – 34.1 pounds minimum</p>
3.4	<p><b>CAPACITY:</b> The total capacity (volume) of the carts, excluding the lid, must be 32 U.S. gallons (+/- 2%), 64 U.S. gallons (+/-3%), and 96 U.S. gallons (+/- 3%), respectively. Contractor must include independent test results according to ANSI Z245.30, Appendix A (Volume Test), certified by an accredited professional engineer, showing the exact capacity of the cart body (to the nearest 0.1 U.S. gallon), for each size.</p>

## EXHIBIT 6 (continued)

3.5	<p><b>DIMENSIONS:</b> The exterior dimensions of the completely assembled carts shall be <b>approximately</b> as follows:</p> <p>32 Gallon –</p> <p>Height: 39.13” Depth: 22.88” Width: 20.2”</p> <p>64 Gallon –</p> <p>Height: 40.25” Depth: 28.0” Width: 26.50”</p> <p>96 Gallon –</p> <p>Height: 45.13” Depth: 33.73” Width: 28.17”</p>
3.6	<p><b>WALL THICKNESS:</b> The carts must have a minimum nominal wall thickness of 0.154” throughout the body of the cart, and a minimum wall thickness of 0.185” inches in the critical wear points (i.e., the cart bottom, handle, and lift mechanism). The minimum wall thickness of the lid must be 0.14”.</p>
3.7	<p><b>MANEUVERABILITY:</b> Contractor must state the average tipping force required to maneuver a fully loaded cart when tilted to the roll position. The Contractor must also submit documentation that conforms to ANSI Z-245.60 (Force To Tip) testing that clearly defines the cart’s maximum average tipping force. The results of this testing may not exceed a maximum average of 27 pounds for 32 gallon carts, 35 pounds for 64 gallon carts, and 50 pounds for 96 gallon carts.</p>
3.8	<p><b>RIM OF BODY:</b> The upper rim of each cart body must have a closed tubular design or be molded with a reinforced rim for maximum strength during collection. The rim must also include a ledge or other built-in feature that creates a tight seal between the body and lid.</p>
3.9	<p><b>HANDLES:</b> Each cart must be equipped with a minimum of one handle, with a minimum of 1” diameter. The handle(s) and handle mounts must be an integrally molded part of the cart body. The handles shall be designed to afford the user positive control of the loaded cart at all times. The handles must not have the ability to rotate on their own axis at any time. Handles which are molded as part of the lid are unacceptable. Bolted-on handle mounts or bolted-on handles are unacceptable.</p>
3.10	<p><b>LID:</b> The lid shall be of one piece construction and manufactured of the same material used in the cart body. The lid shall be configured to ensure that it will not warp, bend, slump, or distort to such an extent that it no longer fits the cart properly or becomes otherwise unserviceable. The lid must be crowned in shape and designed to prevent the</p>

## EXHIBIT 6 (continued)

	entry of rain when in the closed position. The lid must open from a closed position through a full 270° arc. Living hinges and lid counter weights are unacceptable. Lid latches are unacceptable.
3.11	<b>BOTTOM:</b> The bottom of the cart must be impact resistant at all points (four corners and the center) of the base for durability. Screw-on, bolt-on, or pop-on wear guards are unacceptable.
3.12	<b>WHEELS:</b> Wheels for 32 gallon and 64 gallon carts shall be a minimum of 10" diameter. Wheels for 96 gallon carts shall be a minimum of 12" diameter and 1.75" wide with rubber treads. All wheels must be capable of supporting a minimum of 200 pounds per wheel.
3.13	<b>AXLE:</b> The axle for 32 gallon carts must be a minimum of 5/8" diameter. The axle for 64 gallon and 96 gallon carts shall be a minimum of 3/4" (0.75") diameter. All axles shall be zinc chromate plated or powder coated equivalent, solid high strength steel, and fully supported by the cart body. The axle must slide through two molded-in plastic journals in the cart bottom and must not be exposed to the contents inside of the cart. Each molded-in axle journal must be at least 1" wide. Axles attached by means of bolts or rivets are unacceptable.
3.14	<b>STABILITY:</b> Each cart shall be stable and self-balancing when in the upright position, either loaded or empty. The carts must be designed to withstand winds averaging 25 mph when empty.
3.15	<b>LIFT SYSTEM:</b> Each cart shall be equipped with attachment points which make it compatible with standard American semi-automated bar-locking lifters and fully-automated arm lifters. The upper lift point must be integrally molded into the body of the cart. All lower lift bars must be designed to withstand over ten (10) years of lifter attachment. The lower lift bar on 96 gallon carts shall be at least 1" diameter galvanized steel. The lower bar must be mounted in molded-in plastic bearings or held in place with pre-installed latch/push pins. The lower bar must be factory installed and cannot be attached by means of rivets, screws, bolts, or similar fasteners.
3.16	<b>COLOR:</b> The cart body color shall be green, gray, brown, blue or black. Surface treatments, painted or spray-on finishes, and materials that are not homogenous are not acceptable.  Contractor must submit color chips or samples for all colors available. The City will select the colors for the carts.
3.17	<b>INTERIOR CONSTRUCTION:</b> The interior surface of each cart must be smooth and free from crevices, recesses, projections, and other obstructions where material inside the cart could become trapped.

**4. MARKINGS:** Each cart must be permanently marked with letters/numbers, as follows:

4.1	<b>SERIAL NUMBERS:</b> Each cart must have a serial number hot stamped in white on the body. The serial number shall be preceded by a letter or number code which designates the year of manufacture. Serial numbers shall be in sequence beginning with a number designated by the City. The Contractor will maintain a file that identifies the date of
-----	---

## **EXHIBIT 6 (continued)**

	manufacture by the serial number.
4.2	<b>CITY SEAL:</b> The City Seal or logo shall be hot stamped onto both sides of the cart body.
4.3	<b>USER INSTRUCTIONS:</b> Instructions for the safe use of the cart must be molded into each lid. Instructions shall be in both English and Spanish.
4.4	<b>LOAD RATING:</b> The load rating of the cart must be raised-relief molded into the lid. Load rating shall be stated in both pounds and kilograms and in English and Spanish.

5. **IN-MOLD LABEL SPECIFICATIONS:** The In-Mold Label must comply with the following listed specifications:

5.1	<b>MANUFACTURING PROCESS:</b> The in-mold label shall be permanently molded into the container lid. It should not wear or peel from normal uses. It shall have ultra-violet and other protection from the effects of the sun.
5.2	<b>COLOR AND GRAPHICS:</b> The in-mold label shall be 4-color and contain the City logo including images and language representing materials deemed acceptable for disposal. All proofs for the label shall be submitted to the City for approval and shall have a minimum size of 5" X 12".

6. **RFID & BAR CODE INTEGRATION:** Not Applicable.
7. **DATA INTEGRATION:** Not Applicable.
8. **WORK ORDER MANAGEMENT AND REPORTING SYSTEM:** Not Applicable.
9. **ASSEMBLY, DISTRIBUTION AND TRACKING SERVICES FOR CARTS**

9.1	The Contractor shall be responsible for coordinating the delivery of carts from the manufacturing plant, unloading loads of carts, assembling necessary parts, and distributing the carts to homes throughout the Service Area.
9.2	The Contractor shall unload all delivery trailers. Any damage to the carts during any phase of the delivery, unloading, assembly, distribution, or exchanging shall be the responsibility of the Contractor to replace in kind.
9.3	Carts shall be assembled and placed at the resident's curb.
9.4	Each cart must include a plastic hanger bag that includes a pre-printed brochure describing the safe care and use of the carts for residents.
9.5	The Contractor will record the cart serial number for each and every address where the carts are delivered. The Contractor will keep an electronic file of the address assignments of carts by serial number and present it to the City in an acceptable electronic format upon request. Verification of a specific cart being associated to a specific address is required.

10. **CART MAINTENANCE**



## EXHIBIT 6 (continued)

10.1	The Contractor must use inventory tracking software or other methods that enable the Contractor to maintain an adequate inventory of carts and spare parts at all times. Upon request, the Contractor shall promptly provide the City with up-to-date information concerning the Contractor's inventory.
10.2	Each cart action shall be tracked by the Contractor using the serial number on the cart or other methods that are mutually acceptable to the Parties. The time, date, and location of all cart deliveries, swap-outs (exchanges), repairs, and cart maintenance activities must be recorded and made available for the City's inspection.
10.3	The City may generate a service work order and submit it electronically to the Contractor for processing. Contractor must be able to receive and respond to work orders from the City electronically via e-mail.
10.4	Completions of work orders shall be documented using cart numbers (IDs), household address, date, and time work is completed.
10.5	The Contractor shall repair all carts at the residence. All carts in need of repair shall be equipped with new parts.

- 11. WARRANTY:** Contractor must submit a document which clearly states the exact warranty of the Contractor. The warranty must be for no less than ten (10) full years and must specifically provide for no-charge replacement of any component parts which fail in materials or workmanship for a period of ten (10) years after installation. The warranty must be transferable to and enforceable by the City. The Contractor's warranty is understood to include, whether stated in Contractor's warranty or not, the following coverage:

11.1	Failure of the lid to prevent rain water from entering the cart when in the closed position.
11.2	Damage to the cart body, lid, or any component parts through opening or closing the lid.
11.3	Failure of the lower lift bar from damage during interface with lifters.
11.4	Failure of the body and lid to maintain their original shape.
11.5	Damage or cracking of the cart body through normal operating conditions.
11.6	Failure of the wheels to provide continuous, easy mobility, as originally designed.
11.7	Failure of any part to conform to the minimum standards as specified herein.
11.8	Warranty specimen of exact warranty offered must be provided to the Contract Administrator before the carts are ordered.

**EXHIBIT 7**  
**LIST OF BUS SHELTER LOCATIONS**  
**IN DELRAY BEACH**

SHELTER #	LOCATED ON	INTERSECTION	COLLECTION DAY
1	Swinton Avenue	Atlantic Avenue	Monday
2	Congress Avenue	Lake Ida Road	Tuesday
3	Lake Ida Road	Congress Avenue	Tuesday
4	NE 1 <sup>st</sup> Street	NE 5 <sup>th</sup> Avenue	Monday
5	West Atlantic Avenue	NW 1 <sup>st</sup> Avenue	Tuesday
6	West Atlantic Avenue	SW 2 <sup>nd</sup> Avenue	Tuesday
7	SW 12 <sup>th</sup> Avenue	SW 4 <sup>th</sup> Street	Monday
8	SW 12 <sup>th</sup> Avenue	Auburn Drive	Wednesday
9	West Atlantic Avenue	Whatley Rd. (Opp. Delray Square)	Tuesday
10	N. Swinton Avenue	Lake Ida Road	Monday
11	Lindell Boulevard	Egret Circle	Tuesday
12	SW 10 <sup>th</sup> Street	Congress Avenue	Tuesday
13*	NW 5 <sup>th</sup> Avenue	NW 2 <sup>nd</sup> St. (MLK Dr)	Monday
14*	SW 5 <sup>th</sup> Avenue	West Atlantic Avenue	Tuesday
15	SE 5 <sup>th</sup> Avenue (US1)	Atlantic Avenue	Monday
16	SE 6 <sup>th</sup> Avenue (US1)	SE 1 <sup>st</sup> Street	Monday
17	SW 10 <sup>th</sup> Street	SW 11 <sup>th</sup> Terrace	Wednesday
18	Swinton Avenue	SE 10 <sup>th</sup> Street	Wednesday
19	West Atlantic Avenue	SW 10 <sup>th</sup> Avenue	Tuesday
20	West Atlantic Avenue	NW 8 <sup>th</sup> Avenue	Tuesday
21	SW 10 <sup>th</sup> Avenue	SW 10 <sup>th</sup> Avenue	Wednesday
22	SE 5 <sup>th</sup> Avenue	SE 10 <sup>th</sup> Street	Monday
23	Federal Hwy. (US 1)	Banyan Tree Lane	Monday
24	Federal Hwy. (US 1)	Linton Blvd	Tuesday
25*	Congress Avenue	Linton Blvd	Tuesday
26	South Military Trail	Delray West Plaza Ent.	Wednesday
27	South Military Trail	Bocaray Plaza Ent.	Wednesday
28	Lowson Boulevard	Pines of Delray Ent.	Tuesday
29	West Atlantic Avenue	Sherwood Forest Drive	Tuesday
30	West Atlantic Avenue	Sunset Pine Drive	Tuesday
31	Barwick Road	West Atlantic Avenue	Tuesday
32	Congress Avenue	Congress Park Ent.	Tuesday
33	Congress Avenue	PBC Health Department	Tuesday
34*	Congress Avenue	SW 10 <sup>th</sup> Street	Tuesday
35	South Military Trail	Wal-Mart Ent.	Wednesday
36	Federal Hwy (US1)	Harbourside Drive	Tuesday
37	Lindell Boulevard	Audubon Boulevard	Wednesday
38	Congress Avenue	2085 South Congress	Tuesday
39*	Federal Hwy (US1)	Lindell Boulevard	Wednesday
40	North Swinton Avenue	NE 5 <sup>th</sup> Street	Monday
41	Auburn Avenue	Auburn Drive	Wednesday
42	SW 10 <sup>th</sup> Avenue	1301 SW 10 <sup>th</sup> Avenue	Wednesday
43	SW 10 <sup>th</sup> Avenue	1301 SW 10 <sup>th</sup> Avenue	Wednesday
44	SW 10 <sup>th</sup> Avenue	Lindell Boulevard	Tuesday

## EXHIBIT 7 (continued)

45	SW 10 <sup>th</sup> Avenue	Linton Boulevard	Tuesday
46	Lindell Boulevard	Lake Delray Apartments	Wednesday
47	Lindell Boulevard	Dotterel Road	Wednesday
48	South Swinton Avenue	SW 4 <sup>th</sup> Street	
49	Military Trl @ Atlantic Ave	Gramecy Square	
50	West Atlantic Ave @ Whatley Rd	Colony Palms	
51	Federal Hwy @ Mongrove Park	Harbourside	
52	Atlantic Ave @ Congress Square		
53	NE 1 <sup>st</sup> Street @ NE 2 <sup>nd</sup> Ave (PGW)		
54	Old Germantown Rd @ Spanish Well Dr		
55	Old Germantown Rd @ SW 36 <sup>th</sup> Ave		
56	Old Germantown Rd @ Via Verona		
57	SW 22 <sup>nd</sup> Ave @ Germantown SW		
58	SW 22 <sup>nd</sup> Ave @ Germantown SE		
59	Federal Hwy @ Ed Morse	FDOT Variance	
60	SW 29 <sup>th</sup> St @ SW 20 <sup>th</sup> Terr		
61	SW 10 <sup>th</sup> Ave	Side of 10 <sup>th</sup> Street	
62	Linton Blvd @ Linton Squares Oaks		
63	SR-5 @ S Federal Hwy	Transportation Lane	
64	Lamat Ave @ SR-5 Federal Hwy	Ave G	
65	SR-5 @ S Federal Hwy	Fladells Way	
66	SR-5 @ S Federal Hwy	Lindell Blvd	
67	SR-5 @ S Federal Hwy	Delray Plaza	
68	SR-5 @ S Federal Hwy	Tropic Blvd	
69	2501S Federal Hwy	Formerly Ralph Buick	
70	2605 W Atlantic Ave @ NW 24 <sup>th</sup> Ave	Atlantic High School (Easement)	
71	2605 W Atlantic Ave @ NW 24 <sup>th</sup> Ave	Golf Course	

# EXHIBIT 8

## LIST OF BIG BELLY SOLAR LOCATIONS

The City estimates that two (2) 40 gallon trash receptacles will be installed by the City at each location where a Big Belly Solar Compactor is located.

6/24/2014

### Inventory

Jun 24, 2014 08:38:03 AM

Serial Number	Station	Waste Stream	Customer	Description	Status	Latitude
175890	no	Trash	Delray Beach City of	South Concession Stand(Miller)	In Service	26.4347678152629
175892	no	Trash	Delray Beach City of	front of concession (soccer complex)	In Service	26.4891018897678
177668	no	Trash	Delray Beach City of	North of flag pole (Veterans)	In Service	26.4624345781431
177672	no	Trash	Delray Beach City of	next to big pavilion (Orchard)	In Service	26.4371558110454
177673	no	Trash	Delray Beach City of	PlayGround entrance( Veterans )	In Service	26.4627671418078
370774	no	Trash	Delray Beach City of	340 S. Ocean Blvd- Shower	In Service	26.4550783919316
370775	no	Trash	Delray Beach City of	Yogurt Shop	In Service	26.4615912216577
2401237	no	Trash	Delray Beach City of	Front of gleason bathrooms	In Service	26.4615566108333
2401239	no	Trash	Delray Beach City of	E.side of bathrooms (Sandoway)	In Service	26.458553435506
2401244	no	Trash	Delray Beach City of	N.of bathroom (ADP)	In Service	26.4422167351453
2401245	no	Trash	Delray Beach City of	west of building (splash park)	In Service	26.4519682133433
2401247	no	Trash	Delray Beach City of	northside of park(orchard)	In Service	26.4377599375762
2401249	no	Trash	Delray Beach City of	west of Playground (lakeview)	In Service	26.4770720018834
2401255	no	Trash	Delray Beach City of	front of bathrooms(orchard)	In Service	26.4376650704002
2401257	no	Trash	Delray Beach City of	North Pavilion(splash)	In Service	26.4522323674208
2401258	no	Trash	Delray Beach City of	Next to playground (anchor)	In Service	26.4548838833408
2401259	no	Trash	Delray Beach City of	Library southside	In Service	26.4610968010347
2401261	no	Trash	Delray Beach City of	SW corner park (oss)	In Service	26.4623598321803
2401262	no	Trash	Delray Beach City of	East of concession (currie)	In Service	26.4510244343853
2401263	no	Trash	Delray Beach City of	southside next to school(orchard)	In Service	26.4368977241697
2401264	no	Trash	Delray Beach City of	Front of Fenway field	In Service	26.4365811313281
2401265	no	Trash	Delray Beach City of	east on board walk(ADP)	In Service	26.4414914476178
2401266	no	Trash	Delray Beach City of	permit building(cityhall)	In Service	26.4640773028839
2401267	no	Trash	Delray Beach City of	Northwest odum Field (Pompey Park)	In Service	26.46606208710082
2401268	no	Trash	Delray Beach City of	Flag Pole(boy scout)	In Service	26.4697177452336
2401269	no	Trash	Delray Beach City of	South pavilion(splash )	In Service	26.4514302977124
2401270	no	Trash	Delray Beach City of	north of bathrooms(splash)	In Service	26.4519610091327
2401271	no	Trash	Delray Beach City of	north of Pavilion(barwick)	In Service	26.4740458602966
2401272	no	Trash	Delray Beach City of	Front of Building(pompey)	In Service	26.4657065263934
2401273	no	Trash	Delray Beach City of	South of pavilion(eagle)	In Service	26.4606954956389
2401274	no	Trash	Delray Beach City of	west first pavilion(lakeview)	In Service	26.4767694906382
2401275	no	Trash	Delray Beach City of	next to pavilion(pinegrove)	In Service	26.4457455728484
2401276	no	Trash	Delray Beach City of	next to parking lot(Bexley)	In Service	26.4781014667221
2401277	no	Trash	Delray Beach City of	along fence line-Soccer complex	In Service	26.488818615243
2401278	no	Trash	Delray Beach City of	South of bathrooms(oss)	In Service	26.461956432104
2401279	no	Trash	Delray Beach City of	Between pavilions(bexley)	In Service	26.4782167078605
2401280	no	Trash	Delray Beach City of	Concession stand(hilltop)	In Service	26.4878919665826
2401281	no	Trash	Delray Beach City of	Skate park entrance	In Service	26.453318931298
2401282	no	Trash	Delray Beach City of	North of playground(eagle)	In Service	26.4613198115206
2401283	no	Trash	Delray Beach City of	next to basketball court(pompey)	In Service	26.4662779907981
2401285	no	Trash	Delray Beach City of	southside of park-Currie	In Service	26.4498669426159
2401286	no	Trash	Delray Beach City of	between pool&tennis court(pompey)	In Service	26.4669070785842
2401287	no	Trash	Delray Beach City of	west of pavilion(leon Weekes)	In Service	26.4299786894253
2401288	no	Trash	Delray Beach City of	Next to bathroom(knowles)	In Service	26.4467435302514
2401289	no	Trash	Delray Beach City of	N.batting cages(miller)	In Service	26.4357501317459
2401290	no	Trash	Delray Beach City of	east between fields@ main concession(miller)	In Service	26.4348758945036
2401291	no	Trash	Delray Beach City of	South of playground(boy scout)	In Service	26.4696361100754
2401292	no	Trash	Delray Beach City of	N. side of field(hilltop)	In Service	26.4876855101643
2401293	no	Trash	Delray Beach City of	S. side of field(hilltop)	In Service	26.4869629097808
2401296	no	Trash	Delray Beach City of	South of Miracle field bath rooms	In Service	26.4339103830294
2401297	no	Trash	Delray Beach City of	back of building ,NW corner(pompey)	In Service	26.465999462283
2401299	no	Trash	Delray Beach City of	eastside by dock(mangrove)	In Service	26.4444678469943
2401300	no	Trash	Delray Beach City of	Front of Teddy's field(pompey)	In Service	26.4662971996363
2401301	no	Trash	Delray Beach City of	N.pavilion #3(lakeview)	In Service	26.4773408001008
2401302	no	Trash	Delray Beach City of	N.E corner of park(oss)	In Service	26.4626767883914

1/3

## EXHIBIT 8 (continued)

6/24/2014

2401330	no	Trash	Delray Beach City of	North of main concession(miller)	In Service	26.4352169438871
2401921	no	Trash	Delray Beach City of	front of bathrooms(Barwick)	In Service	26.474122798180446
2401922	no	Trash	Delray Beach City of	N.E parking lot(Merritt)	In Service	26.456125001525447
2401924	no	Trash	Delray Beach City of	next to bathrooms( Anchor park)	In Service	26.454993400662875
2401925	no	Trash	Delray Beach City of	north seawall (Veterans)	In Service	26.4629355484115
2401929	no	Trash	Delray Beach City of	eastside(merritt)	In Service	26.455298945593096
2401930	no	Trash	Delray Beach City of	west parking lot -NE 3rd	In Service	26.468313780572345
2401931	no	Trash	Delray Beach City of	westside(merritt)	In Service	26.45522210287949
2401933	no	Trash	Delray Beach City of	Boardwalk(ADP)	In Service	26.44151514638342
2401936	no	Trash	Delray Beach City of	pioneer park by bus stop	In Service	26.447353489357216
2401937	no	Trash	Delray Beach City of	South pavilion(Miller Park)	In Service	26.434285060084246
2401938	no	Trash	Delray Beach City of	Worthing park West	In Service	26.461533245786867
2401939	no	Trash	Delray Beach City of	Sergio field S.E (Miller)	In Service	26.432402055384287
2401940	no	Trash	Delray Beach City of	N.parking lot court yard(city hall)	In Service	26.46497840520068
2401943	no	Trash	Delray Beach City of	N.pavilion (splash park)	In Service	26.4522479855632
2401944	no	Trash	Delray Beach City of	worthing park east	In Service	26.46140838311293
2401945	no	Trash	Delray Beach City of	carver park	In Service	26.45633079462828
2401946	no	Trash	Delray Beach City of	SE corner of park (OSS)	In Service	26.4623646345537
2401947	no	Trash	Delray Beach City of	CRA parking lot-behind dunkin	In Service	26.462627324055866
2401950	no	Trash	Delray Beach City of	N End main pavilion	In Service	26.461524434707734
2401951	no	Trash	Delray Beach City of	Lady atlantic ( veterans )	In Service	26.4614625
2401952	no	Trash	Delray Beach City of	N.marina on seawall	In Service	26.459724064712873
2401953	no	Trash	Delray Beach City of	next to playground..Knowles park	In Service	26.446476962066768
2401954	no	Trash	Delray Beach City of	Libby park southside.	In Service	26.461249892642122
2401955	no	Trash	Delray Beach City of	South baseball field(merritt)	In Service	26.454420053995314
2401956	no	Trash	Delray Beach City of	N.gateway park	In Service	26.461738484100636
2401958	no	Trash	Delray Beach City of	southside of park next to stairs (Barwick)	In Service	26.473118542372962
2401960	no	Trash	Delray Beach City of	adult center (veterans)	In Service	26.4629355484115
2401961	no	Trash	Delray Beach City of	Plumosa park	In Service	26.483120660439127
2401962	no	Trash	Delray Beach City of	front of bathroom( OSS)	In Service	26.46266718367059
2401966	no	Trash	Delray Beach City of	next to playground ( Mae Volen)	In Service	26.474577187363842
2401967	no	Trash	Delray Beach City of	North Parking lot (Anchor)	In Service	26.454999163883276
2401969	no	Trash	Delray Beach City of	North parking lot(ADP)	In Service	26.441969369382452
2401970	no	Trash	Delray Beach City of	Libby Park NW corner	In Service	26.461436991270485
2401972	no	Trash	Delray Beach City of	O.S.S front of museum	In Service	26.462066887027345
2401974	no	Trash	Delray Beach City of	field 5 ,east of playground (miller)	In Service	26.433852740297407
2401975	no	Trash	Delray Beach City of	south parking lot (ADP)	In Service	26.441685978826596
2401977	no	Trash	Delray Beach City of	South Parking lot (Anchor)	In Service	26.45478304305788
2401979	no	Trash	Delray Beach City of	rosemont park	In Service	26.452478421672836
2401980	no	Trash	Delray Beach City of	concession stand ( pompey )	In Service	26.466181946558667
2401982	no	Trash	Delray Beach City of	southside of pavilion( Barwick)	In Service	26.473921118935202
2401983	no	Trash	Delray Beach City of	Bankers Row Park	In Service	26.46535479340431
2401984	no	Trash	Delray Beach City of	sunshine Park	In Service	26.4578936034918
2401985	no	Trash	Delray Beach City of	south of flag pole (veterans)	In Service	26.462268019905583
2401986	no	Trash	Delray Beach City of	13th street playground	In Service	26.47806027637147
2401987	no	Trash	Delray Beach City of	south end corner main pavilion	In Service	26.46133882147914
2401988	no	Trash	Delray Beach City of	S.marina on sidewalk	In Service	26.45823528522983
2401989	no	Trash	Delray Beach City of	Sergio field SW(miller)	In Service	26.43254136035718
2401990	no	Trash	Delray Beach City of	S.marina on sidewalk	In Service	26.458513832532686
2401994	no	Trash	Delray Beach City of	East parking Lot -N E 3rd	In Service	26.46819348728147
2401995	no	Trash	Delray Beach City of	S.gateway park	In Service	26.461472391731666
2402001	no	Trash	Delray Beach City of	west parking lot field 2 ( Pompey)	In Service	26.465956242280605
2402003	no	Trash	Delray Beach City of	bathroom (lakeview)	In Service	26.476816624627542
2402005	no	Trash	Delray Beach City of	middle parking lot ( pompey park)	In Service	26.46621556205157
2402006	no	Trash	Delray Beach City of	west of park next to pavilion( bexley)	In Service	26.478331948883604
2402007	no	Trash	Delray Beach City of	O.S.S front of crest theater	In Service	26.4629169061521
2402008	no	Trash	Delray Beach City of	SW corner (library)	In Service	26.461099837264406

2/3

## EXHIBIT 8 (continued)

6/24/2014

2402009	no	Trash	Delray Beach City of	NE corner of bldg (Teen center)	In Service	26.45347261921412
2402010	no	Trash	Delray Beach City of	community center ( front of building)	In Service	26.462987175215318
2402011	no	Trash	Delray Beach City of	bathroom(mangrove)	In Service	26.444441033139636
2402460	no	Trash	Delray Beach City of	northside of library	In Service	26.46151284516066
2402461	no	Trash	Delray Beach City of	west of building (pompey)	In Service	26.46573073351455
2402472	no	Trash	Delray Beach City of	main pavilion with recycle	In Service	26.461324174094607
881001666	no	Trash	Delray Beach City of		In Service	26.4614625

## EXHIBIT 9

### LIST OF CITY PROPERTIES RECEIVING COLLECTION SERVICE

The following table identifies: (a) the name of each City facility that will receive Collection Service; (b) the type of service required (e.g., Garbage Collection or Recycling Service); (c) the size of the required Collection Container; and (d) the frequency of service required.

Facility	Number of Dumpsters	Size	Frequency (Number of Pulls)	Comments
Park & Recreation	Roll-Off	30 yards	1 time per week	
Public Works	1-Garbage 1-Recycle	8 yards	2 time per week	
<i>Public Works Compound</i>	<i>Roll-Off</i>	<i>20 yards</i>	<i>1 time per week</i>	
Environmental Services Department	4-95 Gallon Recycle Carts		No Garbage	Garbage goes to Public Works
City Hall	2	8	2 times per week	
City Attorney	1	3	1 time per week	
<b>*Fire Department</b>				
501 W Atlantic Ave	1	4	2 times per week	
35 N Andrews	1	95 gallon	2 times per week	
651 W Atlantic Ave	5	95 gallon	2 times per week	
4000 Old Germantown Road	4	95 gallon	2 times per week	
4321 Lake Ida Road	1	95 gallon	2 times per week	
Library	2	95 gallon		
Miller Park	1	6	1 times per week	
Pompey Park	2	6	2 time per week	
Pompey Park Pool	1	4	1 time per week	
Seacrest Pool Aquatics	1	4	1 time per week	
Lavers Swim & Tennis				
Lavers Swim & Tennis Pool				
Depot Road	1	20 yards open top		For tires- Empty when full

## **EXHIBIT 10**

### **LIST OF CITY'S PUBLIC DROP-OFF FACILITIES** **FOR RECYCLABLE MATERIALS**

Delray Beach City Hall	100 NW 1st Avenue
City Parking Lot	South Federal Highway between Atlantic Avenue and SE 1 <sup>st</sup> Street
FEC Railroad Tracks	NE 4th Avenue east of FEC Tracks
City Property at Old Train Depot	Depot Avenue east of CSX Tracks



## EXHIBIT 11

### **LIST OF TRASH RECEPTACLES ON ATLANTIC AVENUE, THE BEACH, AND PINEAPPLE GROVE**

	<b><u>Amount</u></b>
<b><u>BEACH</u></b>	
The trash receptacles at the Beach are located west of the beach dune, next to the sidewalk that is adjacent to Highway A1A.	
S Ocean Blvd and Del Harbor Dr	1
S Ocean Blvd and Casuarina Rd	1
S Ocean Blvd and Anchor Park	1
320 S Ocean Blvd	1
S Ocean Blvd and Bay St	1
S Ocean Blvd and Nassau St	1
S Ocean Blvd and Ocean Terrace	1
S Ocean Blvd and Ingraham Ave	1
S Ocean Blvd and Sandoway Park	1
120 S Ocean Blvd	1
S Ocean Blvd and Miramar Dr	1
88 S Ocean Blvd	1
S Ocean Blvd and Sand Bar	1
40 S Ocean Blvd	1
10 N Ocean Blvd	2
120 N Ocean Blvd	2
126 N Ocean Blvd	1
N Ocean Blvd and Thomas St	1
200 N Ocean Blvd	1
222 N Ocean Blvd	1
302 N Ocean Blvd	1
N Ocean Blvd and Laing St	1
334 N Ocean Blvd	1
N Ocean Blvd and Seaspray Ave	1
N Ocean Blvd and Beach Dr	1
406 N Ocean Blvd	1
502 N Ocean Blvd	1
513 N Ocean Blvd	1
610 N Ocean Blvd	1

#### **NORTH SIDE OF ATLANTIC AVENUE:**

**EXHIBIT 11**  
**(continued)**

E Atlantic Ave (Marriott)	3
E Atlantic Ave and Andrews Ave	1
1155 E Atlantic Ave	1
1111 E Atlantic Ave (Residence Inn Marriott)	1
E Atlantic Ave and Venetian Dr	1
50 East Rd (Barr Terrace)	2
E Atlantic Ave and NE 7th Ave	1
533 E Atlantic Ave	1
501 E Atlantic Ave	1
445 E Atlantic Ave	1
425 E Atlantic Ave	1
401 E Atlantic Ave	1
331 E Atlantic Ave	1
301 E Atlantic Ave	1
217 E Atlantic Ave	1
137 E Atlantic Ave	1
109 E Atlantic Ave	1
E Atlantic Ave and NE 1st Ave	1
E Atlantic Ave and N Swinton Ave	1
37 W Atlantic Ave (Dunkin Donuts)	1
201 W Atlantic Ave	1
W Atlantic Ave NW 3rd Ave	1
301 W Atlantic Ave (Tony's Market)	1
301 W Atlantic Ave (SPY Store)	1
301 W Atlantic Ave (Mens Room)	1
401 W Atlantic Ave (Ziree)	1
401 W Atlantic Ave (Aloha Cleaners)	1
401 W Atlantic Ave (Mammas Pizza)	1
W Atlantic Ave NW 5th Ave	1
501 W Atlantic Ave (Fire Headquarters)	2
601 W Atlantic Ave	1
619 W Atlantic Ave	1
W Atlantic Ave and NW 7th Ave	1
725 W Atlantic Ave (BP Station)	1
W Atlantic Ave and NW 8th Ave	1
W Atlantic Ave (bus stop)	1
945 W Atlantic Ave	1
W Atlantic Ave and NW 10th Ave	1
1135 W Atlantic Ave	1
 <b><u>SOUTH SIDE OF ATLANTIC AVE:</u></b>	
W Atlantic Ave and SW 12th Ave	1
W Atlantic Ave and SW 10th Ave	2

**EXHIBIT 11**  
**(continued)**

W Atlantic Ave (bus stop)	1
W Atlantic Ave and SW 8th Ave	2
702 W Atlantic Ave	1
W Atlantic Ave and SW 7th Ave	1
606 W Atlantic Ave (Shuler Memorial)	1
W Atlantic Ave and SW 6th Ave	1
540 W Atlantic Ave	1
W Atlantic Ave (Vintage Tap)	1
W Atlantic Ave and SW 5th Ave	1
450 W Atlantic Ave (Checkers)	1
400 W Atlantic Ave	1
W Atlantic Ave and SW 4th Ave	1
300 W Atlantic Ave (Police Dept)	2
W Atlantic Ave and SW 3rd Ave	1
W Atlantic Ave (South County Courthouse)	1
W Atlantic Ave and SW 2nd Ave	1
104 W Atlantic Ave (Delray Library)	1
102 W Atlantic Ave	1
52 W Atlantic Ave	1
2 E Atlantic Ave	1
44 E Atlantic Ave	1
110 E Atlantic Ave	1
E Atlantic Ave (Park Tavern)	1
E Atlantic Ave and SE 2nd Ave	1
204 E Atlantic Ave	1
250 E Atlantic Ave (It's Sugar)	1
290 E Atlantic Ave	1
E Atlantic Ave and SE 3rd Ave	1
302 E Atlantic Ave (Suntrust)	1
330 E Atlantic Ave (Green Owl)	1
400 E Atlantic Ave	1
404 E Atlantic Ave	1
422 E Atlantic Ave	1
428 E Atlantic Ave	1
502 E Atlantic Ave	1
600 E Atlantic Ave (Blue Gallery)	1
640 E Atlantic Ave	1
804 E Atlantic Ave (Blue Anchor)	1
900 E Atlantic Ave (Tauriello)	1
900 E Atlantic Ave (Dr Fine)	1
900 E Atlantic Ave (Joseph John Salon)	1
900 E Atlantic Ave (Remax)	1
900 E Atlantic Ave (Private Jewelers)	1

## EXHIBIT 11 (continued)

900 E Atlantic Ave (Lang Realty)	1
1136 E Atlantic Ave	1
1218 E Atlantic Ave (Mimis)	1
E Atlantic Ave and Salina Ave	1
E Atlantic Ave and S Ocean Blvd	1
273 NE 2nd Ave (Mystery Bookstore)	1
200 NE 2nd Ave (Nourishe)	1
200 NE 2nd Ave (City Walk)	1
200 NE 2nd Ave (David Zappitell)	1
200 NE 2nd Ave (Rustic Rooster)	1
233 NE 2nd Ave (United State of Fitness)	1
189 NE 2nd Ave (Trattoria Italia)	1
186 NE 2nd Ave	1
NE 2nd Ave (Art Garage)	4
NE 1st Ave (Chamber of Commerce)	2
23 NE 2nd Ave (House of Siam)	1
NE 2nd Ave (Love Shack)	1
55 SE 2nd Ave	1
101 SW 5th Ave	1
75 SW 5th Ave	1
37 SW 5th Ave	1
26 SW 5th Ave	1
60 NW 5th Ave	1
105 NE 5th Ave	1
182 NW 5th Ave	1
139 NW 5th Ave	1
<b><u>Rogue Cans:</u></b>	
Military Trl and NW 5th St	1
Military Trl and Lake Ida Rd	1
4675 Linton Blvd	1
Homewood Blvd and Black Olive Rd	1
SW 11th Terrace and SW 10th St	1
SE 3rd Ave and SE 4th St	1
SE 3rd Ave and SE 10th St	1
NW 2nd St and NW 10th Ave	1
378 NE 5th Ave	1
900 block NW 2nd St	1
<b>Total</b>	<b>162</b>

6/5/2014

## EXHIBIT 12

### SAMPLE CALCULATIONS FOR CPI ADJUSTMENTS

The following calculations use hypothetical values to demonstrate how the CPI adjustment should be determined.

#### Year 1

Current monthly Rate per Dwelling Unit: \$10.00

Percentage change in CPI for previous 12 month period: 1.7%

Calculation:  $\$10.00 \times .017 = \$0.17$

New monthly Rate per Dwelling Unit:  $\$10.00 + \$0.17 = \$10.17$

#### Year 2

Current monthly Rate per Dwelling Unit: \$10.17

Percentage change in CPI for previous 12 month period: 2.5%

Calculation:  $\$10.17 \times .025 = \$0.254$

New Rate per Dwelling Unit:  $\$10.17 + \$0.25 = \$10.42$

#### Year

Current monthly Rate per Dwelling Unit: \$10.42

Percentage change in CPI for previous 12 month period: 8.0%\*

Calculation:  $\$10.42 \times 0.04^* = \$0.41$

New monthly Rate per Dwelling Unit:  $\$10.42 + \$0.41 = \$10.83$

\* Note: Pursuant to Section 38.3 of the Agreement, a single CPI adjustment to the Rate shall not exceed four percent (4%) in any year. Accordingly, the CPI adjustment in Year 3 shall be limited to four percent (4%)

## **EXHIBIT 13**

### **OPTIONAL BENEFITS AND SERVICES**

The Contractor shall provide additional services to the City in compliance with the requirements in this Exhibit 13. These services were proposed by the Contractor in its response to the City's RFP and they constitute Optional Benefits for the City and its residents. These Optional Benefits shall be provided to the City, without charge, each Operating Year.

1. Recycle Delray!

The Contractor shall work with the "Recycle Delray" program to promote recycling through community events and outreach programs for local schools and businesses. The Contractor shall provide at least Two Thousand Dollars (\$2,000) in financial contributions, plus in-kind time and marketing resources.

2. Delray Beach Public Library

The Contractor shall donate at least Two Thousand Five Hundred Dollars (\$2,500) annually to the Delray Beach Public Library.

3. Keep America Beautiful Coastal Cleanups

The Contractor shall support the coastal cleanup program conducted by Keep America Beautiful. The Contractor shall donate at least Two Hundred Fifty Dollars (\$250) to each local youth program that sends volunteers to the cleanup, up to a maximum amount of Two Thousand Five Hundred Dollars (\$2,500) per cleanup. In addition, the Contractor shall contribute One Thousand Dollars (\$1,000) as a sponsor for each cleanup. This cash commitment is limited to one coastal cleanup event per year. The total value of these contributions to the coastal cleanup program shall be at least Three Thousand Five Hundred Dollars (\$3,500) each year.

4. Annual Shredder Day

Once each year, the Contractor shall provide free shredding services to the City and its residents at a mutually agreeable location in the City. The value of this service is estimated to be at least Three Thousand Five Hundred Dollars (\$3,500) each year.

5. New Trucks and New Equipment

The Contractor shall purchase at least One Thousand One Hundred Fifty (1,150) new Mechanical Containers and a new fleet of vehicles that the Contractor shall use when providing Collection Services in the City. On the Commencement Date, the average age of the Contractor's vehicles, including spare and reserve vehicles, shall be one year or less.

6. Portable Restrooms for City Events

The Contractor shall provide portable restroom services to the City for the following annual events:

- (a) The City's First Night Celebration;
- (b) the City's annual Christmas Tree Lighting;
- (c) the City's Fourth of July Celebration; and
- (d) the Chris Evert Tennis Tournament.

The Contractor estimates that these services shall have a value in excess of Ten Thousand Dollars (\$10,000) each year.

7. Sponsorship of City Events

The Contractor shall provide cash to sponsor one or more City events each year and the total of such contributions shall be at least Ten Thousand Dollars (\$10,000).

8. Waste Removal Services for Garlic Festival and Delray Affair

The Contractor shall provide waste removal services each year for the City's Garlic Festival and the City's Delray Affair. The Contractor estimates the value of these services shall be at least Two Thousand Five Hundred Dollars (\$2,500) each year.

9. Portable Restrooms for Additional Events

The Contractor will provide services for five (5) different events sponsored by the Delray Chamber of Commerce and/or the Chamber's affiliates. More specifically, the Contractor shall provide portable restrooms for five (5) events, up to a value of Two Thousand Dollars (\$2,000) per event. In this manner, the Contractor shall provide benefits worth at least Ten Thousand Dollars (\$10,000) per year.

10. Delray Chamber of Commerce

The Contractor shall provide a cash donation of Ten Thousand Dollars (\$10,000) each year to the Delray Chamber of Commerce and/or the Chamber's affiliates for the sponsorship of community events, including but not limited to the Garlic Festival and the Delray Affair.

11. You Recycle, We Replant

The Contractor shall work with the City to plant trees in public places where there is a need to add or replace trees. The Contractor shall work with the City's Public Works Department to provide in-kind donations, trucking, and labor worth at least Five Thousand Dollars (\$5,000) annually.

12. Pine Grove Elementary School Safety Patrol

The Contractor shall provide a cash contribution each year in the amount of Two Thousand Five Hundred Dollars (\$2,500) to support the Pine Grove Elementary School's Safety Patrol and the school's annual trip to Washington, D.C.

13. Guaranteed Benefits for the City and Community

In paragraphs 1 through 4 and 6 through 12, above, the Contractor agrees to provide financial contributions and in-kind services worth at least Sixty One Thousand Five Hundred Dollars (\$61,500) each Operating Year during the term of the Agreement, beginning with the

Operating Year that starts on October 1, 2015. Upon request, the Contractor shall provide documentation to the City demonstrating that the Contractor has satisfied these financial commitments. If at any time the City reasonably concludes that the Contractor has not fully satisfied these commitments, the Contractor shall remedy the shortfall in its spending within twelve (12) months after receiving notice from the City. In such circumstances, the City and the Contractor shall work together to identify mutually acceptable projects that the Contractor shall support with cash or in-kind contributions to remedy the shortfall. The Contractor also may remedy any shortfall by increasing its contributions to the activities and projects identified in this Exhibit 13.

Notwithstanding the foregoing, the City recognizes that the Contractor may not make contributions worth Sixty-One Thousand Five Hundred Dollars (\$61,500) during the First Operating Year because the First Operating Year (i.e., June 1, 2015 to September 30, 2015) will be less than twelve (12) calendar months in duration. During the First Operating Year, the Contractor shall support all of the community events that are described above in paragraphs 1 through 4 and 6 through 12, if such events occur during the First Operating Year. In addition, during the First Operating Year, the Contractor shall provide the funds and services described in paragraphs 1, 2, 4, 11 and 12, above. Funds for the services described in paragraph 7 shall be paid pro-rata during the First Operating Year. Subject to the City's written approval, the City and Contractor may mutually agree to substitute similar programs and benefits of at least equal or greater value than as described above.