



AGENDA ITEM

February 16, 2021 City Council Meeting

Approved for Submittal By:

Scott Morgan

Scott Morgan, City Manager

To Be Presented By:

Morris Richardson

Morris Richardson, City Attorney

To: Honorable Mayor and Members of the West Melbourne City Council

Through: Scott Morgan, City Manager

From: Morris Richardson, City Attorney

Date: February 16, 2021

SUBJECT

Direction regarding expiration of Agreement for Solid Waste, Recyclable Materials, and Yard Waste Collection, Processing and Disposal Services with Waste Management Inc. of Florida.

RECOMMENDATION

The City Manager and City Attorney recommend that the City Council consider the expiring Agreement with Waste Management, which terminates on September 30, 2021, and direct the City Manager to exercise the City's contractual option to extend the term of the Agreement for an additional period of two years, until September 30, 2023.

FISCAL IMPACT

The current Agreement with Waste Management has very favorable rates and utilizes a favorable index for rate adjustments. Waste Management pays a franchise fee to the City, the base amount of which is ten percent (10%) of the gross revenue collected during the previous service period, including revenue from the collection of non-exclusive construction and demolition waste debris. Over the last three years, the Agreement generated the following franchise fees:

- FY 17-18: \$265,512
- FY 18-19: \$278,930
- FY 19-20: \$321,452

DISCUSSION

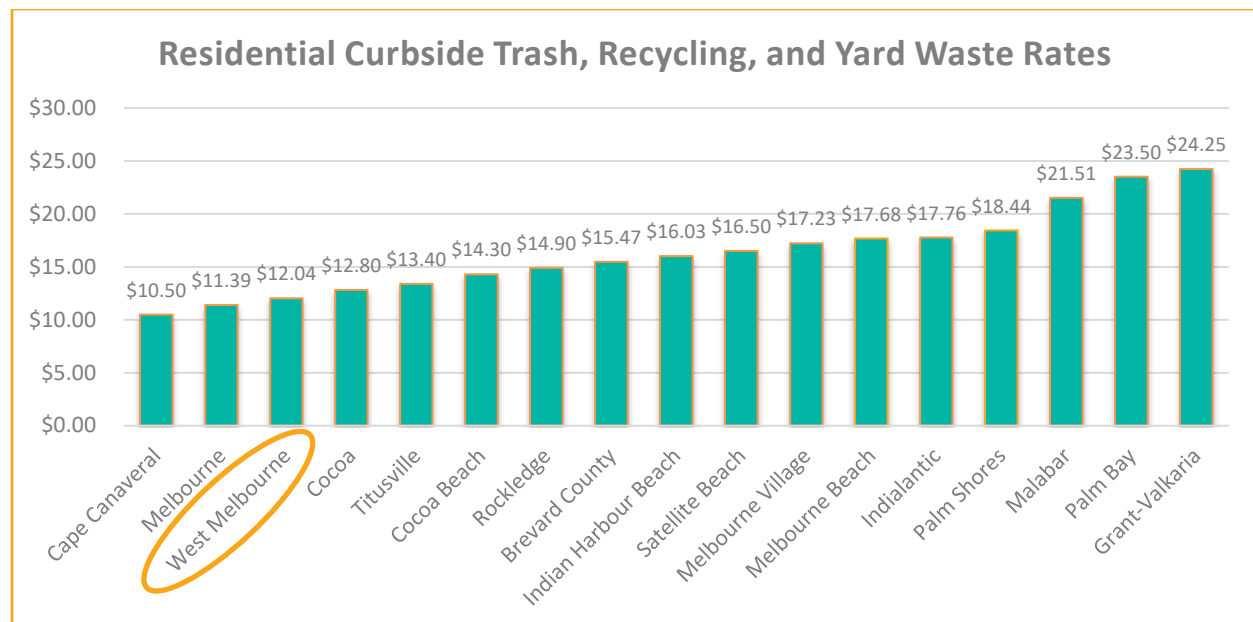
BACKGROUND

After an open procurement process, on April 19, 2011, the City Council awarded Waste Management Inc. of Florida the contract for collection and disposal of solid waste, construction and demolition debris, white goods, recyclable materials, and yard trash (the “Agreement”). The Agreement took effect on July 1, 2011, with an expiration date of June 30, 2018.

On October 17, 2017, the City Attorney requested that the City Council consider the expiring Agreement, and direct staff to either (1) immediately commence preparation of an open procurement process for waste collection services, or (2) attempt to negotiate a contract extension with Waste Management, subject to obtaining favorable terms, competitive pricing, and Council approval. The City Council directed the City Manager and City Attorney to negotiate a contract extension with Waste Management.

On January 16, 2018, the City Council unanimously approved the negotiated contract extension. The resulting First Amendment to the Agreement has an expiration date of September 30, 2021. The City has the right to unilaterally extend the Agreement for an additional two years, until September 30, 2023. In order to exercise its right to extend the Agreement, the City must give Waste Management notice on or before March 30, 2021.

Under the Agreement, West Melbourne enjoys the third lowest residential trash, recycling, and yard waste rate in Brevard County. The Agreement utilizes a favorable index for annual price adjustments, which has resulted in very modest rate increases.¹



¹ The Agreement utilizes the Consumer Price Index for All Urban Consumers (CPI-U), South Region, All Items index for annual rate adjustments. The all items CPI-U for the South rose 1.4% for the 12 months ending in December 2020, with an average annual increase of 1.8% per year in the three years prior. By way of comparison, the CPI: Urban Consumer – Garbage and Trash Collection index preferred by waste haulers, and utilized in some local waste hauling contracts, increased 3.49% in 2020, and 3.1% on average over the three years prior.

West Melbourne also enjoys competitive commercial collection rates. Four municipalities reported current commercial rates in the same manner provided in the Agreement, with pricing based on bin size in cubic yards and collection frequency. West Melbourne's rates are comparable to the lowest in the area, and well below the average.

Bin Size and Frequency	Cocoa	Malabar	Palm Bay	Satellite Beach	West Melbourne	Average
2 yd ³ - 1x / week	\$38.42	\$36.63	\$93.10	\$56.50	\$39.06	\$52.74
2 yd ³ - 2x / week	\$76.85	\$73.26	\$186.19	\$113.00	\$78.11	\$105.48
2 yd ³ - 3x / week	\$115.29	\$109.88	\$279.29	\$169.51	\$117.17	\$158.23
2 yd ³ - 4x / week	\$153.72	\$146.51	\$372.38	\$226.01	\$156.23	\$210.97
2 yd ³ - 5x / week	\$192.13	\$183.15	\$465.48	\$282.51	\$195.28	\$263.71
2 yd ³ - 6x / week	\$230.56	\$219.78	\$558.57	\$339.01	\$234.34	\$316.45
4 yd ³ - 1x / week	\$76.85	\$73.26	\$186.19	\$113.00	\$78.11	\$105.48
4 yd ³ - 2x / week	\$153.72	\$146.51	\$372.38	\$226.01	\$156.23	\$210.97
4 yd ³ - 3x / week	\$230.56	\$219.78	\$558.57	\$339.01	\$234.34	\$316.45
4 yd ³ - 4x / week	\$307.43	\$293.05	\$744.76	\$452.02	\$312.45	\$421.94
4 yd ³ - 5x / week	\$384.28	\$366.30	\$930.95	\$565.02	\$390.57	\$527.42
4 yd ³ - 6x / week	\$461.13	\$439.57	\$1117.14	\$678.03	\$468.68	\$632.91
6 yd ³ - 1x / week	\$115.29	\$109.88	\$279.29	\$169.51	\$117.17	\$158.23
6 yd ³ - 2x / week	\$230.56	\$219.78	\$558.57	\$339.01	\$234.34	\$316.45
6 yd ³ - 3x / week	\$345.86	\$329.66	\$837.86	\$508.52	\$351.51	\$474.68
6 yd ³ - 4x / week	\$461.12	\$439.57	\$1117.14	\$678.03	\$468.68	\$632.91
6 yd ³ - 5x / week	\$576.41	\$549.45	\$1396.43	\$847.53	\$585.85	\$791.13
6 yd ³ - 6x / week	\$691.71	\$659.35	\$1675.71	\$1017.04	\$703.02	\$949.37
8 yd ³ - 1x / week	\$153.72	\$146.51	\$372.38	\$226.01	\$156.23	\$210.97
8 yd ³ - 2x / week	\$307.43	\$293.05	\$744.76	\$452.02	\$312.45	\$421.94
8 yd ³ - 3x / week	\$461.13	\$439.57	\$1117.14	\$678.03	\$468.68	\$632.91
8 yd ³ - 4x / week	\$614.86	\$586.10	\$1489.52	\$904.04	\$624.91	\$843.89
8 yd ³ - 5x / week	\$768.56	\$732.62	\$1861.90	\$1130.05	\$781.13	\$1054.85
8 yd ³ - 6x / week	\$922.28	\$879.15	\$2234.28	\$1356.06	\$937.36	\$1265.83

Waste Management provides trash collection services to the majority of Brevard County, though competitors Republic, Waste Pro, and FCC are active in bidding for municipal contracts in the area.

- Waste Management serves unincorporated Brevard and eight of the 16 cities and towns in the county (Cocoa, Cocoa Beach, Indialantic, Indian Harbour Beach, Malabar, Melbourne, Satellite Beach, and West Melbourne).
- Waste Pro serves five municipalities (Cape Canaveral, Grant-Valkaria, Melbourne Beach, Melbourne Village, and Palm Shores). Republic Services serves Palm Bay.
- Two municipalities self-perform their own trash collection operations (Rockledge and Titusville).

Despite increasing competition, it seems unlikely that an open procurement process would result in better rates than the City presently enjoys. Generally, the lowest contract rates in Brevard

County are tied to relatively older contracts. Contracts that have been procured in the last few years tend to have resulted in dramatic rate increases, despite the competitive bidding process.

In 2019, Brevard County conducted an open procurement for trash collection services. The County received responses from its then-current provider Waste Management, as well as Waste Pro and FCC. Republic submitted a statement of no-bid. Waste Management submitted the lowest competitive bid, and was awarded the County contract. The new contract resulted in a **37% rate increase** to residential customers.

In 2020, Palm Bay conducted an open procurement that resulted in Republic replacing Waste Management. Customers saw rates rise from \$12.30 per month to \$23.50 per month, a **91% rate increase** or \$11.20 per month, with future rate increases of 3% each year over the 10-year term of the contract. It should be noted that under the new Republic contract, solid waste pickup went from once per week to twice weekly, which accounts for some of the dramatic rate increase.

If the City exercises its option to extend the Agreement, West Melbourne rate increases in the two-year extension period will be limited to the increase in the Consumer Price Index for All Urban Consumers (CPI-U), South Region, All Items, which increased 1.4% in 2020, and increased an average of 1.8% per year in the three years prior.

CONCLUSION

Based on the foregoing, the City Attorney and City Manager recommend that the City Council direct the City Manager to exercise the City's contractual option to extend the term of the Agreement for an additional period of two years, until September 30, 2023.

ATTACHMENTS

1. First Amendment to Agreement for Solid Waste, Construction and Demolition Debris, White Goods, Recyclable Materials, and Yard Waste Collection, Processing and Disposal Services
2. Agreement for Solid Waste, Construction and Demolition Debris, White Goods, Recyclable Materials, and Yard Waste Collection, Processing and Disposal Services

**FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE,
CONSTRUCTION AND DEMOLITION DEBRIS, WHITE GOODS,
RECYCLABLE MATERIALS, AND YARD WASTE COLLECTION,
PROCESSING AND DISPOSAL SERVICES**

This First Amendment to Agreement for Solid Waste, Construction and Demolition Debris, White Goods, Recyclable Materials, and Yard Waste Collection, Processing and Disposal Services (the "First Amendment"), is entered into this 24th day of April, 2018, by and between the CITY OF WEST MELBOURNE, a Florida municipal corporation ("City"), and WASTE MANAGEMENT INC. OF FLORIDA, a Florida corporation ("Collector").

WHEREAS, the City and the Collector previously entered into that certain Agreement for Solid Waste, Construction and Demolition Debris, White Goods, Recyclable Materials, and Yard Waste Collection, Processing and Disposal Services, dated May 3, 2011, with an effective date of July 1, 2011 (the "Agreement"); and

WHEREAS, the Agreement between the City and the Collector expires at midnight on June 30, 2018; and

WHEREAS, the City and the Collector desire to extend the term of the Agreement subject to the modifications set forth herein, and that all other terms and conditions of the Agreement shall remain unchanged.

NOW, THEREFORE, the City and the Collector, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

SECTION 1 – RECITALS

- 1.1 **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Agreement.

SECTION 2 – TERM

- 2.1 **Term.** The term of this First Amendment shall commence at midnight, June 30, 2018, and shall expire at midnight on September 30, 2021 (the "Renewal Term"). Notwithstanding the foregoing, the provisions set forth herein regarding the Annual Adjustment of Maximum Rates shall take effect immediately upon execution of this First Amendment by the parties.
- 2.2 **Extension Option.** The City shall have the right to extend the term for an additional period of two (2) years beyond the expiration of the Renewal Term, said period to expire at midnight on September 30, 2023 (the "Extension Term"). The City must give the Collector written notice of the City's intent to exercise its right to extend the term no earlier than twelve (12) months, and no later than six (6) months, prior to September 30, 2021.

Upon the giving of such renewal notice, the term shall be extended without execution or delivery of any other or further document, with the same force and effect as if the Extension Term had originally been included in the Renewal Term.

SECTION 3 – E-WASTE SERVICE

- 3.1 **Definition.** “E-Waste” means computers and peripherals, monitors, keyboards, mice, mobile devices, scanners, printers, copying and facsimile machines, stereos, radios, VCRs, televisions, compact fluorescent tubes and bulbs, and similar items and equipment.
- 3.2 **E-Waste Service Added.** Article 3, Scope of Services, of the Agreement is hereby amended to add curbside E-Waste collection as a new service to be provided by the Collector at no additional cost. The Collector shall provide curbside collection of E-Waste on a once a week basis on the same day as one of the Solid Waste collections, in the same manner that the Collector provides for collection of White goods or Bulky waste. The Collector shall process and dispose of all E-Waste in accordance with all Applicable Law.
- 3.3 **Title to E-Waste.** It is expressly understood that all E-Waste collected under the Agreement becomes the property of Collector at the point of collection, subject to the requirement of delivery of E-Waste to the Designated Disposal site, Designated Recycling Facility, or such other suitable processing location as the Collector deems appropriate for the particular E-Waste, in accordance with all Applicable Law. At no time does City obtain any right of ownership or possession of E-Waste placed for collection, and nothing in this First Amendment shall be construed as giving rise to any inference that City has any such rights. City and Collector agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is Collector, and not City that is to be considered the “merchant” of goods recycled pursuant to this First Amendment. Any and all proceeds derived from the use or sale of E-Waste by Collector shall belong to Collector.

SECTION 4 – ANNUAL ADJUSTMENT OF RATES

- 4.1 **Annual Adjustment.** The City and the Collector agree that the Schedule of Approved Base Rates published for July 1, 2017 to June 30, 2018, shall remain in effect through and including midnight of September 30, 2018. Subject to the terms herein, the Collector may make one adjustment annually to the Maximum Rates contained in the Schedule of Approved Base Rates effective October 1 of each year of the Renewal Term and, if applicable, the Extension Term, commencing October 1, 2018, where such adjustment would result in no more than a four (4) percent rate increase for

any given service level. In the event the Collector proposes any annual adjustments that would result in a greater than four (4) percent Maximum Rate increase for any given service level, the Collector shall petition the City for an adjustment in Maximum Rates. Said petition shall be made only to the extent that the Collector can demonstrate to the satisfaction of the City Manager that the Collector's actual CPI-influenced costs increased more than four (4) percent during the previous twelve months. At the discretion of the City Manager, petitioned annual adjustments of greater than four (4) percent may be subject to appeal to, approval, partial approval, or rejection by the City Council.

- 4.2 **First Adjustment of Maximum Rates.** The Collector may make the first adjustment of the rates set forth in the Schedule of Approved Base Rates effective October 1, 2018. Subject to the limitation set forth in Section 4.1 herein, the adjustment shall be calculated based on 100% of the percent change in the CPI for the April 2017 to April 2018 period.
- 4.3 **Subsequent Annual Adjustment of Maximum Rates.** After the first adjustment of Maximum Rates pursuant to Section 4.2 above, each subsequent annual adjustment of Maximum Rates during the Renewal Term, and the Extension Term if applicable, shall be based on the percent change in the CPI for the immediately preceding April to April period and effective each subsequent October 1. The Collector shall submit such annual adjustments to the Schedule of Approved Rates to the City Manager at least forty-five (45) days in advance of the October 1 annual adjustment of Maximum Rates.

SECTION 5 – RECYCLING REBATES ELIMINATED

- 5.1 **Elimination of Recycling Rebates.** Section 7.3 of the Agreement, providing for the Collector to remit to the City each month Recycling Revenues from the collection, processing, and sale of Recyclables net of negotiated Collector costs and expenses, is hereby deleted in its entirety. Section 7.4 of the Agreement is hereby amended to read as follows:

7.4 COLLECTOR BILLING STATEMENT AND REMITTANCE

Collector shall prepare and provide to City a monthly statement and a Monthly Remittance by the 15th day following each month of Collection Service. The monthly statement, which shall be in the form determined by the City Manager, shall set forth the basis and calculations used for computing the amount due, in the following format:

Total billings, whether billed by Collector or billed on behalf of Collector by City, including late charges, for the current billing

period (including number of accounts in each Rate class, and total number for each type of special charge)

+ Gross revenue collected during the previous service period, whether billed by Collector or by City on behalf of Collector, including revenue from the collection of non-exclusive construction and demolition waste debris

x Ten percent (10%) = Franchise Fee

Collector then calculates Monthly Remittance due to City as follows:

Franchise Fee Payment

+ Unpaid liquidated damages assessed by City against Collector

+ Unpaid billing charges for City billing of residential premises accounts at 85 cents/bill

+ ~~Recycling rebates in accordance with the formula set forth in Section 7-3~~

= Monthly Remittance to City

SECTION 6 – AGREEMENT TO REMAIN IN FULL FORCE AND EFFECT


6.1 **Full Force and Effect.** To the extent not expressly modified or amended herein, all of the terms, covenants, and conditions of the Agreement shall remain in full force and effect during the initial term of the Agreement, the Renewal Term, and, if applicable, the Extension Term.

IN WITNESS WHEREOF, the **CITY OF WEST MELBOURNE** and **WASTE MANAGEMENT INC. OF FLORIDA** have caused this Agreement to be executed on the day and year first written above.

ATTEST:

 **CITY OF WEST MELBOURNE**, a Florida municipal corporation


Cynthia S. Hanscom, City Clerk



Scott Morgan, City Manager

Approved as to legal form and sufficiency.

As approved by City Council on 1/16/2018


Morris Richardson, City Attorney

[SIGNATURE AND NOTARY OF COLLECTOR ON THE FOLLOWING PAGE]



Witness
RONALD M. KAPLAN, ASST. SEC.
Printed Name of Witness

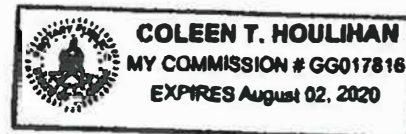
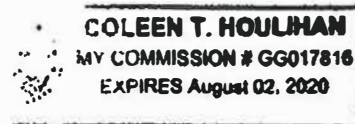
WASTE MANAGEMENT INC. OF
FLORIDA, a Florida corporation

By: 
Name: Timothy B. Hawkins
Its: President

STATE OF FLORIDA)
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 13 day of April,
2018, by Timothy B. Hawkins, who is President of WASTE
MANAGEMENT INC. OF FLORIDA, a Florida corporation. (S)he is personally known to me or
produced _____ as identification.


Signature of Notary Public
Printed Name: Coleen T. Houlihan
Commission Expires: _____



AGREEMENT FOR SOLID WASTE, CONSTRUCTION AND DEMOLITION DEBRIS, WHITE
GOODS, RECYCLEABLE MATERIALS, AND YARD WASTE
COLLECTION PROCESSING AND DISPOSAL SERVICES

BETWEEN

THE CITY OF WEST MELBOURNE,
A FLORIDA MUNICIPALITY

AND

WASTE MANAGEMENT INC. OF FLORIDA
A FLORIDA CORPORATION

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Exhibits

- A. List of Residential Recyclables
- B. Schedule of Maximum Rates
- C. Performance Standards

AGREEMENT

THIS AGREEMENT FOR SOLID WASTE, CONSTRUCTION AND DEMOLITION DEBRIS, WHITE GOODS, RECYCLABLE MATERIALS AND YARD TRASH COLLECTION, PROCESSING, AND DISPOSAL SERVICES ("Agreement") is entered into as of the 3rd day of May, 2011, by and between the City of West Melbourne, Florida, a municipality, organized and existing under the laws of the State of Florida ("City") and Waste Management Inc. of Florida ("Collector"), as follows:

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

- A. The Legislature of the State of Florida, by enactment of law codified as Chapter 403, Florida Statutes, has established a solid waste management process which requires cities to implement portions of the coordinated statewide waste management program; and
- B. Chapter 403 authorizes and requires cities to make adequate provisions for solid waste handling within their jurisdictions; and
- C. Pursuant to State law, City is authorized to enter into an exclusive agreement for the collection and disposal of solid waste; and
- D. Collector and City desire to implement a new, automated system of residential solid waste and recyclable material collection in the City, to more efficiently provide for the collection of such materials, and to facilitate achievement of state and local government responsibilities and goals; and
- E. Pursuant to this Agreement, City desires to engage Collector as an independent contractor to exclusively provide solid waste, construction and demolition debris, white goods, recyclable materials and yard waste collection services in the City. Collector shall furnish all personnel, equipment, and supplies necessary to collect, or otherwise remove and dispose of all solid waste, construction and demolition debris, white goods, recyclable materials and yard waste, as defined herein, generated or accumulated at all residential and commercial/industrial and construction site premises within the City, except as otherwise specifically provided herein; and
- F. Collector has represented and warranted to City that it has the experience, responsibility, and qualifications to implement the collection of solid waste, construction and demolition debris, white goods, recyclable materials and yard waste, and to arrange with residents and other entities within the City for the collection, safe transport, processing and disposal of all materials in compliance with applicable laws; and

- G. City and Collector are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of solid waste, including Chapter 403, Florida Statutes, and CERCLA; and
- H. City and Collector desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a “generator” or “arranger” as those terms are used in the context of CERCLA Section 107(a)(3), and that it is Collector, not City, which is “arranging for” the collection of solid waste, construction and demolition debris, white goods, recyclable materials and yard waste from residential and commercial/industrial and construction site premises in the City, and transporting of same for disposal, recycling of recyclable materials, and processing of construction and demolition debris, white goods, and yard trash.
- I. As a material inducement to City entering into this Agreement, Collector has agreed to fully indemnify City against all claims, losses, lawsuits to actions relating to any hazardous waste at any place where Collector transfers, stores, processes, or disposes of solid waste, construction and demolition debris, white goods, recyclable materials and yard waste pursuant to this Agreement, or its activities pursuant to this Agreement that result in a release of hazardous substances into the environment, including claims relating to services provided by Collector to City, or the disposal of solid waste collected from within the City by Collector and deposited into the Sarno Road landfill, or any other landfill.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to as follows:

ARTICLE I

DEFINITIONS

1.1 DEFINITIONS

Whenever any term used in this Agreement has been defined by Chapter 403.703, Florida Statutes, the definitions in Chapter 403.703 shall apply. In addition, the following definitions are hereby incorporated into this Agreement:

- 1.1.1 “Applicable Law” shall mean all laws, regulations, rules, orders, judgment, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection and disposition of solid waste, construction and demolition debris, white goods, recyclable materials and yard waste that are in force on the Effective Date and as they may be enacted, issued or amended during the Term.
- 1.1.2 “Bulky Waste” shall mean items that are larger than residential premises’ containers can hold that customers set out curbside that are acceptable for disposal at the Designated Disposal Site.
- 1.1.3 “CERCLA” means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.
- 1.1.4 “Change in Law” means any of the following events or conditions, which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations):
 - (a) the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the date of this Agreement; or
 - (b) the order or judgment of any governmental body, on or after the date of this Agreement, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or of Collector, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence. “City Code” shall mean the Code of the City of West Melbourne, Florida, as it presently exists or may subsequently be amended.
- 1.1.5 “City Facility” shall mean: City Hall, City Corporation Yard, City Wastewater Treatment Facility, City parks, rights-of-way, and any other facilities or real property used primarily by the City that may be constructed, acquired or leased during the Term.
- 1.1.6 “Collection Services” shall mean all of the duties and obligations of Collector hereunder.

- 1.1.7 “Consumer Price Index” or “CPI” shall mean the CUUR0300SA0 index produced by the United States Department of Labor for All Urban Consumers, South Region, All Items, 1982-1984=100 found on the U.S. Department of Labor website <http://data.bls.gov/data>.
- 1.1.8 “Control” shall mean, for purposes of this Agreement, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, or other association.
- 1.1.9 “Designated Disposal Site” means the Sarno Road landfill facility designated by the City Council of the City of West Melbourne, as may be amended by action of the City Council pursuant to Section 3.12.1, for the disposal of solid waste collected pursuant to this Agreement.
- 1.1.10 “Designated Yard Waste Facility” means the Yard Waste Processing facility designated by Collector pursuant to Section 3.12.3, subject to City’s right to disapprove the designation pursuant to that Section, for the Processing of Yard Waste collected pursuant to this Agreement.
- 1.1.11 “Designated Recycling Facility” means the Recycling Processing facility designated by Collector pursuant to Section 3.12.2, for the Processing of Recyclables collected pursuant to this Agreement.
- 1.1.12 “Effective Date” means July 1, 2011, or as soon thereafter as the Conditions Precedent set forth in Section 2.6 have been satisfied.
- 1.1.13 “Environmental Statutes” means, for the purposes of this Agreement, 42 U.S.C. Sections 6901, *et seq.* and Sections 9600, *et seq.*, or successor statutes.
- 1.1.14 “Franchise Fee” means the fee charged Collector by City for the privilege of holding an exclusive franchise for Collection Services.
- 1.1.15 “Gross Rate Revenues” means all Subscriber revenues collected by Collector for providing the Collection Services as set forth in Article 3.
- 1.1.16 “Monthly Remittance” means the monthly payment made to the City by Collector pursuant to Section 7.3.
- 1.1.17 “Owner” means the person holding the legal title or having a right to possession to the real property to which Collection Services are provided.
- 1.1.18 “Sarno Road Landfill” shall mean the Brevard County public landfill, located on Sarno Road in Melbourne, Florida.
- 1.1.19 “Maximum Rates” means the Schedule of Approved Base Rates (Exhibit B), as may be amended pursuant to Article 6, and are maximum services charges and Special Charges for Collection Services determined, billed and collected by Collector from each Subscriber receiving service under this Agreement.

- 1.1.20 “Recyclables” means the List of Residential Curbside Recyclables (Exhibit A), as may be amended pursuant to Articles 3 and 6.
- 1.1.21 “Recycling Revenues” means all revenues resulting from the sale of Recyclables collected through provision of Collection Services.
- 1.1.22 “Related Party” means any other Person under the same ownership and/or Control as Collector.
- 1.1.23 “Residue” means materials that remain after Processing Recyclables and Yard Waste, which cannot be Recycled, marketed, or otherwise utilized, including but not limited to materials such as rocks, contaminated paper, putrescible waste, and other debris.
- 1.1.24 “Rollout Period” shall mean the period between the Effective Date and December 31, 2011, or such earlier date, or with the prior written approval of the City Manager, later date, when the automated Collection Services required by this Agreement are provided to residential premises throughout the City and fully operational.
- 1.1.25 “Schedule of Approved Base Rates” shall mean Exhibit B.
- 1.1.26 “Special Charges” are specific service-related residential and commercial charges that are contained on the Schedule of Approved Base Rates, and that may be billed by Collector.
- 1.1.27 “Special Rate Review” means the Rate adjustment process described in Section 6.4 of this Agreement.
- 1.1.28 “State” means the State of Florida.
- 1.1.29 “Street Sweeping Fines” means material collected as a result of street sweeping operations.
- 1.1.30 “Subscriber” means an individual or entity that subscribes to Collection Services provided by Collector pursuant to this Agreement.
- 1.1.31 “Substantial Evidence” means such evidence as would convince a reasonable person and on which reasonable persons may not reasonably differ as to the conclusion to be drawn from such evidence.
- 1.1.32 “Term” means the term of this Agreement, as set forth in Section 2.4.
- 1.1.33 “Ton” means a “short ton” of 2,000 pounds.

ARTICLE 2

PARTIES; EXCLUSIVE RIGHTS; TERM OF AGREEMENT

2.1 PARTIES TO THE AGREEMENT

The parties to this Agreement are:

- 2.1.1 City: The City of West Melbourne, Florida, a Florida municipality, having its principal office at 2240 Minton Road, West Melbourne, Florida 32904.
- 2.1.2 Collector: Waste Management Inc. of Florida, a Florida Corporation, having its principal place of business at 7382 Talona Drive, West Melbourne, Florida 32904.

2.2 REPRESENTATIVES OF PARTIES AND SERVICE OF NOTICES

The representatives of the parties who are primarily responsible for the administration of this Agreement, and to whom formal notices, demands and communications shall be given, are as follows:

- 2.2.1 The principal representative of City shall be:

Mr. Scott Morgan, City Manager
City of West Melbourne
2440 Minton Road
West Melbourne, Florida 32904
Telephone No.: (321) 837-7771
Fax No.: (321) 768-2390
E-mail: smorgan@westmelbourne.org

- 2.2.2 The principal representative of Collector shall be:

Mr. Jim Padovan, Senior District Manager
Waste Management Inc. of Florida
7382 Talona Drive
West Melbourne, Florida 32904
Telephone No.: (321) 409-6617
Fax No.: (321) 984-8170
E-mail: jpadovan@wm.com

- 2.2.3 Formal notices, demands, and communications to be given hereunder by either party shall be made in writing and shall be effective upon the date of personal delivery or, in the case of mailing, on the date of delivery or attempted delivery as shown on the U.S. Postal Service certified mail return receipt. Notices to the Collector shall not be invalidated in the event that a copy of the notice is not also sent to counsel for Collector.
- 2.2.4 If the name of the principal representative designated to receive the notices, demands, or

communications, or the address of such person, is changed, written notice shall be given to the other party within five (5) working days of the change.

2.3 GRANT OF EXCLUSIVE RIGHTS

- 2.3.1 Subject to the terms and conditions of this Agreement and applicable State laws, City hereby grants and issues to Collector the exclusive authority, right, privilege and franchise to collect, transport, process, and dispose of all solid waste, including white goods, yard waste, and recyclable materials, generated or accumulated by all Subscribers within the City, for the Term unless earlier terminated as provided herein. Collector's exclusive rights hereunder shall be subject to any rights that may otherwise be retained by State, county or school district owned and operated facilities to use a provider other than Collector.
- 2.3.2 Collector accepts the terms of this Agreement as defining the scope of its exclusive rights to provide Solid Waste, White goods, Recyclable materials and Yard Waste collection, processing and disposal services in the City.
- 2.3.3 As a material inducement to City to enter into this Agreement, Collector hereby waives any right it may possess to contest the legal right, power or the authority of City to enter into and perform this Agreement, or any provision hereof, and agrees to fund the City's legal defense and otherwise cooperate with and assist City in supporting the legal validity of and authorization for such provisions in the event of any legal challenge thereto brought or made in any manner by a third party.

2.4 TERM OF AGREEMENT AND EFFECTIVE DATE

The term of this Agreement shall continue in force for a period of seven (7) years and shall commence on, or as soon thereafter as the conditions precedent set forth in Section 2.6 have been satisfied or waived (the "Effective Date"), and shall expire midnight June 30, 2018.

Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, to terminate this Agreement for cause in accordance with the procedures elsewhere contained herein.

2.5 REPRESENTATIONS AND WARRANTIES OF COLLECTOR

Collector hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date:

- (a) Collector is duly organized and validly existing as a corporation under the laws of the State of Florida, registered to do business within the State of Florida, with full legal right and power to enter into and perform its obligations under this Agreement.
- (b) Collector has the authority to enter into and perform its obligations under this

Agreement. Collector or its authorized representative has taken all actions required by law and its governing documents to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Collector warrant and represent that they have authority to do so. This Agreement constitutes the legal, valid and binding obligation of Collector.

- (c) Neither the execution of this Agreement nor the delivery by Collector of collection services nor the performance by Collector of its obligations hereunder: (1) conflicts, with, violates or results in a breach of Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certification of incorporation of Collector) or instrument to which Collector is a party or by which Collector or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of the City.
- (d) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Collector's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Collector or which is likely to result in an unfavorable decision, ruling or fining which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Collector in connection with the transaction contemplated hereby, or which could materially and adversely affect the ability of Collector to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Collector.
- (e) Collector has no knowledge of any Applicable Law in effect as of the date of this Agreement that would prohibit the performance by Collector of this Agreement and the transactions contemplated hereby.
- (f) Collector has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection Services required by this Agreement.
- (g) The information supplied by Collector in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Collector throughout this Agreement are true, accurate, correct and complete in all material respects on and of the Effective Date of this Agreement.
- (h) Collector's representative, designated in Section 2.2.2, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Collector unless the actions taken are not within the scope of this Agreement.

- (i) The new, automated system of residential solid waste and recyclable materials collection services described in this Agreement will be implemented throughout the City on or before December 31, 2011.
- (j) Collector has, or will obtain prior to the Effective Date, right to dispose and process solid waste and recyclable materials at the permitted locations as set forth in Section 3.13 of this Agreement.
- (k) Sarno Road Landfill (and any other Designated Disposal Site that may subsequently be determined by the City Council of the City of West Melbourne) is a landfill which is properly permitted to receive municipal solid waste and is in compliance with all Applicable Laws.
- (l) The Orange County Recovered Materials Processing Facility at 12100 Young Pine Road, Orlando is a facility which is properly permitted and in compliance with all Applicable Laws.

2.6 CONDITIONS PRECEDENT

This Agreement shall not become effective and City shall not be obligated to perform the undertakings provided for in this Agreement unless and until each and all of the conditions set out below are satisfied or waived, in written form, by City. Waiver of any of the following as a condition to the effectiveness of this Agreement will not preclude City from pursuing any claim for breach of this Agreement. This Agreement shall automatically expire and be of no further force or effect, without the need for notice pursuant to Section 10.1, if the conditions precedent set forth below are not satisfied on or before December 31, 2011.

- (a) The representations and warranties made by Collector in Section 2.5 of this Agreement are true and correct on and as of the Effective Date.
- (b) There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- (c) Collector shall submit, to the satisfaction of the City Manager: (a) endorsements of insurance coverage pursuant to Section 5.2; (b) the faithful performance bond pursuant to Section 5.3; and (c) the fidelity bond pursuant to Section 5.4 of this Agreement.
- (d) Collector shall deliver to City evidence satisfactory to the City Manager that Collector has the authority to provide, or has arranged for, the disposal and processing rights at the Sarno Road Landfill and the Orange County Recovered Materials Processing Facility at 12100 Young Pine Road, Orlando as set forth in Section 3.13.

ARTICLE 3

SCOPE OF SERVICES

3.1 GENERAL

Collector shall collect all Solid Waste, White goods, Recyclable materials and Yard waste generated and presented for collection at each residential, commercial/industrial and construction site premises within the City, in conformity with the provisions of this Agreement, including but not limited to the performance standards set forth in Exhibit "C". The work to be done by Collector pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, containers (including residential cart containers), other equipment, materials, supplies, and all other items necessary to perform the Collection Services, and the payment of all related expenses including, but not limited to, all taxes and utility charges. The Collection Services shall be performed in a thorough and professional manner that constitutes litter free, reliable, courteous and high-quality service. Collector shall at all times perform its duties using best industry practices for comparable operations.

3.2 COMPLIANCE WITH APPLICABLE LAW, RULES AND REGULATIONS

- 3.2.1 Collector shall acquire and maintain all necessary permits and licenses, and shall comply with all provisions of this Agreement, the West Melbourne Code of Ordinances, and all other Applicable Laws, rules, and implementing regulations, as they may from time to time be amended, including, but not limited to Chapter 403, Florida Statutes, and CERCLA.
- 3.2.2 Collector agrees to observe and comply with the operating rules and regulations established by the applicable county and State regarding the Designated Disposal Site and Designated Recycling Facility including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control and safety measures.

3.3 COLLECTION FROM RESIDENTIAL PREMISES

- 3.3.1 Collector shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide automated Collection of Solid Waste from all residential premises in the City from the curb on a twice weekly basis, except in areas where automated collection is not practicable. In those areas, semi-automated or manual collection services shall be provided.
- 3.3.2 Curbside collection of Recyclable materials from residential premises shall be performed on a once a week basis, on the same day as one of the Solid Waste collections. The minimum list of Recyclables to be collected in this program is attached hereto as Exhibit "A". Subject to the provisions of Section 6.6, City shall have the right to modify the list of residential Recyclables at any time during the Term, upon written notice to Collector but without the need to amend this Agreement.
- 3.3.3 Curbside collection of Yard waste from residential premises shall be performed on a once a week basis on the same day as one of the Solid Waste collections.

3.4 CART CONTAINERS FOR RESIDENTIAL PREMISES

- 3.4.1 (a) Collector shall provide at its own cost and expense the initial residential cart containers and any replacement cart containers to all residential premises. Except in areas where automated collection is not practicable, all residential subscribers shall receive one (1) Standard Residential Solid Waste Container having an approximate capacity of either 36 gallons, 64 gallons, or 96 gallons as specified by the Subscriber and one (1) Standard Residential Recycling Container having an approximate capacity of either 64 gallons or 36 gallons as specified by the Subscriber. For the initial distribution of residential cart containers, all Subscribers shall be provided, at a minimum, written material describing cart size options, mechanism for response, and specifics that the default size for each cart will be 64 gallons (36 gallons in 55 and older age restricted neighborhoods) if no response is received from Subscriber. Written material shall be reviewed and approved by City Manager prior to distribution. Subscribers shall be provided a minimum of two (2) weeks from the mailing date to indicate their cart size preferences. If the Subscriber does not specify a container size, Collector shall provide the Subscriber with a 64 gallon solid waste cart (36 gallons in 55 and older age restricted neighborhoods) and with a 64 gallon recycling cart (36 gallons in 55 and older age restricted neighborhoods). All residential cart containers provided by Collector shall be constructed of rigid, durable materials with a minimum five (5) year life expectancy warranted by the manufacturer.
- (b) Collector shall permit residential Subscribers to change the size of their solid waste cart container once annually at no additional charge. Collector shall deliver the solid waste containers associated with requested changes in service level no later than two weeks after receipt of the request. Subscribers may request additional changes in the size of their solid waste container throughout the year, but each Subscriber must pay Collector the additional charge specified in the Schedule of Approved Base Rates.
- (c) Repairs to residential cart containers for damage caused by ordinary wear and tear by the Subscribers or by Collector shall be the responsibility of Collector. These repairs include replacement of wheels, lids, hinges, axles, and handles. Collector shall have the right to charge Subscribers for residential cart containers damaged through willful or intentional abuse or misuse.
- (d) In the event delivered Solid Waste and/or Recycling cart containers are lost, stolen, damaged or destroyed, not through the willful or intentional abuse or misuse of Subscriber, Collector shall deliver to the Subscriber (a) replacement cart(s) within one week of request at no charge to the Subscriber or City for either the cart or its delivery.
- (e) To the extent that the Collector replaces more than 500 cart containers in a single calendar year, prorated for partial years, and excepting those cart containers replaced pursuant to paragraph (d), the City shall allow Collector to recover the actual cost of replacing such cart containers over the above specified amount by allowing an

increase in the Rate to be charged by Collector sufficient for Collector to recover its costs for the purchase, assembly and delivery of such replacement cart containers ("Collector's Excess Cart Container Costs"), pursuant to Section 6.4. Collector shall bear the cost of replacing the first 500 cart containers.

- (f) Collector shall report to the City periodically, but not less than annually, the number of residential cart containers replaced and address of each residence where replacement occurred in accordance with the previous two paragraphs.
- (g) Collector shall provide additional Solid Waste and/or Recycling cart containers to any residential premise upon request from the residential householder provided. Additional containers shall be delivered and services for the Rate specified in the Schedule of Approved Base Rates.

3.5 WHEEL-OUT SERVICE

- 3.5.1 Collector shall provide free wheel-out service to eligible residents. For purposes of this Section 3.5, "eligible residents" are those who: (1) are physically unable to move the residential cart containers as verified by a medical certificate, or evidence of 100% disability, or veteran disability pension; and (2) submit a signed statement that they live in a residence with no other residents capable of moving the cart containers.
- 3.5.2 Collector shall provide wheel-out service for any non-eligible resident requesting such service on a for-fee basis. Service shall be provided for the Rate specified in the Schedule of Approved Base Rates.

3.6 WHITE GOODS AND BULKY WASTE

- 3.6.1 Collector shall provide curbside collection of White goods and Bulky waste on a once a week basis on the same day as one of the Solid Waste collections. Collector shall process and dispose of all White goods and Bulky waste in accordance with all Applicable Law.
- 3.6.2 For qualifying households, defined as a household in which either: (a) the youngest person is 62 years of age or older; or (b) the head of household is physically unable to move White goods or Bulky waste to the curb as verified by a medical certificate, or evidence of 100% disability, or veteran disability pension, and submits a signed statement that they live in a residence with no other residents capable of moving white goods or bulky waste to the curb, Collector shall provide pre-scheduled pick-up service on or within property upon request. Collector may charge a fee for this service as specified in Schedule of Approved Rates.
- 3.6.3 Collector shall ensure that 80% of pick-up service requests pursuant to Section 3.6.2 are met within 3 days of the requested pickup date, and 100% of pick-up service requests are met within 10 days of the requested pickup date.
- 3.6.4 Collector shall transport collected materials that cannot otherwise be recycled to the Designated Disposal Site. Collector shall make good faith efforts to maximize the Recycling of collected materials.

- 3.6.5 Services provided under this Section shall be provided to all residential premises, including multi-family residences, at no additional cost to the Subscribers or City. Notwithstanding, Collector may charge for Freon removal from Freon-containing appliances in accordance with Exhibit B.

3.7 COMMERCIAL/INDUSTRIAL SERVICE

- 3.7.1 Collection. Collector shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide collection of Solid Waste and Recyclables from commercial/industrial premises within the City on at least a weekly basis. Collector may use locking bins when there is a need to protect against unauthorized deposits of waste materials. Collector will assist the owners of commercial/industrial premises in selecting an appropriate level of service for solid waste and recyclables. Collector shall be responsible for billing each commercial/industrial premises at the Rates set forth on the Schedule of Approved Base Rates. Collector shall work with commercial/industrial premises subscribers to select the appropriate size, type and number of containers to be provided for Solid Waste and Recyclables Collection services.

- 3.7.2 Promotion of Commercial Recycling. Collector shall make Recyclables Collection service available to all commercial/industrial premises in the City. In coordination and cooperation with City efforts, Collector shall use its best efforts to promote and expand the use of Recycling services to all commercial/industrial premises.

3.8 SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION FROM CITY FACILITIES

- 3.8.1 Collector shall collect and either dispose of or deliver for processing, all Solid Waste and Recyclable materials from all City Facilities. Collector shall provide each City Facility with sufficient bins and other containers, as determined by the City Manager, for the collection.
- 3.8.2 Collector shall provide for the disposal or delivery for processing all Solid Waste from all City employee-constructed public works projects, whether delivered by Collector, City employees in City vehicles or by designated agents for City, provided that the disposal is consistent with the permit limitations of the Designated Disposal Site.
- 3.8.3 Collector shall provide for the disposal of all West Melbourne wastewater treatment facility sludge delivered by Collector, City or its agents and accepted at the Designated Disposal Site or other approved and permitted sites designated by City.
- 3.8.4 All services provided pursuant to this Section shall be provided at Collector's expense, with no charge to City. The City Manager may delete or add a City Facility from the list of facilities to be provided collection services by Collector pursuant to this Section at any time, upon written notice to Collector.

3.9 CONSTRUCTION AND DEMOLITION DEBRIS

- 3.9.1 Collector has the right, but not the exclusive right, to collect construction and demolition debris. The collection of Construction and demolition debris shall be performed in conformance with all standards adopted by the City Council by ordinance or resolution.
- 3.9.2 The Collector shall document that it has used best efforts to insure that, consistent with Section 403.706(2)(b), Florida Statutes, Construction and demolition debris collected by the Collector is recycled to the greatest extent feasible.
- 3.9.3 Collector shall not charge City for the collection, processing and disposal of source-separated Construction and demolition debris generated by City employee-constructed projects. The Collector may charge City for processing of any City generated construction and demolition debris that is not source-separated.
- 3.9.4 City has no obligation to deliver construction and demolition debris from City employee-constructed projects and other City sources to the Designated Disposal Site, except for that which is collected by Collector.

3.10 DEAD ANIMAL COLLECTION

At no additional cost to City, Collector shall provide for the collection and disposal of dead domesticated animals deposited in solid waste containers so long as such animals may be disposed of at the Designated Disposal Site.

3.11 HAZARDOUS WASTE NOTIFICATIONS AND PROCEDURES

- 3.11.1 The collection, transportation and disposal of hazardous waste is specifically beyond the scope of this Agreement. Collector and City shall take all reasonable steps necessary to prevent Hazardous Waste from being collected, transported, or disposed of by Collector under this Agreement.
- 3.11.2 Collector shall not be required to filter through and thoroughly inspect the Solid Waste or Recyclables deposited in containers by City's residents and commercial/industrial premises in order to ensure it does not contain any Hazardous Waste. Collector, however, shall take all reasonable steps to avoid collecting Hazardous Waste and shall collect and dispose of any such waste of which it becomes aware. Collector shall "tag" each container which contains Hazardous Waste, and shall keep a record of all Subscribers who have received a tag for depositing Hazardous Waste items, in accordance with the procedures set forth in Section 7.D. of Exhibit "C" regarding tagging items not collected. If a container is "tagged," the resident shall be notified where the waste items contained therein may be properly disposed.
- 3.11.3 Collector shall provide written information regarding Hazardous Waste to all Subscribers upon initially beginning service and on a yearly basis thereafter. This information shall specify what types of waste may and may not be disposed of through routine collection procedures, the availability of Hazardous Waste collection locations, the tagging procedure if Hazardous Waste is found in the Subscriber's deposited waste, and other pertinent

information.

- 3.11.4 Collector shall conduct yearly training programs for its waste Collection employees to instruct them in determining what is Hazardous Waste, to advise them to be aware of and locate, if possible, Hazardous Waste when undertaking their collection of Solid Waste and Recyclables in the City, to follow proper procedures by tagging Hazardous Waste items as “Hazardous Special Handling Required,” and to advise Subscribers of the various legal alternatives for the disposal of Hazardous Waste.
- 3.11.5 Collector shall notify all agencies with jurisdiction, including local emergency response providers, and if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed by Collector anywhere within the City, including on, in, under or about City owned property and City waste containers. In addition to other required notifications, if Collector observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully disposed of or released on City owned property, including but not limited to streets in the City, storm drains, or public rights of way, Collector also shall immediately notify the City Manager.

3.12 DISPOSAL AND PROCESSING FACILITIES

- 3.12.1 City has designated the Sarno Road Landfill facility as the Designated Disposal Site. This Brevard County Landfill is properly permitted to receive municipal Solid Waste in compliance with all Applicable Laws. Except as set forth in Section 3.13.3, Collector shall dispose of all Solid Waste collected within the City at the Designated Disposal Site, at Collector’s expense and in accordance with all Applicable Laws. City reserves the right to change the Designated Disposal Site by resolution of the City Council at any time during the Term of this Agreement at the City’s sole and complete discretion provided the changed site is properly permitted to receive municipal Solid Waste and is in compliance with all Applicable Laws.
- 3.12.2 Collector has designated the Orange County Recovered Materials Processing Facility in Orlando as the Designated Recycling Facility. Collector covenants that its Designated Recycling Facility is properly permitted and in compliance with all Applicable Laws. Collector shall deliver all Recyclable materials collected within the City to the Designated Recycling Facility at Collector’s expense and in accordance with all Applicable Laws. Collector shall ensure that, after processing, residue material shall not exceed the amount permitted by Applicable Law. Collector shall ensure that recyclable materials are used, measured, and reported in a manner that is consistent with Chapter 403.76(2)(a) and implementing rules and regulations adopted by the Florida Department of Environmental Protection.
- 3.12.3 Collector has designated the Sarno Road Landfill facility as the Designated Yard Waste Facility. Collector covenants that the Designated Yard Waste Facility is properly permitted and is in compliance with all Applicable Laws. Collector shall deliver all Yard waste collected in the City to the Designated Yard Waste Facility.
- 3.12.4 Collector shall ensure that the Designated Disposal Site, Designated Recycling Facility, and

Designated Yard Waste Facility are properly permitted and in compliance with Applicable Law at all times during the Term. Collector shall immediately inform City Manager in writing in the event of any non-compliance, and City, in its sole discretion, shall have the right to require the use of a different disposal or processing facility, proposed by Collector. The City Council may also, in its sole discretion, require the use of a different site at any time during the Term if the Designated Disposal Site, Recycling Facility, or Yard Waste Facility is found to not be in compliance with the provisions of Sections 3.12.1, 3.12.2, or 3.12.3 (as the case may be), and the City Council determines that the Designated Disposal Site, Recycling Facility, or Yard Waste Facility is not acceptable due to a failure to comply with the terms of this Agreement or a finding by State or federal regulatory agencies that it is not in compliance with Applicable Law, and is unable to accept City's Solid Waste, Yard waste or Recyclables (as the case may be). Under no circumstances, however, shall a change in one or more of Designated Disposal Site, Designated Recycling Facility, and Designated Yard Waste Facility pursuant to this Section 3.12.4 provide a basis for an increase in Maximum Rates.

3.13 TITLE TO SOLID WASTE, YARD WASTE, WHITE GOODS AND RECYCLABLES

It is expressly understood that all Solid waste, Yard waste, White goods and Recyclable materials collected under this Agreement becomes the property of Collector at the point of collection, subject to the requirement of delivery of Solid waste to the Designated Disposal Site, Recyclable materials to the Designated Recycling Facility, Yard waste to the Designated Yard Waste Facility, and White goods to the Designated Disposal site and/or Designated Recycling Facility, as appropriate for the particular White good. At no time does City obtain any right of ownership or possession of Solid waste, Yard waste, White goods or Recyclables placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights. City and Collector agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is Collector, and not City that is to be considered the "merchant" of goods recycled pursuant to this Agreement. Any and all proceeds derived from the use or sale of Solid waste, Yard waste, White goods and/or Recyclables by Collector shall belong to Collector subject only to a net payment to the City after Collector processing cost deductions from the sale of Recyclables as set forth in Section 7.3.

3.14 PUBLIC EDUCATION

- 3.14.1 Collector shall develop and implement a public education and information program in order to explain the transition to automated residential collection, maximize participation in the residential and commercial/industrial recycling efforts, and provide information on the availability of White goods and Bulky waste services described in this Article 3, as well as on the complaint resolution procedure set forth in Section 3.16. The public education and information program may include, without limitation, media advertising, contests, and community involvement programs. The public education and information program shall include methods of intensive outreach during the Rollout Period, as well as periodically (no less often than annually) thereafter, and methods of informing customers of available services at the time they apply for service. The various elements of the public education and information program shall be reviewed and approved by the City Manager prior to

implementation, pursuant to Section 4.3. The costs of implementing the program shall be borne by Collector.

3.14.2 Throughout the Term, Collector shall provide Subscribers with information pertaining to this Agreement and shall conduct public education services that include, but are not limited to, providing information pertaining to the following:

1. New services implementation;
2. Change in service;
3. Notices of incorrect setouts;
4. Coordination with local and State agencies in development of promotions and public education materials on source reduction, recycling, backyard composting and green waste program topics;
5. The availability of free wheel-out and on-call at the door White good and Bulky waste collection service for qualifying Subscribers;
6. The availability of extra Containers, wheel-out, and on-call at the door White good and Bulky waste service for additional fee;
7. Hazardous Waste disposal services provided by others; and
8. Providing recycling outreach to schools and community groups as requested.

3.14.3 All press releases, reports, or other documents prepared by Collector for release to the public or any other public agency that materially affect the City shall be subject to the prior review (for a period of at least five business days) of the City Manager. The parties agree that, for purposes of this Section 3.14.3, any reports or other documents relating to the new automated residential collection system in the City materially affects the City.

3.15 PUBLIC ACCESS TO COLLECTOR

3.15.1 Collector shall establish and maintain at all times during the Term an office and corporation yard within or within reasonable proximity of the City. A responsible and qualified representative of Collector shall be available at Collector's local office during office hours for communication with City and the public.

3.15.2 Collector shall maintain a toll-free telephone system in operation at a customer service center to assist Subscribers during, at a minimum, the hours of 8:00 a.m. to 5:00 p.m. Monday through Saturday. Collector shall install telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Subscribers must be able, with reasonable convenience, to reach Collector's office by phone during the hours set forth in this Section. In addition, Collector must maintain a physical and telephone customer presence at its local office during, a minimum, the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. Any recording at both the customer service center and local office shall provide an additional number to call in the event of an emergency. Collector shall provide the City Manager the means to contact a representative of Collector directly by telephone on a 24-hour basis in the event of an emergency.

3.16 SERVICE COMPLAINTS AND RESPONSE

- 3.16.1 Collector agrees to maintain a computer-based log (“Complaint Log”) of all oral and written service complaints registered with Collector from Subscribers or the public within the City. The Complaint Log shall be maintained in a computerized database format reasonably acceptable to the City Manager. Collector shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Subscriber complaints. Subscriber complaints that cannot be reasonably resolved may be appealed to the City Manager for final resolution. Collector shall record in the Complaint Log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, name of Collector employee taking the complaint, and the nature and date of resolution. The Complaint Log shall be maintained so that representatives of City upon request may conveniently inspect it. Collector shall deliver a summary of complaints by number and type, and a copy of the Complaint Log reflecting action to date along with the quarterly reports specified in Section 9.4 or otherwise upon request of the City.
- 3.16.2 Collector shall respond to all complaints from Subscribers, other than missed pickups, within one business day.
- 3.16.3 In the event of a missed pickup, Collector shall complete the pickup the same day if the complaint is received by 3:00 p.m., or by 11:00 a.m. the following business day if the complaint is received after 3:00 p.m.

3.17 REPORT ACCUMULATION OF SOLID WASTE; UNAUTHORIZED DUMPING

Collector shall direct its drivers to note the addresses of any premises at which they observe significant and ongoing accumulation of Solid waste that is not being delivered for collection, and the address or other location description at which Solid waste has been dumped in an apparently unauthorized manner. Collector shall deliver the address or description to the City Manager within three (3) working days of such observation.

3.18 PRIVACY

Collector shall strictly observe and protect the rights of privacy of Subscribers, information identifying individual Subscribers, or the composition or contents of a Subscriber’s Solid waste or recyclables shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, authorized Federal, State, or municipal law enforcement agency, by statute, or upon valid authorization of the Subscriber. Collector shall not market or distribute mailing lists with the names and addresses of residential or commercial/industrial Subscribers. This provision shall not be construed to preclude Collector from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by City. The rights accorded Subscribers pursuant to this Section shall be in addition to any other privacy rights accorded Subscribers pursuant to Federal or State law.

3.19 CHANGE IN OPERATIONS/ADMINISTRATION OR SCHEDULE

Collector shall notify the City Manager in writing of any proposed material changes in, or to the Collection Services operation (e.g. vehicle routes, equipment type or number, crew size), administration (e.g. management and employees), and schedule prior to implementation. Any changes to the collection operation shall meet the service standards and other terms of this Agreement. In the case of changes to the collection schedule, Collector must notify all affected Subscribers at least fourteen (14) days prior to any change in the collection days. Collector shall not permit any Subscriber to go more than seven (7) days without service in connection with a collection schedule change.

3.20 MODIFICATION OR CHANGE OF COLLECTION SERVICES; NEW SERVICES

- 3.20.1 Upon receiving a written request from City, Collector shall provide reasonable modification of any Collection Service subject to establishment of appropriate compensation for providing the service. Such a service modification may include, but not be limited to, the addition or deletion of specific residential recycling materials. Granting of any such modified Collection Service shall be contingent upon City Manager's review and approval of an applicable Rate pursuant to Section 6.6.
- 3.20.2 Upon receiving a written request for the City Manager, Collector shall provide any other exclusive or non-exclusive services not covered by this Agreement, and that it is qualified to provide, subject to establishment of appropriate compensation for providing the service pursuant to Section 6.6.

ARTICLE 4

ROLLOUT OF AUTOMATED RESIDENTIAL SERVICE; IMPLEMENTATION PLANS

4.1 ROLLOUT PERIOD

4.1.1 This Agreement requires, for residential premises, a transition from the manual collection system used in the City as of the date of this Agreement to an automated system. This Agreement also requires implementation of a new, single stream, cart-based recyclables collection program. Collector shall “rollout” the new services required by this Agreement such that all required cart containers are distributed to residential premises throughout the City for use, on or before December 31, 2011, accordingly to the following schedule:

(a) Subscriber size-selected residential solid waste cart containers shall be provided to residences throughout the City on or before July 1, 2011.

(b) Subscriber size-selected residential recyclables cart containers shall be provided to residences throughout the City on or before July 1, 2011.

(c) The new automated residential service shall be fully operational on or before December 31, 2011.

4.1.2 During the Rollout Period, Collector shall distribute the containers required by this Agreement to all residential premises in the City, and implement the public education program developed pursuant to Section 3.14. As a material inducement to City entering into this Agreement, Collector has represented to City that the automated system described in this Agreement, will be provided throughout the City on or before December 31, 2011. For purposes of this Section 4.1.2, and the representation in Section 2.5(i) “provided throughout the City” means all residential premises in the City are being provided by Collector with the automated Collection Services required by this Agreement by Collector.

4.1.3 Collector shall provide to all residential premises a “no harm” transition period, during which up to four (4) errors by Subscribers in setting out or placing contents in containers shall not result in any penalty. This “no harm” transition period shall commence, as to each residential premises, on the first collection day where one or more of the new residential cart containers is used, and continue for 180 days from the date of the first collection day where all the new residential cart containers are used.

4.2 TRANSITION PLAN

Collector shall submit to the City Manager, within twenty (20) business days after the Effective Date, the written transition plan for the transition to automated residential collection and implementation of the various programs required by this Agreement. The City Manager shall, with ten (10) business days of Program receipt, concur with or require changes in the Program.

4.3 PUBLIC EDUCATION AND INFORMATION PLAN

4.3.1 Collector shall submit to the City Manager, within twenty (20) business days after the Effective Date, the written Public Education and Information Program for the intensive outreach during the Rollout Period required by Section 3.14.1. The City Manager shall, within ten (10) business days of Program receipt, concur with or require changes in the Program.

4.3.2 Collector shall submit to the City Manager, within twenty (20) business days after the Effective Date, the written Public Education and Information Program required by Section 3.14.2 for the Term. The City Manager shall, within ten (10) business days of Program receipt, concur with or require changes in the Program.

4.4 COMMERCIAL/INDUSTRIAL RECYCLING PLAN

Collector shall submit to the City Manager, within twenty (20) business days after the Effective Date, a written plan for City Manager's review and approval, describing activities, programs, outreach, other actions, and time frames Collector will use to promote and expand the use of recycling services to all commercial/industrial premises. The City Manager shall, within ten (10) business days of receipt, concur with or require changes to the plan.

4.5 CONTINGENCY PLAN

Collector shall submit to the City Manager, within twenty (20) business days after the Effective Date, a written "Contingency Plan" demonstrating the Collector's specific arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, and in case of natural disaster, strikes or other emergency, including events described in Section 10.7. The City Manager shall, within ten (10) business days of plan receipt, concur with or require changes in the plan.

ARTICLE 5

INDEMNIFICATION; INSURANCE; BONDS

5.1 INDEMNIFICATION

5.1.1 Collector shall protect, defend (with counsel mutually selected by Collector and City), indemnify and hold harmless City, its officers, agents, employees and volunteers from any and all claims and losses whatsoever occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, any and all claims, lawsuits or actions arising from the awarding or execution of this Agreement, and for any and all claims and losses occurring or resulting to any person, firm, corporation or property for damage, injury or death arising out of or connected with Collector's or any of its officers, agents, employees or subcontractors' performance of its obligations pursuant to this Agreement or arising from or attributable to any alleged breach of warranty of merchantability or fitness of purpose or other laws relating to product liability for Recyclables collected and processed pursuant to this Agreement. Collector's obligation to indemnify, defend and hold harmless City as stated herein above shall include, but not be limited to, paying all actual legal fees and costs incurred by legal counsel of City's choice in representing City in connection with any such claims, losses, lawsuits or actions. The obligations of Collector pursuant to this Subsection 5.1.1 are not limited by the coverage of any insurance maintained by Collector pursuant to Section 5.2. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE, CONSTRUCTION AND DEMOLITION DEBRIS, WHITE GOODS AND RECYCLABLE MATERIALS AND YARD WASTE COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

5.1.2 Collector shall protect, defend (with counsel selected by City), indemnify and hold harmless City, its officers, agents, employees and volunteers from any and all claims and losses whatsoever occurring or resulting from: (a) the repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Waste at any place where Collector or any of its officers, agents, employees or subcontractors transfers, stores or disposes of Solid waste, Construction and demolition debris, Yard waste, White goods, or Recyclable materials pursuant to this Agreement; or (b) its activities pursuant to this Agreement which result in a release of hazardous substances into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, codified at 42 U.S.C. Section 9607(e), to protect, defend, hold harmless and indemnify City. Collector's obligation to protect, defend, hold harmless and indemnify City as stated herein above shall include, but not be limited to, paying all actual legal fees and costs incurred by legal counsel of City's choice in representing City in connection with any such claims, losses, lawsuits or actions. The obligations of Collector pursuant to this Subsection 5.1.2 are not limited by the coverage of any insurance maintained by Collector pursuant to Section 5.2. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE, CONSTRUCTION AND DEMOLITION DEBRIS, WHITE GOODS, AND**

RECYCLABLE MATERIALS AND YARD WASTE COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.

- 5.1.3 Collector agrees to protect, defend (with counsel reasonably acceptable to City), indemnify and hold harmless City, its officers, agents and employees from compliance of Chapter 403, Florida Statutes, against all fines or penalties imposed by the Florida Department of Environmental Protection in the event Collector's delays in providing information prevent City from submitting reports required by the Chapter 403, Florida Statutes and implementing regulations in a timely manner. Collector further agrees to reimburse City its "pro rata share" of all costs and expenses attributable to any administrative proceedings or litigation relating to compliance with Chapter 403, Florida Statutes and implementing regulations, including reasonable attorneys' fees. For purposes of this Section, Collector's "pro rata share" shall be determined by apportioning such costs and expenses in accordance with the percentage of fault of Collector and City, as determined by the court of administrative body, or if none, as mutually agreed to by the parties. Collector's obligation to indemnify and reimburse City pursuant to this section is limited to the extent that such fines, penalties, costs or expenses result from activities, events, or omissions occurring during which Collection Services are to be provided under this Agreement. The obligations of Collector pursuant to this Subsection 5.1.3 are not limited by the coverage of any insurance maintained by Collector pursuant to Section 5.2. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE, CONSTRUCTION AND DEMOLITION DEBRIS, WHITE GOODS, AND RECYCLABLE MATERIALS AND YARD WASTE COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

5.2 INSURANCE

- 5.2.1 Collector shall procure and maintain for the Term of this Agreement insurance against claims for injuries to persons, including death, or damages to property which may arise from or in connection with the performance of the work hereunder by Collector, its agents, representatives, employees or subcontractors. Collector shall not perform any work during any period when Collector is not covered by insurance as required in this Subsection. In the event Collector does any work while not covered by the insurance required by this subsection, City may immediately terminate this Agreement without providing the seven (7) day written notice required by Section 10.1.

General Liability and Errors & Omissions coverage shall be maintained for a minimum of five (5) years after contract completion. Insurance acceptable to City to allow Collector to meet its indemnification commitments under Section 5.1 and Pollution and/or Environmental Impairment Liability shall remain in effect for a period of ten (10) years after contract completion. The assertion of claims against any insurance required of Collector shall not be considered a waiver by City of any other claim or liabilities it may have against Collector.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- i. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.).

- ii. Automobile Liability, including endorsements required by federal or state authorities.
- iii. Workers' Compensation Insurance as required by the State of Florida and Employer's Liability Insurance.
- iv. Pollution and/or Environmental Impairment Liability and/or Errors & Omissions.

B. Minimum Limits of Insurance. Collector shall maintain limits no less than:

- i. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.
- iii. Workers' Compensation and Employer's Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury or disease.
- iv. Pollution and/or Environmental Impairment Liability and/or Errors & Omissions: \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Collector shall ensure that such coverage shall, if commercially available, without involvement of City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by City will be called upon to contribute to a loss suffered by Collector hereunder and waive subrogation against City and other additional insureds.

C. Deductible and Self-Insured Retentions. Any deductibles, self-insured retentions or self-insurance programs must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, official, employees and volunteers; or Collector shall provide evidence satisfactory to the City Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses. Notwithstanding the foregoing, City may elect not to accept any deductibles or self-insured retentions offered by Collector.

D. Other Insurance Provisions

- i. The policies are to contain, or be endorsed to contain, the following provisions:

- a. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the general liability and automobile liability policies.
 - b. Collector's insurance coverage shall be primary insurance as respects to City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Collector's insurance and shall not contribute with it.
 - c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by the insurer except after thirty (30) days prior written notice has been given to City.
 - d. Collector's insurance shall apply separately to each insured against whom claim is made or suit is brought, except for the limits of the insurer's liability.
- ii. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Collector for City.
 - iii. All Coverages. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the City Manager and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If Pollution and/or Environmental Impairment and/or Errors & Omissions coverages are not available from an "Admitted" insurer, the coverage may be written with City's permission, by a non-admitted insurance company. A non-admitted company should have an A.M. Best's rating of A:X or higher.
- F. Verification of Coverage. Collector shall furnish City with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City Manager before work commences.
- G. Subcontractors. Collector shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- H. Other Provisions. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, agents, employs and volunteers.

5.3 FAITHFUL PERFORMANCE BOND

Within five (5) days of the date of this Agreement, Collector shall file with City a bond, payable to City, securing Collector's faithful performance of each and every one of its obligations under this Agreement. The principal sum of the bond shall be \$500,000. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of Florida, with a financial condition and record of service satisfactory to the City Manager. Alternatively, Collector may deposit in a form acceptable to City an irrevocable letter of credit or open a certificate of deposit in the name of City to be held to secure Collector's faithful performance. The performance bond shall be maintained in force for the duration of this Agreement. Collector shall pay the premium for the bond.

5.4 FIDELITY BOND

Within five (5) days of the date of this Agreement, Collector shall file with City a bond, payable to City, securing Collector's fidelity and protecting City from loss of Franchise Fee revenues resulting from theft, embezzlement, fraud, or dishonesty covering all employees of Collector. The principal sum of the bond shall be \$500,000. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of Florida, with a financial condition and record of service satisfactory to the City Manager. Alternatively, Collector may deposit an irrevocable letter of credit in a form acceptable to City or open a certificate of deposit in the name of City to be held to secure this fidelity. The fidelity bond shall be maintained in force for the duration of this Agreement. Collector shall pay the premium for the bond.

ARTICLE 6

COMPENSATION AND RATES

6.1 MAXIMUM RATES

The Maximum Rates contained in the Schedule of Approved Base Rates, as may be adjusted from time to time in accordance with this Agreement, provide the compensation to Collector for services pursuant to this Agreement. Actual rates are set by the Collector within the maximums allowed and are monitored for compliance by City in accordance with the Schedule of Approved Base Rates, as may be adjusted from time to time in accordance with the Agreement.

6.2 ANNUAL ADJUSTMENT OF RATES

- 6.2.1 Annual Adjustment. Subject to the terms herein, Collector may make one adjustment annually to the Maximum Rates contained in the Schedule of Approved Base Rates effective July 1 of each year of this Agreement, commencing July 1, 2012, where such adjustment would result in no more than a four (4) percent rate increase for any given service level. In the event Collector proposes any annual adjustments what would result in a greater than four (4) percent Maximum Rate increase for any given service level, Collector shall petition City for an adjustment in Maximum Rates. Said petition shall be made only to the extent that Collector can demonstrate to the satisfaction of the City Manager that Collector's actual CPI-influenced costs increased more than four (4) percent during the previous twelve months. At the discretion of the City Manager, petitioned annual adjustments of greater than four (4) percent may be subject to appeal to, approval, partial approval, or rejection by the City Council.
- 6.2.2 First Adjustment of Maximum Rates. Collector may make the first adjustment of Rates set forth in the Schedule of Approved Base Rates effective on July 1, 2012. The adjustment shall be calculated based on 100% of the percent change in the CPI for the March 2011 to March 2012 period.
- 6.2.3 Subsequent Annual Adjustment of Maximum Rates. After the first adjustment of Maximum Rates pursuant to Section 6.2.2, each subsequent annual adjustment of Maximum Rates shall be based on the percent change in the CPI for the immediately preceding March to March period and effective each subsequent July 1. Collector shall submit such annual adjustments to the Schedule of Approved Maximum Rates to the City Manager at least forty-five (45) days in advance of the July 1 annual adjustment of Maximum Rates.
- 6.2.4 Change in the CPI Index. If the CPI is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

6.3 COMMERCIAL RECYCLING RATES

Collector may charge a fee for commercial/industrial premises recycling service up to fifty (50) percent of the Rate for commercial/industrial premises Solid Waste Collection Service of a comparable volume. Collector may not charge a fee for any other recycling services.

6.4 SPECIAL RATE REVIEW

Requests for “Special Rate Review” may be made at Collector’s discretion, provided that Collector shall seek no more than a single annual adjustment to become effective at the time of the CPI adjustment described in Section 6.2.

A. Eligible Items. Collector is entitled to apply to City for consideration of a Special Rate Review, or City may initiate such a review should one or more of the following occur, and for no other reason whatsoever:

1. Any Change in Law that was not reasonably known to Collector before the Effective Date, that Collector substantiates would result in a direct increase in Collector’s cost of providing Collection Services to City.
2. Changes to operations or modifications of services, or new services, are mandated by City.
3. Changes in the Franchise Fee established pursuant to Section 7.2.
4. Flood, hurricane, other Acts of God, war, civil insurrection, riots, or other similar catastrophic events beyond the control of Collector.
5. Collector’s excess Container costs pursuant to Section 3.4.1(e).
6. Unforeseen fuel increases above and beyond the normally anticipated increases which periodically occur.

B. Ineligible Items. Collector will not be compensated over the term for any other costs except those indicated in Section 6.4.A.

C. Review of Costs. Should Collector request a Special Rate Review, City shall have the right to review any or all costs associated with Collector’s services under this Agreement. A Special Rate Review may, at the City Manager’s sole discretion, occur in conjunction with a performance review pursuant to Section 9.11. The provisions of this paragraph “C” shall not apply if the sole item to be considered in the Special Rate Review is “Collector’s Excess Container Costs”, pursuant to paragraph (e) of Section 3.4.1.

D. Submittal of Request. Collector must submit its request for a Special Rate Review and complete cost and operational data in a form and manner specified by City at least forty-five (45) days prior to the proposed effective date of any rate adjustment.

E. Burden of Justification. Collector shall bear the burden of justifying to City by substantial evidence any entitlement to a rate increase under this Section. If the City Manager determines that Collector has not met its burden, Collector may, before seeking legal action pursuant to Section 6.5, request a hearing before the City Council to produce additional evidence. At its sole discretion, the City Council may permit or deny the additional hearing and, if permitted, approve, partially approve, or deny the requested Special Rate Review.

F. Grant of Request. Based on evidence Collector submits, and in his or her sole discretion, the City Manager may grant some, all or none of the requested increase. At the discretion of the City Manager, any denial, approval or partial approval of a Special Rate Review may be made subject to confirmation, modification, or denial by the City Council.

6.5 RESOLUTION OF DISPUTES REGARDING SPECIAL RATE REVIEWS

This Section pertains only to Special Rate Reviews requested by Collector under the provisions of Section 6.4. If City rejects a Special Rate adjustment requested by Collector, grants a rate increase less than what was requested by Collector, or fails to act in a timely manner upon all or any part of Collector's Special Rate adjustment application, then Collector's sole remedy against City is to file a petition for writ of mandate. Collector expressly agrees that it does not and would not have a cause for action for damages against City based upon City's failure to perform the Special Rate Review referenced herein or arising out of the results of such Special Rate Review actually performed.

6.6 RATES FOR MODIFIED OR ADDITIONAL SERVICES

In the event either party requests a modification of a Collection Service or other service provided pursuant to this Agreement, or additional services not currently included within this Agreement, Collector shall furnish City with complete, projected operational and cost data for the modified or additional service and other information it may reasonably need to ascertain the appropriate Rate for the modified or new service. City reserves the right to employ qualified independent consulting services to review data submitted by Collector. For Collector-initiated proposals for service modifications or additional services, Collector shall pay City consultant fees and costs relating to the review. The City Manager shall consider operational and cost data for approval, and if approved, City shall establish a Rate for the additional service. At City sole's discretion, a performance review pursuant to Section 9.11, may occur coincident with review of Rate(s) for a modified or new service. The implementation of any modified or additional service shall be contingent upon City Manager's approval and establishment of a Rate. If a mutually acceptable Rate for a new service requested by City cannot be negotiated between City and Collector within a reasonable time frame, City reserves the right to solicit other bids and obtain other service provider(s) for additional service. Nothing in this Article 6 requires City to request additional services from Collector.

6.7 NOTICE OF RATE INCREASES

Collector shall provide all Subscribers for whom Collector performs billing services with advance written notice or Rate increases, in the form of a bill insert at least thirty (30) days

prior to the effective date of such increases.

6.8 DELINQUENT ACCOUNTS

- 6.8.1 Collector shall make diligent, good faith efforts to collect delinquent payments from Collector-billed Subscribers. Collector shall reconcile payments made by Subscribers to amounts billed to such Subscribers. City is not in any way responsible to assist Collector in collecting delinquent accounts, or in any way responsible to compensate Collector for revenues lost due to delinquent accounts.
- 6.8.2 For commercial/industrial premises Subscribers, Collector shall send a first delinquency notice the day immediately following the due date of the billing cycle for which the Subscriber is delinquent. If delinquent commercial/industrial premises Subscriber has not paid in full by the due date shown on the first delinquency notice, Collector may suspend service to the delinquent commercial/industrial premises account, but only if, one week prior to suspending service to the delinquent commercial/industrial premises account, Collector sends a final delinquency notice to the delinquent commercial/industrial Subscriber clearly indicating that service will be suspended in seven (7) calendar days from the final delinquency notice date. Each of the two delinquency notices may include a late payment fee not to exceed 10% of the delinquent charges. If service is suspended, Collector may pick up its container(s) from the location of the commercial/industrial suspended Subscriber, and provide same day notice to the City Code Enforcement Office by both telephone and e-mail.
- 6.8.3 Collector shall provide a brief summary of the number and duration of suspended accounts by Subscriber class with each Monthly Remittance submitted to City pursuant to Section 7.3.

ARTICLE 7

BILLING, COLLECTION AND REMITTANCE; COLLECTOR FEE

7.1 BILLING

7.1.1 Collector shall bill commercial/industrial premises, and City shall bill residential premises, on a monthly basis for services provided under this Agreement. Collector shall pay City eighty-five cents per residential premises bill produced by City, and remit this City billing charge to the City each month together with the franchise fee and any unpaid liquidated damages in accordance with Section 7.4. Collector may bill for commercial/industrial premises Collection Services in advance of the billing period for which services will be rendered. Collector shall not charge any amount in excess of the approved Maximum Rates for any services required or permitted to be performed by the terms of this Agreement. The approved Rates are those set forth in the Schedule of Approved Base Rates, as such schedule may, during the term, be revised pursuant to the procedures set forth in Article 6.

7.1.2 With regard to billing, Collector:

(a) May levy: Special Charges, including for prescheduled on or within property, White good or Bulky waste collection pursuant to Section 3.6.2, extra Container service pursuant to Section 3.4.1(g), and for-fee wheel-out service pursuant to Section 3.5.2, residential call back charges for missed residential Collection where missed Collection is the result of the Subscriber's setout of the cart after Collection time, at no more than the Maximum Rates provided in the Schedule of Approved Rates. Special Charges shall not be levied without prior notification to the Subscriber.

(b) May not bill for: The free wheel-out service for eligible Subscribers specified in Section 3.5.1; the Collection Services for City Facilities specified in Sections 3.8; the Construction and Demolition Waste Disposal Services described in Section 3.9.3; the public education services specified in Section 3.14; or any other service which is described in this Agreement as being for no extra compensation to Collector.

7.2 FRANCHISE FEE

7.2.1 In consideration of the rights granted Collector in this Agreement, Collector shall pay to City a Franchise Fee of ten percent (10%) of the total amount of gross revenues received by Collector for providing Collection Services pursuant to this Agreement to residential and commercial/industrial premises, including any recycling fees charged commercial/industrial premises in accordance with Section 6.3, and to any construction sites for construction and demolition debris collection.

7.2.2 Nothing herein shall excuse Collector from paying City business license fees and other permits required to be paid pursuant to City, State or Federal Law. Franchise Fees shall be computed and paid each calendar month. Collector shall remit the Franchise Fee as part of the Monthly Remittance specified in Section 7.4.

- 7.2.3 Collector is not allowed to add the cost of the Franchise Fee to Subscribers' bills. Such fee must be paid from the base rates collected for services provided.

7.3 RECYCLING REBATES

Collector shall remit to City each month Recycling Revenues from the collection, processing, and sale of Recyclables net of negotiated Collector costs and expenses established by the formula set forth in this Section 7.3. The net rebate to the City shall be determined as follows:

The gross per Ton blended value of Recyclables is established by multiplying the delivered value of either the end user market value of the material or the Official Board Market (OBM) Southeast High Side index value times the Designated Recycling Facility percentage of each material in the Recyclables material stream.

For the costs of transport of Recyclables from West Melbourne to the Designated Recycling Facility: Collector shall first deduct forty dollars (\$40.00) per Ton from the gross per Ton blended value, then multiply the result by eighty percent (80%).

For the costs of processing and selling the Recyclables: Collector shall deduct thirty-five dollars (\$35.00) per Ton.

An example of the calculation of a monthly net remittance per Ton to the City is as follows:

<u>% of Stream</u>	<u>Material Recovered</u>	<u>Price</u>	<u>Contribution</u>	<u>Price Measure</u>
7.9%	#11 OCC cardboard	\$140.00	\$11.06	OBM SE high side
45.0%	#8 ONP newsprint	\$150.00	\$67.50	OBM SE high side
1.3%	mixed paper	\$125.00	\$ 1.63	OBM SE high side
22.0%	mixed glass	(\$10.00)	(\$2.20)	end user
10.5%	mixed plastic containers	\$390.00	\$40.95	end user
2.2%	steel cans	\$290.00	\$ 6.38	end user
1.1%	aluminum	\$1,589.00	\$17.48	end user
10.0%	Residue	(\$37.10)	(\$3.71)	actual cost
Total Gross Blended Value/Ton			\$139.09	

Gross Blended Value of \$139.09 less \$40.00 equals \$99.09 times 80% equals \$79.27 less \$35.00 equals \$44.27 per Ton rebate to City.

In no event shall Collector bill City if the value of the gross per Ton blended value were to drop below the above-negotiated costs of transport, processing and selling Recyclables.

7.4 COLLECTOR BILLING STATEMENT AND REMITTANCE

Collector shall prepare and provide to City a monthly statement and a Monthly Remittance by the 15th day following each month of Collection Service. The monthly statement, which

shall be in the form determined by the City Manager, shall set forth the basis and calculations used for computing the amount due, in the following format:

Total billings, whether billed by Collector or billed on behalf of Collector by City, including late charges, for the current billing period (including number of accounts in each Rate class, and total number for each type of special charge)

+ Gross revenue collected during the previous service period, whether billed by Collector or by City on behalf of Collector, including revenue from the collection of non-exclusive construction and demolition waste debris

x Ten percent (10%) = Franchise Fee

Collector then calculates Monthly Remittance due to City as follows:

Franchise Fee Payment

+ Unpaid liquidated damages assessed by City against Collector

+ Unpaid billing charges for City billing of residential premises accounts at 85 cents/bill

+ Recycling rebates in accordance with the formula set forth in Section 7.3

= Monthly Remittance to City

7.5 DISPUTE REGARDING REMITTANCES

7.5.1 No acceptance of any payment by City shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Collector for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates a Franchise Fee underpayment, Collector shall pay to City the amount of the underpayment within ten days of receipt of written notice from City that such is the case. In addition, Collector shall pay interest on any underpayment at the highest rate allowed by law. Such interest shall commence accruing on the date the underpayment would have originally been due. If, after audit, such recomputation indicates a Franchise Fee underpayment of more than two and one half percent (2.5%), Collector shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recomputation, within ten days of receipt of written notice from City that such is the case. If, after audit, such recomputation indicates a Franchise Fee overpayment, City shall notify Collector in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recomputation. Collection may offset the payment or payments (as appropriate) next due following receipt of such notice by the amount specified therein. In case of dispute between City and Collector regarding any amounts due, Collector shall pay the amount claimed by City as due and notify City in writing at the time of payment as to any portion that is paid

under protest, specifying the basis of its claim of overpayment. The parties will then work together in good faith to attempt to settle disputes to their mutual satisfaction.

- 7.5.2 If either party disputes any amount remitted pursuant to this Article, the disputing party shall provide the other party with a written objection within 15 days of receipt of the remittance, indicating the reasons for the disputing party's objection to or disagreement with such amount. If the parties are not able to resolve such dispute within 30 days after the disputing party's objection, either party may pursue legal action pursuant to Section 10.5. Nothing contained in this Section shall limit City or any authorized officer of City or any other governmental agency from raising a further objection to any amount billed by Collector as a result of an audit conducted pursuant to Section 8.4.

ARTICLE 8

FINANCIAL RECORD KEEPING AND REPORTING REQUIREMENTS

8.1 ACCOUNTING AND RECORDS

Collector shall maintain in its offices full, complete and separate financial, statistical and accounting records, pertaining to cash, billing disposal, and processing transactions for City, prepared on a cash basis, and otherwise in accordance with generally accepted accounting principles. Such records shall be subject to audit and inspection by the City or its agent. Gross revenues derived from the provision of Collection Services, whether such services are performed by Collector or by a subcontractor or subcontractors shall be recorded as revenues in the accounts of Collector. Collector shall maintain and preserve all cash, billing, disposal and processing records for a period of not less than three (3) years following the close of each of Collector's fiscal years.

8.2 RIGHT TO INSPECT RECORDS

City and its authorized officers, agents or employees, shall at any reasonable time have the right to review and inspect Collector's records and enter Collector's premises for the purpose of such review. City shall have the right to inspect or review compliance with service classifications, income tax returns, payroll tax reports, route maps, Subscriber lists, specific documents or records required pursuant to this Agreement, or any other similar records or reports of Collector that the City Manager shall deem, in his or her sole discretion, necessary to evaluate financial data or reports.

8.3 ANNUAL REPORTS

Collector shall submit reviewed annual financial statements, prepared on an accrual basis by an independent accountant acceptable to City, consisting of a balance sheet, income and expense statement, statement of cash flow, and related consolidated statement of operations, and reports of operation prescribed by City for Collection Services. All such statements and reports shall be submitted no later than six (6) months following the end of Collector's fiscal year. Statements shall clearly show financial information for Collection Services provided under this Agreement separate from any and all other Collector operations. Statements shall provide information in a manner that is necessary and sufficient for reconciling any financial determinations related to this Agreement, including but not limited to Subscriber revenues, Gross Rate Revenues, Franchise Fee, liquidated damages and Monthly Remittance amounts. Upon request, City shall have the right to review and approve Collector's proposed annual report format.

8.4 ANNUAL AUDIT OF BILLINGS

If warranted by City's review of the reviewed financial reports prepared by Collector, City may, in its sole discretion, retain an independent certified public accountant to conduct an independent audit of billings of Subscriber accounts. The independent audit shall be conducted to determine and verify that each Subscriber is receiving the level of service for

which they are billed by examining a statistically significant sample of Subscribers. Collector shall cooperate fully with City and its agents in the performance of the independent audit, including providing full and timely access to all required records, data and other information. Collector shall bear the reasonable cost of such an independent audit.

ARTICLE 9

OTHER RECORD KEEPING AND REPORTING REQUIREMENTS

9.1 RECORD KEEPING

- 9.1.1 Collector shall maintain in its office records of the quantities of (i) Solid waste collected and disposed under the terms of this Agreement, (ii) Recyclables, by type, collected, purchased, processed, sold, donated or given for no compensation, and Residue disposed, and (iii) Yard waste collected, received, purchased, processed, sold, donated or given for no compensation, and Residue disposed. The records shall be subject to the inspection provisions provided in Section 9.9.
- 9.1.2 Collector shall maintain an auditable journal recording each instance that Solid waste, Yard Waste or Recyclables are not collected in compliance with the terms of this Agreement or applicable ordinance or regulation. The journal shall include the reason for non-collection, including but not limited to instances of Hazardous Waste found in the Solid waste, Yard Waste or Recyclables.
- 9.1.3 Collector's refusal or failure to file (after written notice requesting Collector to do so) any of the reports required, or to provide required information to City, or the inclusion of any false or misleading statement or representation by Collector in such report, shall be deemed a material breach of this Agreement, and shall subject Collector to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.
- 9.1.4 All reports and records required under this or any other Article shall be furnished at the sole expense of Collector.

9.2 ROUTE AUDITS

In order to verify reports of the amounts of Solid waste, Yard waste and Recyclables collected and disposed of by Collector from each designated route, City shall be entitled to conduct an audit of any designated route upon demand. City will make the audit demand by telephone 48 hours prior to the regularly scheduled collection day of the designated route. Telephone notice shall be followed by written notice and facsimile transmission (Fax) to Collector. The audit demand shall entitle City to conduct a physical route audit of any or all designated routes for the purposes of verifying Subscribers served, Subscriber amounts collected, any and other information as may be deemed necessary and beneficial to City so long as the audit activity does not interfere with Collector's personnel who are servicing the route being audited. The standard route audit will include, but is not limited to: (1) certification that the collection vehicle is empty when beginning the route; (2) verification of the addresses which are served by the designated Collection vehicle; (3) verification of the Designated Disposal Site or other facility to which the Solid waste, Yard waste or Recyclables are taken; and (4) the quantity of Solid waste, Yard waste and Recyclables in Tons collected from the designated route.

9.3 MONTHLY DOCUMENTS

Collector shall compile and keep the following documents by month, and shall deliver the documents to the City Manager, if required, within ten (10) days of any request by the City Manager:

- (a) copies of Designated Disposal Site weight tickets/invoices which indicate the net amount of all Solid waste disposed during the reporting month, any fees paid, and where the waste was disposed of, by route;
- (b) copies of Designated Recycling Facility weight tickets/invoices which indicate the net amount of all Recyclables delivered during the reporting month, any fees paid, and where the Recyclables were delivered, by route; and
- (c) copies of Designated Yard Waste Facility weight tickets/invoices which indicate the net amount of all Yard Waste delivered during the reporting month, any fees paid, and where the Yard Waste was delivered, by route.

9.4 QUARTERLY REPORTING

9.4.1 Collector shall compile and keep the following information for each month during the quarter and shall deliver a written report thereon, signed by an officer of Collector, to the City Manager on a quarterly basis. Quarterly reports shall be submitted no later than the 28th of the month immediately following the end of the quarter, with the first quarterly report due on or before November 28, 2011. Quarterly reports shall be submitted in hard copy and shall also be provided electronically in a format and using software acceptable to City.

- (a) Solid Waste Data. The average number of daily set-outs, Tons collected and delivered to the Designated Disposal Site, number of service accounts and number of containers distributed by size and Subscriber for each separate Subscriber class and for each free facility service.
- (b) Recycling Data. The daily average of gross Tons collected by material type and by route for residential premises, commercial/industrial premises, and for facilities receiving free service; the average number of daily set-outs by route; the total set-outs and Tonnages, by material type and by route for the quarter; the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts; quarterly totals of Recyclables delivered to the Designated Processing Facility; and number of Recyclables containers distributed by size and Subscriber type.
- (c) Yard Waste Data. The average daily gross Tons collected by route; the average daily number of set-outs by route; and the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts.
- (d) Complaint Log. A copy of the Complaint Log maintained pursuant to Section 3.16 of this Agreement, including a summary of the type and number of complaints.

(e) Problems and Actions Taken. Narrative summary of problems encountered with collection, disposal, and processing activities and actions taken; report shall indicate the type and number of notification tags left at Subscriber accounts, instances of property damage or injury, poaching or scavenging, significant changes in operation, market factors, publicity conducted, or needs for publicity; description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

(f) Disposal Summaries. Summaries of the net amount of all Solid waste disposed during the reporting period, any fees paid, and where the waste was disposed of, by residential and commercial service sectors. City may review all supporting documentation (which Collector shall retain) for Collector's summaries on Collector's business premises after giving 48 hours written notice of such a request.

9.5 ANNUAL REPORTING

Annual reports shall be submitted no later than March 1st for the previous calendar year. Annual reports shall be submitted in hard copy and shall also be provided electronically in a format and using software acceptable to City. The annual report shall summarize the numerical information contained in the quarterly reports. In addition, the annual reports shall include:

(a) A summary of the prior year's monthly Franchise Fee payments.

(b) Account data including the number of accounts, account names and addresses of Collection locations per each service category.

(c) An updated complete inventory of Collection and major processing equipment including stationary, rolling stock and collection containers by type and size.

(d) Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, and community information and events, tours and other activities related to the provision of Collection Services. The report shall discuss the impact of these activities on Recycling and Yard waste participation and amounts collected.

(e) An analysis of residential and commercial Recycling collection processing and marketing issues or conditions (such as participation, set-outs, contamination, etc.) and possible solutions.

(f) As necessary, recommendations for program modifications or new programs including cost estimates to meet Recycling goals for Recyclable materials specified in Section 403.706, Florida Statutes.

(g) A list of Collector's officers and members of its board of directors.

9.6 ADVERSE INFORMATION

- 9.6.1 Collector shall provide City two (2) copies of all reports or other material adversely affecting this Agreement, submitted by Collector to the United States Environmental Protection Agency (EPA), the Florida Department of Environmental Protection, or any other federal, State or local agency. Copies shall be submitted to City simultaneously with Collector's filing of such matter with those agencies. Collector's routine correspondence to those agencies need not be automatically submitted to City, but shall be made available to City upon written request.
- 9.6.2 Collector shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Collector to, as well as copies of all decisions, correspondence and actions by, any federal, State and local courts, regulatory agencies and other government bodies relating specifically to Collector's performance of services pursuant to this Agreement.

9.7 ADDITIONAL REPORTING

Collector shall furnish City with any additional reports as may reasonably be required that sets forth all information required by City. These reports shall be prepared and submitted in the form specified by City. Collector shall bear the cost of such additional reporting.

9.8 OTHER RELATED REQUIREMENTS

- 9.8.1 Waste Characterization Studies. Collector shall cooperate with and assist City in the performance, if and as needed, of periodic waste characterization studies.
- 9.8.2 Collection Monitoring. Collector shall monitor its Collection of Recyclables and Yard waste to identify occurrences of, and to prevent, contamination of Recyclables and Yard waste. Collector shall allow a person designated by the City Manager to ride with Collector's Collection vehicles on any route or routes. The City Manager will inform Collector at least one week in advance prior to date of route monitoring.

9.9 INSPECTION BY CITY

The City Manager shall have the right to observe and review Collector's operations and equipment, and to enter Collector's premises for the purpose of such observations and review at any time without prior notification.

9.10 PERIODIC REVIEW

City will periodically review the performance of Collector based on Subscriber complaints, timely payment of sums due, statistical reporting, program progress, etc. This review will be conveyed to the City Council, and Collector may review the report and submit its own statement.

9.11 PERFORMANCE REVIEW

City, at its sole discretion, may require during the Term, a Performance Review subject to the terms and conditions of this Section 9.11.

- 9.11.1 The Performance Review shall be performed by a qualified firm under contract to City. The qualified firm shall be selected by the City Manager with input from Collector. Notwithstanding, the City shall have the sole discretion in selecting the qualified firm to conduct the performance review.
- 9.11.2 The costs of the Performance Review shall be equally shared by Collector and City. However, if the Performance Review finds a material breach or default in Collector's performance, Collector shall in a timely manner reimburse City the total cost of the Performance Review.
- 9.11.3 The performance review shall address all appropriate areas that may include, but are not limited to, the following areas, and shall provide specific recommendations, as appropriate, for improvement in each area:
 - a. Compliance with the terms of this Agreement and Applicable Law.
 - b. Overall organizational structure and management systems and procedures.
 - c. Efficiency of collection operations, including an analysis of routes, schedules and the impact to Agreement requirements.
 - d. Staffing practices, including the deployment of management and supervisory personnel.
 - e. Financial management practices, including Collector's billing and collection system and its policies with regard to uncollected Subscriber accounts.
 - f. Employee job and safety training, and management of Hazardous Waste.
 - g. Procedures for receiving and resolving Subscriber complaints and concerns.
 - h. Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
 - i. Utilization and management of facilities, equipment and personnel.
 - j. Comparison with practices of businesses deemed similar to Collector.
- 9.11.4 Collector shall cooperate fully with the Performance Review, and provide within thirty (30) days of request, all operational, financial and other information deemed reasonable or convenient by City or the firm for purposes of conducting the Performance Review.

Collector's failure to cooperate or provide all requested information shall be considered an event of Default.

- 9.11.5 In conjunction with any Performance Review, City reserves the right to require changes to Collector's operations, which City determines to be necessary or appropriate by reason of the findings or results of the Performance Review to carry out the intent of the terms and conditions of this Agreement. City may not, pursuant to this Section 9.11.5, require that lower Rates for Collection Services be charged.

ARTICLE 10

BREACH AND TERMINATION

10.1 DEFAULT; NOTICE

- 10.1.1 All terms and specifications of this Agreement are material and binding, and failure to perform any portion of the work described herein shall be considered a breach of this Agreement. Subject to the extensions of time set forth in Section 10.7, and to the notice provisions of Section 10.1.2, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence during the cure period.
- 10.1.2 Neither party may exercise any rights or remedies upon a default by the other party, unless and until such default continues for a period of seven (7) days after written notice thereof from the non-defaulting party. Provided, however, that if the nature of the default is such that more than seven (7) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if it has commenced a cure within the seven (7) day period and thereafter diligently prosecutes such cure to completion within thirty (30) days after receipt of written notice thereof. No additional time to cure shall be allowed for failure to pay any amount due to City under this Agreement, or if the nature of the default is such that the health, welfare, or safety of the public is endangered as determined by the City Manager. The notice of default shall specify the default complained of by the injured party. In the event of any conflict between the cure periods set forth in this Section 10.1.2 and any shorter cure periods set forth in a specific Section of this Agreement, the cure periods set forth in the specific Section shall control.
- 10.1.3 Delay in giving a notice of default shall not constitute a waiver of any default nor shall it change the time of default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, nor deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10.2 NOTICE; RESPONSE; RESOLUTION; APPEAL

- 10.2.1 Notice; Response. If the City Manager determines that Collector's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, Chapter 403, Florida Statutes or any other Applicable Law, including but not limited to, the laws governing transfer, storage or disposal of Solid waste or Hazardous Waste, the City Manager may advise Collector in writing of such suspected deficiencies, specifying the deficiency in reasonable detail (the "Notice of Deficiencies"). The City Manager, in any Notice of Deficiencies, shall set a reasonable time within which Collector is to correct the deficiencies and respond. Unless the circumstances necessitate correction and response within a shorter period of time, Collector shall correct the deficiencies to the satisfaction of the City Manager

and response to the Notice of Deficiencies within seven (7) days from the effective date of the Notice (as determined pursuant to Section 2.2). Collector may request additional time to correct deficiencies; City shall not unreasonably deny any such request. The parties understand and agree that the Notice of Deficiencies described in this Section 10.2.1 constitutes the “notice of default” required of City by Section 10.1.2.

- 10.2.2 Review by City Manager; Notice of Appeal. The City Manager shall review any written response from Collector and decide the matter or refer the matter to the City Council for consideration pursuant to this Section. If the City Manager’s decision is adverse to Collector, the City Manager may order remedial actions to cure any deficiencies, or invoke any other remedy in accordance with this Agreement, and in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate this Agreement. The City Manager shall promptly inform Collector of the City Manager’s decision. In the event the decision is adverse to Collector, the City Manager shall inform Collector, in writing, of the specific facts found and evidence relied on, and legal basis in provisions of this Agreement or other laws for the City Manager’s decision and any remedial action taken or ordered. An adverse decision by the City Manager shall be final and binding on Collector unless Collector files a “Notice of Appeal” to the City Council with the City Clerk (with copies to the City Manager and City Attorney) within seven (7) days of receipt of the notification of the adverse decision by the City Manager.

In any “Notice of Appeal” to the City Council, Collector shall state all of its factual and legal contentions, citing provisions of this Agreement or other laws to support its contentions. Within twenty-one (21) days of the effective date of the Notice of Appeal, Collector shall deliver to the City Clerk three (3) copies of all relevant affidavits, documents, photographs and videotapes that Collector may choose to submit.

- 10.2.3 City Council Hearing. If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Collector, the City Council will set the matter for a hearing and act on the matter. The City Clerk shall give Collector at least thirty (30) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the following information:

- (a) A staff report by the City Manager, summarizing the proceedings to date and outlining the City Council’s options;
- (b) The City Manager’s written Notice of Deficiencies;
- (c) Collector’s response to the Notice of Deficiencies;
- (d) The City Manager’s written notification to Collector of adverse decision; and
- (e) Collector’s Notice of Appeal to the City Council.

No new legal issues may be raised, or new evidence submitted by Collector at this or at any further point in the proceedings, absent a showing of good cause. If new issues or evidence is to be considered, a reasonable continuance shall be allowed so the other party may respond.

The City Manager, Collector's representatives and other interested persons shall be provided a reasonable opportunity to be heard at this or at any continued hearing.

- 10.2.4 City Council Determination. Based on the administrative record (written materials and minutes of oral proceedings), the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld. If, based upon the administrative record, the City Council determines that the performance of Collector is in breach of any Agreement Term or any provision of any applicable federal, State or local statute or regulation, the City Council, in the exercise of its discretion, may order Collector to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement, including but not limited to termination. The decision or order of the City Council shall be final and binding.
- 10.2.5 Continued Performance by Collector. Collector's performance under this Agreement is not excused during the period of time prior to a final determination as to whether or not Collector's performance is in material breach of this Agreement, or the time set by City for Collector to discontinue a portion or all of its services pursuant to this Agreement.

10.3 TERMINATION FOR CAUSE

- 10.3.1 City reserves the right to terminate this Agreement in the event that Collector fails to cure any default within the applicable cure periods. City shall further have the right to terminate this Agreement upon the occurrence of one or more of the following:
- (a) if Collector violates any material provision of any Applicable Law;
 - (b) if Collector fails to maintain the insurance required by Section 5.2, or fails to pay to City any monies due City pursuant to this Agreement, and fails to remedy such default within five (5) days after written notice thereof from City;
 - (c) if, after City has reviewed the results of a particular performance review conducted pursuant to Section 9.11 of this Agreement, including problem areas, frequency of occurrence, recommended improvements and compliance therewith, and has considered any evidence presented by Collector in connection therewith, City determines to its satisfaction that any material default has occurred, then this Agreement may be terminated by City at its option pursuant to this Article 10.
 - (d) there is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Collector, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Collector's ability to perform under this Agreement and which cannot be released, bonded or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;
 - (e) Collector fails to provide reasonable assurances of performance as required under Section 10.8;

(f) Collector fails to notify City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid waste, Recyclables, and Yard waste collection, transportation, or processing or disposal activities;

(g) if Collector violates any orders or filings of any regulatory body having jurisdiction over Collector relative to this Agreement, provided that Collector may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Collector is entered;

(h) if Collector ceases to provide Collection service as required under this Agreement over all or a substantial portion of the area within the City, for a period of seven days or more, for any reason within the control of Collector, including labor disputes;

(i) if Collector fails to make any payment required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in this Agreement.

10.3.2 Notwithstanding Section 10.1, City reserves the right to terminate this Agreement, without the need to provide Collector an opportunity to cure, in the event of any of the following:

(a) if Collector practices, or attempts to practice, any fraud or deceit upon City, or practiced any fraud or deceit or made any misrepresentations in the negotiations which precede the execution of this Agreement;

(b) if Collector fails to submit, or resubmit after initial rejection, any of the implementation plans required by Sections 4.2, 4.3, 4.4, or 4.5, in a form and content acceptable to the City Manager, on or before twenty days subsequent to the Effective Date.

(c) if Collector has received three (3) or more written notices of default issued pursuant to Section 10.1 or paragraph (b) of Section 10.3.1 above in any twelve (12) month period, irrespective of whether or not the act or omission set forth in the notice was corrected or remedied within the time set forth in the notice, but excluding written notices of default where, after investigation, the City Manager or City Council has determined that no default occurred.

10.4 LIQUIDATED DAMAGES

10.4.1 All time limits and acts required to be done by this Agreement are essential elements of this Agreement. Should Collector fail to perform or complete the work required to be done at the time set forth in this Agreement, it is mutually understood and agreed that the public will necessarily suffer damages and that such damages, from the nature of the default in performance will be extremely difficult and impractical to fix. City finds, and Collector agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by City as a result of a material breach by Collector of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the

fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

- 10.4.2 In the event that Collector fails to perform Collection Services hereunder such that there is a complete or near complete cessation in Collection Services, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Five Thousand Dollars per day for each calendar day that service is not provided by Collector in accordance with this Agreement. The liquidated damages schedule set forth in Section 10.4.3 shall not apply in the event of such a complete or near complete cessation of services.
- 10.4.3 The City Manager or City Council (as indicated below) may impose the following liquidated damages upon Collector, in addition to any other available remedies City may have. Any damages collection shall be paid to the City and not to a private party subscriber. Only the City Council, however, may impose liquidated damages for Items (d), (e), (g), (k), and (l).

<u>Occurrence</u>	<u>Payment per Occurrence</u>
a. For each failure to commence service to a Subscriber account within seven (7) days after order:	\$25.00
b. For each failure to collect Solid waste which has been properly delivered for collection, from an established Subscriber account on the scheduled collection day:	\$25.00
c. For each occurrence of excessive noise (as determined by collection performed outside the authorized hours of operation):	\$25.00
d. For each occurrence of discourteous behavior:	\$25.00
e. For each failure to immediately clean up material spilled by collector from Solid waste or Recycling cart containers:	\$50.00
f. For each occurrence of collecting Solid waste, Recyclables or Yard Waste during unauthorized hours:	\$50.00

- g. For each failure to respond to a Subscriber complaint within the relevant time period: \$25.00
- h. For each failure to have Collection workers dressed in suitable and acceptable uniform clothing and badge or other method of identification (per employee per day): \$25.00
- i. For each failure to remedy a complaint which is found to be justified by the City Manager within two (2) business days after notification by the City Manager (each day): \$100.00
- j. For each failure to maintain any Collection vehicle in accordance with the specifications in this Agreement after twenty-four (24) hours notification by the City Manager (per vehicle per day used in performance of this Agreement): \$100.00
- k. For each failure to notify the City Manager of material operational changes (each day): \$100.00
- l. Any report shall be considered late until such time the City receives a materially correct and complete report. For each business day a report is late: \$50.00
- m. For each business day an annual financial statement pursuant to Section 8.3 is late : \$100.00

10.4.4 City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative, by Collector's reports, or by investigation of Subscriber or resident complaints. The actual cost of investigation by the City Manager of any failure or violation may be assessed in addition to the above scheduled of liquidated damages, computed at the then current rate per hour of staff time plus any direct costs. If City equipment is used to pick up misses or respond to complaints, all direct costs plus staff time (including overhead) shall be charged to Collector.

10.4.5 City finds, and Collector acknowledges and agrees, that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. These liquidated damages sum shall be applicable to each calendar day of delay during which Collector has been found by the City Council or City Manager (as the case may be) to be in breach of this Agreement. If the City Council or City Manager, as the case may be, assesses such liquidated damages, the City Manager shall so notify Collector in writing and send a copy of the notice to the City Finance Director. Collector shall have the right to appeal the City Manager's determination pursuant to the procedures set forth in Section 10.2 for appeal of a decision of the City Manager regarding a notice of default. Any such appeal must be made within ten (10) days after the City Manager has notified Collector of his/her determination to levy liquidated damages.

- 10.4.6 Separate from or in addition to assessing liquidated damages pursuant to Sections 10.4.2 or 10.4.3, City may also at its sole discretion promptly secure, or direct Collector to promptly secure, at Collector's sole expense, substitute services, satisfactory to City, for when Collector is in breach, upon the same terms and conditions as provided in this Agreement.

10.5 INSTITUTION OF LEGAL ACTIONS

In additional to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement, including but not limited to injunctive relief, except that there shall be no right to terminate this Agreement except as set forth in Article 10 of this Agreement. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach thereof. Should City institute any action for damages, however, any such claim for damages shall be offset by the amount of liquidated damages assessed pursuant to Sections 10.4.2 and 10.4.3, and paid to City by Collector, to the extent such liquidated damages apply to the matter for which the action was filed.

10.6 CUMULATIVE RIGHTS

City's rights to terminate this Agreement or to impose liquidated damages are in addition to any other rights of City upon a failure of Collector to perform its obligations under this Agreement.

10.7 ENFORCED DELAY; EXTENSION OF TIME OF PERFORMANCE

- 10.7.1 In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default in the event they are prevented from so performing by reason of floods, hurricanes, tsunamis, other "Acts of God", war, civil insurrection, riots, and other similar catastrophic events that are beyond the control of and not the fault of the party claiming excuse from performance hereunder, which such party could not have avoided by exercising due diligence and care and regarding which such party shall use all reasonable efforts that are practically available to it in order to correct such condition.
- 10.7.2 None of the following are to be considered an excuse from performance, and Collector shall be obligated to continue to provide service notwithstanding the occurrence of any or all such events: (a) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost of fuel, commodities, supplies or equipment; (b) changes in the financial condition of Collector or any of its subcontractors affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by Collector, or any subcontractor; (d) failure of any subcontractor or supplier to furnish labor, materials, service or equipment; (e) equipment failure; (f) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclables; (g) the availability of any disposal site or processing facility; (h) labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by Collector's employees or directed at Collector, or a subcontractor. In the case of labor unrest or job

action directed at a third party over whom Collector has no control, however, the inability of Collector to make collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Collector's employees while making collections or to make reasonable accommodations regarding container placement and point of delivery, time of collection, or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make collections, shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Collector's cooperation in making collection at different times and in different locations. In the event of labor unrest, including but not limited to, strike, work stoppage or slowdown, sickout, picketing or other concerted job action, Collector shall not be required to adhere strictly to the specific requirements of this agreement regarding routes, collection times or similar matters; provided, however, that: (i) in no event shall more than seven (7) days elapse between pickup for residential customers, (ii) pickup days for commercial accounts shall not exceed one day late, and (iii) all Subscribers shall receive at least 24 hours' notice of deviations from collection routes or times.

10.7.3 Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of time reasonable in light of the enforced delay. The extension of time shall commence to run from the time of the commencement of the cause, so long as the party claiming the extension has notified the other party in writing of the nature of the matter constituting the enforced delay within two (2) days after such party has notice of such cause, giving the other party notice of the facts constituting such cause and asserting its claim to excuse under Section 10.7.

10.7.4 The partial or complete interruption or discontinuance of Collector's services caused by one or more of the events described in this Section 10.7 and constituting an excuse from performance shall not constitute default by Collector under this Agreement. Notwithstanding the foregoing, however, (i) the existence of an excuse from performance shall not affect City's rights under Section 10.6 and (ii) if Collector is excused from performing its obligations hereunder for any of the causes listed in this Section 10.7 for a period of thirty (30) days or more, other than as the result of third party labor disputes where services cannot be provided for reasons described earlier in this Section 10.7, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving fifteen (15) days notice, in which case the provisions of Section 10.9 shall apply.

10.7.5 Notwithstanding any other provision of this Agreement, the City Manager, in his or her sole discretion, may authorize the extension of any of the time periods set forth in this Agreement for a period not to exceed sixty (60) days. No such extension shall be valid unless in writing and signed by the City Manager.

10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

If Collector is (i) the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal investigation, charge, or judgment or order entered by a federal, state, regional or local agency for violation of a law relating to performance under this Agreement, and City

Council believes in good faith that Collector's ability to perform under this Agreement has thereby been placed in substantial jeopardy, City may, at its option and in addition to all other remedies it may have, demand from Collector reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City Council believes in good faith is reasonably necessary in the circumstances to evidence Collector's continued ability to perform under this Agreement. If Collector fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be a basis for termination for cause pursuant to Section 10.3.

10.9 CITY'S RIGHT TO PERFORM UPON DEFAULT

- 10.9.1 City's Right to Perform. In addition to any and all other legal or equitable remedies, in the event that Collector, for any reason whatsoever, fails, refuses or is unable to perform any Collection Service at the time and in the manner provided in this Agreement, and if, as a result thereof, should Solid waste accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the environment, public health, safety or welfare, then City shall have the right, but not the obligation, without payment to Collector upon twenty-four (24) hours prior notice to Collector during the period of such emergency as determined by City Manager or his/her designee, to do either one or both of the following: (i) cause to be performed such services with other personnel without liability to Collector; (ii) to take temporary possession of that part of Collector's land, equipment and other property essential for providing one or more of the Collection Services and to provide one or more of the Collection Services until other alternatives can be found. Should City take possession of Collector's equipment and other property pursuant to this Section 10.9, City shall exercise reasonable, ordinary care in the use of the equipment and property.
- 10.9.2 Notice. Notice of Collector's failure, refusal or neglect to perform one or more Collection Services may be given orally by telephone to Collector at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Collector within twenty-four (24) hours of the oral notification.
- 10.9.3 Collector's Cooperation. Collector further agrees that in such event:
- (a) It shall fully cooperate with City to affect the transfer of possession of property to City for City's use.
 - (b) It shall, if City so requests and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain the property in operational condition.
- 10.9.4 Not a Taking by City. City's exercise of its contractual rights under this Section 10.9: (i) does not constitute a taking of private property for which compensation must be paid; (ii) shall not create any liability on the part of City to Collector; and (iii) does not exempt Collector from the indemnity provisions of Section 5.1, which are meant to extend to

circumstances arising under this Article 10, provided that Collector is not required to indemnify City against claims and damages that are solely caused by the established active negligence or willful misconduct of City officers, employees, agents, or volunteers acting under this Section 10.9. City shall not effect a permanent taking of Collector's property pursuant to this Section 10.9.

- 10.9.5 Possession of Collector's Property. City's right to retain temporary possession of Collector's property, and to provide one or more Collection Services, shall continue until Collector can demonstrate to City's satisfaction that it is ready, willing and able to resume such services. City has no obligation to maintain possession of Collector's property or continue its use in performing one or more Collection Services for any period of time and may, at any time, in its sole discretion, relinquish possession to Collector.

ARTICLE 11

ASSIGNMENT

11.1 ASSIGNMENT OF AGREEMENT

Collector shall not assign, sell, subcontract or otherwise delegate authority to perform any portion of this Agreement, including but not limited to a sale, exchange or other transfer of substantially all of Collector's assets dedicated to service under this Agreement to a third party, or between a subsidiary and a parent company or Related Party, without the prior express written approval of City. In the event of any assignment duly authorized by City, the assignee shall assume the liability of Collector.

11.2 TRANSFER OF STOCK OR INTEREST

No sale, gift, or transfer of stock or other interest of Collector, including but not limited to any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Collector or any of its shareholders is a party, which would result in a change of Control of Collector, shall be made without prior written approval of the City Council. Violation of this provision shall be a breach of this Agreement and grounds for termination by City without the need for compliance with the notification requirements of Section 10.1. This Section 11.2 shall not apply to the transfer of stock by bequest or intestate succession.

11.3 BANKRUPTCY

If Collector shall at any time during the Term become insolvent, or if proceedings in bankruptcy shall be instituted by or against Collector, or if Collector shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Collector shall be appointed in any suit or proceeding brought by or against Collector, or if Collector shall make an assignment for the benefit of creditors, then and in each and every such case, this Agreement shall immediately cease, terminate, and be canceled upon written notice by City and without the necessity of suit or other proceeding.

11.4 REQUIREMENTS OF COLLECTOR

11.4.1 If Collector requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. City need not consider any request by Collector for consent to an assignment unless and until Collector has met the following requirements:

- (a) Collector shall pay to City the transfer fee described in Section 11.5.
- (b) Collector shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.

(c) Collector shall furnish City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Collection Services, including: (i) that the proposed assignee has at least 10 years of experience in the provision and management of Solid waste and Recyclables Collection Services on a scale equal to or exceeding the scale of operations conducted by Collector under this Agreement; (ii) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any State, federal or local agencies and the assignee has provided City with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid waste and Recyclables Collection Services in accordance with sound Solid waste and Recyclables practices, and in full compliance with all federal, State and local laws regulating the collection and disposal of Solid waste including hazardous substances; and (v) any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

11.5 APPLICATION AND TRANSFER FEE

Any application for an assignment transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in the amount of Ten Thousand Dollars (\$10,000) to cover the cost of all direct and indirect administrative expenses, including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, Collector shall reimburse City for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. Collector shall pay such bills within thirty (30) days of receipt. The transfer fees are over and above any Collector Fees specified in this Agreement.

11.6 TRANSITION

If City consents to an assignment, Collector shall cooperate with City and subsequent collector(s) or subcontractor(s) to assist in an orderly transition, including but not limited to Collector providing route lists and billing information.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 INDEPENDENT CONTRACTOR

Collector is, and shall at all times remain as to City, a wholly independent contractor. Collector shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Collector or any of Collector's employees, except as set forth in this Agreement. Collector shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of City. Collector shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Collector nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees.

12.2 FEES AND GRATUITIES

Collector, its officers, agents or employees are prohibited from requesting, soliciting, demanding, or accepting, either directly or indirectly, any compensation or gratuity other than as set forth in this Agreement for the collection of Solid waste, Construction and demolition debris, White goods, Recyclable materials and Yard waste otherwise required to be collected under this Agreement. Nor shall Collector, its officers, agents or employees provide, directly or indirectly, any gifts or gratuities to any City officer or employee. Notwithstanding the foregoing, employees of Collector may accept de minimis gifts freely offered by Subscribers.

12.3 GOVERNING LAW

This law of the State of Florida shall govern this Agreement. In the event of litigation between the parties, venue in State trial courts shall lie exclusively in Brevard County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Middle District of Florida.

12.4 ATTORNEYS' FEES

Should legal action be brought by either party to enforce any provision of this Agreement, the prevailing party in such action shall be entitled to its actual attorneys' fees, court costs, and other litigation expenses including, without limitation, expenses incurred for the preparation and discovery, expert witness fees, and expenses relating to appeals, if any. The entitlement to recover such fees, costs and expenses shall accrue upon the commencement of the action regardless of whether the action is prosecuted to a final judgment.

12.5 SUBCONTRACTING

Collector shall not engage any subcontractors for collection of Solid waste, Construction and demolition debris, White goods, Recyclable materials or Yard waste without the prior written consent of City.

12.6 AGREEMENT AS COLLATERAL

Collector shall only use this Agreement as collateral to secure any loan if proceeds of the loan are used exclusively for the provision of services under this Agreement and only upon prior written consent of the City Manager. Collector shall not create an encumbrance or lien against this Agreement without the prior written consent of the City Manager.

12.7 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

12.8 TRANSITION TO THE NEXT COLLECTOR

One (1) year prior to the conclusion of the term, and in order to assist with the competitive bid process, Collector shall provide City with such information as may reasonably be requested, including, but not limited to, route maps, account names and phone numbers, and level of service provided. Failure to provide full cooperation may at City's sole discretion preclude Collector from participating in any competitive bid process.

12.9 PARTIES IN INTEREST

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

12.10 WAIVER

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

12.11 CONDEMNATION

In addition to its rights under Section 10.9, City fully reserves the rights to acquire Collector's property utilized in the performance of this Agreement, by purchase or through the exercise of its power of eminent domain.

12.12 ENTIRE AGREEMENT

This Agreement consisting of fifty-eight (58) pages and three (3) Exhibits represents the full and entire Agreement between the parties regarding the matters covered herein.

12.13 CAPTIONS

The captions in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.14 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

12.15 REFERENCE TO DAYS

All references to days herein are to calendar days, including Saturdays, Sundays and Holidays, except as otherwise specifically provided.

12.16 INTERPRETATION

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting. Each of the parties has received the advice of legal counsel prior to signing this Agreement. Each party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

12.7 AMENDMENT

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

12.18 SEVERABILITY

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein. Notwithstanding the foregoing, however, the provisions of this Agreement reserving to City the right and power to require the use of the Designated Disposal Site shall not be deemed to be severable from the other provisions hereof. In the event such provisions are held in any legal proceeding which is binding upon City to be null, void, in excess of City powers or otherwise invalid or unenforceable, and Collector as a result thereof, utilizes a disposal site other than the

Designated Disposal Site, this entire Agreement may at City's sole discretion terminate without any liability of City to Collector.

12.19 COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be considered an original.

12.20 EXHIBITS

Each of the Exhibits identified is attached hereto and incorporated herein and made a part hereof by this reference.

Executed as the day first above stated:

For City of West Melbourne:

For Collector:

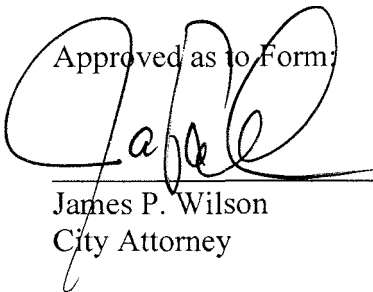


Scott Morgan
City Manager



R. David McConnell
Area Vice President

Approved as to Form:



James P. Wilson
City Attorney

EXHIBIT A

LIST OF RESIDENTIAL CURBSIDE RECYCLABLES

Newspaper

Flattened cardboard and brown bags

Aluminum, steel, and bi-metal containers

Glass bottles and jars

Junk mail

Phone books

Envelopes

Magazines

White and colored office paper

Computer paper

Paperboard, milk and juice containers

All #1 through #7 plastic

UPDATED EXHIBIT B

SCHEDULE OF APPROVED BASE RATES

Monthly Rates October 1, 2020 to September 30, 2021

Residential Premises Rates

Residential Cart Service	\$12.04
Additional Solid Waste Cart	30% single cart rate (\$3.61)
Additional Recyclables Cart	no charge

Residential premises cart service includes twice weekly solid waste curbside collection in either 36, 64 or 96-gallon cart (Subscriber's choice) plus once weekly White good, Bulky waste and e-waste curbside collection; weekly curbside recyclables collection in either a 36 or 64-gallon cart (Subscriber's choice) and weekly Yard waste collection.

Commercial Premises Rates

36 Gallon Cart, once a week pickup.....	\$ 9.61
36 Gallon Cart, twice a week pickup.....	\$ 11.31
64 Gallon Cart, once a week pickup.....	\$ 18.09
64 Gallon Cart, twice a week pickup.....	\$ 21.47
96 Gallon Cart, once a week pickup.....	\$ 24.87
96 Gallon Cart, twice a week pickup.....	\$ 28.27
2 Cubic Yard Bin, once a week pickup.....	\$ 39.06
2 Cubic Yard Bin, twice a week pickup.....	\$ 78.11
2 Cubic Yard Bin, three times a week pickup.....	\$117.17
2 Cubic Yard Bin, four times a week pickup.....	\$156.23
2 Cubic Yard Bin, five times a week pickup.....	\$195.28
2 Cubic Yard Bin, six times a week pickup.....	\$234.34
4 Cubic Yard Bin, once a week pickup.....	\$ 78.11
4 Cubic Yard Bin, twice a week pickup.....	\$156.23
4 Cubic Yard Bin, three times a week pickup.....	\$234.34
4 Cubic Yard Bin, four times a week pickup.....	\$312.45
4 Cubic Yard Bin, five times a week pickup.....	\$390.57
4 Cubic Yard Bin, six times a week pickup.....	\$468.68
6 Cubic Yard Bin, once a week pickup.....	\$117.17
6 Cubic Yard Bin, twice a week pickup.....	\$234.34
6 Cubic Yard Bin, three times a week pickup.....	\$351.51
6 Cubic Yard Bin, four times a week pickup.....	\$468.68
6 Cubic Yard Bin, five times a week pickup.....	\$585.85
6 Cubic Yard Bin, six times a week pickup.....	\$703.02.

8 Cubic Yard Bin, once a week pickup.....	\$156.23
8 Cubic Yard Bin, twice a week pickup.....	\$312.45
8 Cubic Yard Bin, three times a week pickup.....	\$468.68
8 Cubic Yard Bin, four times a week pickup.....	\$624.91
8 Cubic Yard Bin, five times a week pickup.....	\$781.13
8 Cubic Yard Bin, six times a week pickup.....	\$937.36

Compactor and Debris Rates

Note: Compactor rates do not include leasing or maintenance

3 Cubic Yard Compactor, once a week pickup	\$117.17
3 Cubic Yard Compactor, twice a week pickup	\$234.34
3 Cubic Yard Compactor, three times a week pickup	\$351.51
3 Cubic Yard Compactor, four times a week pickup	\$468.68
3 Cubic Yard Compactor, five times a week pickup	\$585.85
4 Cubic Yard Compactor, once a week pickup.....	\$156.23
4 Cubic Yard Compactor, twice a week pickup.....	\$312.45
4 Cubic Yard Compactor, three times a week pickup	\$468.68
4 Cubic Yard Compactor, four times a week pickup	\$624.91
4 Cubic Yard Compactor, five times a week pickup	\$781.13
5 Cubic Yard Compactor, once a week pickup.....	\$175.76
5 Cubic Yard Compactor, twice a week pickup.....	\$351.51
5 Cubic Yard Compactor, three times a week pickup	\$527.27
5 Cubic Yard Compactor, four times a week pickup	\$703.02
5 Cubic Yard Compactor, five times a week pickup	\$878.78
6 Cubic Yard Compactor, once a week pickup.....	\$234.34
6 Cubic Yard Compactor, twice a week pickup.....	\$468.68
6 Cubic Yard Compactor, three times a week pickup	\$703.02
6 Cubic Yard Compactor, four times a week pickup	\$937.36
6 Cubic Yard Compactor, five times a week pickup	\$1,171.70
2 Cubic Yard Bin, per pull*	\$22.62
3 Cubic Yard Bin, per pull*	\$33.93
4 Cubic Yard Bin, per pull*	\$45.24
5 Cubic Yard Bin, per pull*	\$56.54
6 Cubic Yard Bin, per pull*	\$67.86
8 Cubic Yard Bin, per pull*	\$79.16
20 Yard Debris Box, per pull*	\$203.58
25 Cubic Yard Debris Box, per pull*	\$226.18
30 Cubic Yard Debris Box, per pull*	\$243.15
40 Cubic Yard Debris Box, per pull*	\$248.80
Less than 30 Cubic Yard Compactor, per pull	\$231.84
30 to 40 Cubic Yard Compactor, per pull	\$231.84
Greater than 40 Cubic Yard Compactor, per pull	\$243.15

* Rates include dropping off box or bin at customer location, retrieving box or bin when requested, and hauling up to four (4) tons of waste to disposal. An additional charge of \$33.59 per ton will apply to disposal over four (4) tons.

Special Charges

Wheel-out service for non-qualifying households.....	additional \$15.86 per month
On-call white good/bulky waste pick up for non-qualifying residents, including any freon removal charge	\$11.04 per cubic yard per event
On-call extra solid waste collection for residential premises	\$11.10 per event
Cart exchange in addition to once annually free exchange	\$27.74 per event
Call back for collection as a result of set-out after collection time.....	\$11.35 per event
Cart replacement due to loss or damage from willful misuse.....	\$79.44 per cart
Extra Commercial pick-up:	
36 gallon cart.....	\$9.61 per event
64 gallon cart.....	\$18.09 per event
96 gallon cart.....	\$24.87 per event
2 cubic yard bin.....	\$18.09 per event
4 cubic yard bin.....	\$36.19 per event
6 cubic yard bin.....	\$54.28 per event
8 cubic yard bin.....	\$63.32 per event
Key charge when container access requires driver to remove lock.....	\$28.27 per month
Enclosure charge when collection requires removing container from an enclosure and replacing it when empty.....	\$56.54 per container per month
Gate service charge when collection requires passing through a gate for accessing a container.....	\$33.94 per container per month
Distance charge when container is placed further than ten feet from where collection vehicle has access.....	\$33.94 per fifty feet per container per month

EXHIBIT C

PERFORMANCE STANDARDS

1. Company Standards

- A. Services are to be completed in thorough and professional manner that constitutes litter-free, reliable, timely, courteous and high-quality service.
- B. Collector shall, at all times, perform its duties using best industry practice for comparable operations.
- C. Personnel shall conduct themselves in a courteous, workmanlike manner.
- D. Personnel shall dress in clean, uniform shirts with suitable identification.
- E. Color and appearance of Collection vehicles, Containers, employee uniforms, and public education materials provided by Collector shall be designed to provide a standard representation of the company.

2. Collection Containers

- A. Collector shall provide containers for storage of materials that shall be designed and constructed to be watertight and prevent the leakage of liquids. All containers with a capacity of 1 cubic yard or more shall meet all applicable federal regulations on Solid waste container safety. All containers provided by Collector shall be constructed of rigid, durable materials with a minimum five (5) year life expectancy warranted by the manufacturer.
- B. The containers shall be clearly labeled to indicate their designation for collection of Solid waste or Recyclables and shall list the types of materials to be stored in the container for collection.
- C. Collector shall be responsible for distributing all containers to Subscribers in accordance with the provisions of this Agreement.
- D. Collector shall repair, clean, paint, and replace containers as needed to maintain a clean, attractive, functional, new-like condition. All graffiti shall be removed immediately.

3. Collection Vehicles

- A. Collector shall provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Vehicles collecting Solid waste and Recyclables in carts shall be fully automated such that, with the exception of wheel-out-service, Collector's employees are not required to leave the vehicle to collect cart

contents. Collector agrees to maintain each piece of equipment used by it in the performance of this Agreement in good order and repair. Collector shall have available on service days sufficient backup vehicles and qualified operators to respond to complaints and emergencies. Collector may use semi-automatic and non-automatic vehicles as may be necessary to provide services (other than the routine collection of residential cart containers) pursuant to this Agreement.

B. Vehicle Identification

Collector's name, phone number, and vehicle identification number must be visibly displayed on both sides of all vehicles in letters and figures.

C. Cleaning and Maintenance

i. General.

Collector shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times, and well and uniformly painted, to the satisfaction of the City Manager. Vehicles shall be maintained in such a manner that no leakage of fluids from the collected materials occurs.

ii. Cleaning.

Vehicles used in the collection shall be thoroughly washed at a minimum of once per week, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. All vehicles shall be painted on a regular schedule to maintain a clean, profession, new-like appearance, although the City Manager may require the painting of any vehicle that does not present a satisfactory appearance at any time. The vehicles shall be painted in a uniform manner. All graffiti shall be removed immediately. City may inspect vehicles at any time to determine compliance with sanitation requirements. Collector shall make vehicles available to the County Health Department for inspection at any frequency it requests.

iii. Maintenance.

Collector shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly. Collector shall also perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Collector shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to City upon request.

iv. Repairs.

Collector shall repair, or arrange for the repair of, all of its vehicles and equipment, including dents, leaks, and other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe and operable condition. If an item of repair is covered by a warranty, Collector shall obtain warranty performance. Collector shall maintain accurate records of repair, which shall include date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

v. Alternative Fuels.

Collector agrees to participate with City in pursuant to grants, pilot programs, or other mutually agreeable efforts that provide for alternative fuel collection vehicles.

vi. Age of Vehicles.

Collector's fleet of vehicles shall comply with applicable provisions of State law. The City Manager has the right to inspect Collector's fleet of vehicles, not more often than annually, to ascertain whether they remain in full compliance with applicable provisions of State law. Collector shall immediately remove from service any vehicle that, in the reasonable discretion of the City Manager, is not in full compliance with applicable provisions of State law.

Each Collection vehicle shall be under ten (10) years of age unless specifically authorized in writing by City. If the age of a Collection vehicle reaches 15 years, Collector must notify City. This equipment shall be subject to inspection by City or its designee.

D. Inventory.

Collector warrants that it shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which it is responsible under this Agreement. Collector shall furnish City a written inventory of all vehicles, including collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type and capacity.

E. Storage.

Collector shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with applicable zoning regulations.

4. Operation

- A. All vehicles must be registered with the State of Florida and inspected at the frequency required by the State. Vehicles shall be operated in compliance with Florida law and all applicable safety and local ordinances.
- B. Collector shall not load collection vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.
- C. Collector shall use all reasonable means to minimize the backing up of collection vehicles.

5. Collection Schedule

- A. If the day of collection on any given route falls on a holiday, Collector shall provide collection service for such route on the next workday following such holiday. In the event the holiday schedule of the Designated Disposal Facility, Designated Recycling Facility, or Designated Yard Waste Processing Facility are different than the holidays stated herein, the holiday schedule may be adjusted accordingly.
- B. Commercial Collection Services shall not start before 4:00 a.m. or continue after 6:00 p.m., six days per week excluding Sunday. Residential Collection Services shall not start before 6:00 a.m. or continue after 6:00 p.m., six days per week excluding Sunday. Collector shall not provide Collection Services on Sundays. Collection service hours are subject to change by City Council in the exercise of its reasonable discretion.
- C. Collector shall provide Collection Services for residential premises Subscribers from the curbside (with the exception of wheel-out service for qualifying disabled individuals and for Subscribers paying additional charge for wheel-out service).
- D. Collector shall provide at least once weekly pickup for commercial/industrial premises Subscribers from a location designated by the property owner.
- E. Recyclables and Yard waste shall be collection from residential premises on the same day as one of the Solid Waste pickup days.

6. Collection Routes

- A. Collection routes shall be established and maintained in such a manner as to provide uniform and efficient Collection Services.
- B. Collector shall submit route plans to the City Manager for informational purposes at the start of this Agreement, one year prior to the end of this Agreement, at the end of this Agreement, and at end of the contract term and whenever there is a

significant routing change. The route plans shall include, but not be limited to, the following information:

- i. the course each vehicle follows;
 - ii. the properties served;
 - iii. approximate starting and ending time for each route; and
 - iv. the day of week the route will be served.
- C. Materials collected shall not be mixed in Collector's Collection equipment with any materials collected from another municipality, unless Collector accounts for such mixed loads with reasonable accuracy in its applicable reports.

7. Collection Requirements

A. Care of Private Property

Reasonable care shall be used by Collector's employees in handling all collection containers and enclosures, and all damage caused thereto by the negligence or carelessness of Collector's employees shall be promptly adjusted with the owner thereof. All collection containers after emptying thereof by Collector's employees shall be returned to within 5 feet of the location from which the same were picked up by Collector's employees, upright with lids properly secured, and Collector's employees shall use all reasonable means to ensure same are not deposited in a manner that blocks any driveway, sidewalk, or street. Collector shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Subscriber, and avoid crossing landscaped areas and climbing or jumping over hedges and fences. City shall refer complaints about damage to private property to Collector. Collector shall repair all damage to private property caused by its employees.

B. Noise

All Collection operations shall be conducted as quietly as possible and shall conform to applicable federal, State, county and City noise level regulations. City may conduct random checks of noise emission levels to ensure such compliance. Collector shall promptly resolve any complaints of noise to the satisfaction of the City Manager.

- C. When any materials deposited for collection are not collected by Collector, Collector shall provide notice to the Subscriber, at Collector's cost. The notice shall provide Collector's phone number and indicate the reasons for Collector's refusal to collect the materials placed in the collection containers giving reference to the Section of the appropriate City ordinance or to the Section of this Agreement which has been violated, and which gives grounds for Collector's

refusal. This information shall either be in writing via a tag at least 2 inches x 6 inches in size, or by means of a check system. Collector shall maintain, at Collector's place of business, a logbook listing all occurrences of noncollection. The logbook shall contain the names and date and manner of disposition of each case. Such log shall be kept so that it may conveniently be inspected by representatives of City upon request.

D. Load Checking

Collector is responsible for inspecting all materials prior to collection for Hazardous Waste or other unacceptable materials. Collector is not responsible for the Collection of Hazardous Waste or other unacceptable materials. Collector is responsible for controlling contamination levels of the Recyclables through public education efforts, random inspection of set-outs, and tagging of improper set-outs at a level that minimizes contamination.

8. Litter Abatement

- A.** Collector shall use due care to prevent materials placed in the collection containers from being spilled or scattered during the collection or transportation process. If any material is spilled during collection, Collector shall promptly clean up all spilled materials. Each collection vehicle shall carry a broom and a shovel at all times for this purpose. Collector shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle.

B. Cleanup

During the collection transportation process, Collector shall clean up litter in the immediate vicinity of any storage area (including the areas where collections bins are delivered for collection) of any materials that escape from the collection vehicle or collection containers as a result of Collector's service. In the event that litter not caused by Collector's service is in the vicinity of the storage area, Collector is required to clean up this litter whether or not Collector has caused the litter on a one-time basis and shall discuss the spillage directly with the Subscriber responsible and shall report such instances to City. Collector shall work with the Subscriber to resolve the spillage problem. City will attempt to rectify such situations with the Subscriber if Collector has already attempted to do so without success.

C. Covering of Loads

All materials shall be contained or covered during transportation to the disposal or processing site. No material shall be transported to the disposal site or processing facility in vehicle hoppers.

D. Oil or Other Vehicle Fluid Spills

Collector is responsible for cleaning up all oil or vehicle fluid spills immediately and must notify City within 24 hours of each such spill. All vehicles must carry an acceptable absorbent material to use in the event of spills. Repair for damages caused by oil or other vehicle spills shall be at Collector's expense. Collector will follow the spill procedures below:

- Driver will determine cause and source of spill.
- Each driver or shop employee is responsible for having enough absorbent in their vehicle to contain or prevent any hydraulic fluid or oil from entering a storm drain or sewer and to clean up small spills as they occur.
- Driver will contain or stop the leak and clean it up without endangering self.
- Driver will immediately notify dispatch or supervisor.
- Driver will not leave the spill until either a supervisor or spill response personnel arrive at the scene.
- Driver will keep all people, cars, or other vehicles from walking or driving through the spill.
- Driver or spill response personnel will take whatever action possible to prevent the spill from entering any storm drain, grates or other entry points.

9. Personnel

A. General

Collector shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the Collection Services required by this Agreement in a safe and efficient manner.

All Collector employees must be able to read, write and speak English with sufficient proficiency to enable them to successfully meet and adhere to all of the terms of this Agreement.

B. Driver Qualifications

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the State of Florida. All Collection vehicle drivers shall also complete an in-house training program provided by Collector which includes

education on the use of all vehicles in the collection fleet, collection programs, and route information as well as Subscriber service practices and safety information.

C. Identification Badge

Collector shall require its drivers, and all other employees who come into contact with the public, to wear a clean uniform shirt with an identification badge or other means of identifying the employee.

D. Safety Training

Collection shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection or who are otherwise directly involved in such services. Collector shall train its employees involved in collection to identify, and not to collect, Hazardous Waste or infectious waste.

E. No Gratuities

Collection shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection Services under this Agreement. This does not prevent Collector's employees from accepting a de minimis gift freely given by a Subscriber, only that the employee may not ask.

F. No Discrimination

Collector shall not discriminate during the performance of this Agreement against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age, disability, marital status, or sexual orientation. Collector understands and agrees that if it violates this no discrimination provision, City may terminate this Agreement, and Collector shall further be barred from performing any services for City, unless a showing is made satisfactorily to City that discriminatory practices have been terminated and that reoccurrence of such action is unlikely.

G. Employee Appearance and Conduct

All employees, while engaged in Collection Services within the City, shall be attired in suitable and acceptable uniform shirts. Collector shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Collector shall regularly train its employees in Subscriber courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Collector shall take all appropriate corrective measures.

H. Provision of Field Supervision

Collector shall designate one qualified employee as supervisor of field operations. The field supervisor shall devote whatever time is necessary in the field checking on collection operations, including timely response to complaints.

I. General Supervision

The Collection Services shall be under the general supervision of the City Manager. All orders, directions and instructions to Collector, not inconsistent with the terms of this Agreement, shall be promptly complied with by Collector.

10. Corporation Yard and Recyclables Processing

- A. Collector covenants to comply with Collector's performance obligations throughout the Term and to perform Collector's performance obligations with respect to its corporation yard and any Recyclables transfer and/or processing facilities in accordance with accepted practice for comparable facilities, sound management and operations practice, the facility's operation and maintenance manual, plans and specifications, permits, Applicable Law (including OSHA standards), provisions hereof, and covenants, conditions and restrictions pertaining to the site.

Collector shall be responsible for maintaining and renewing all necessary permits, licenses, and clearances necessary to and for its corporation yard and any Recyclables transfer and/or processing operations. Collector shall maintain and renew permits; however, Collector shall not be responsible for any delays in maintaining or renewing, or failure to maintain or renew the permits if Collector has exercised due diligence in maintaining and/or renewing the permits, and such failure is caused by any action or inaction of the issuing or renewing authority.

B. Maintenance and Repair

Collector shall maintain its corporation yard and any Recyclables transfer and/or processing facility in good working order and repair, including maintaining spare parts inventory and performing periodic maintenance in accordance with the operations and maintenance manual, manufacturer's recommendations, accepted practice for comparable facilities, and sound management and operations practice. Collector shall maintain the aesthetic appearance of the facilities and sites in a clean and neat manner in accordance with the plans and specifications, with due regard for reasonable control of odors, dust, and noise.

C. Safety

Collector shall conduct facility operations in a safe manner, in accordance with Applicable Law, requirements of insurance carried, and standard industry practices in the waste management and materials recovery industry.

D. Right to Enter and Inspect Facility

City and its designated representative shall have the right, but not the obligation, to enter, observe, and inspect the corporation yard and any Recyclables transfer and/or processing facilities during regular business hours, meet with the facilities' managers or their representative at any time, and meet with other employees upon request, which request shall not be unreasonably denied. Upon City request, Collector shall make personnel available to accompany City employees on inspections. Collector shall ensure that its employees cooperate with City and respond to City's reasonable inquiries. Collector shall make operational and business records other than financial records available to City during receiving hours upon City request.

E. Tours of Facilities

Upon 24 hours request of City, Collector shall provide tours of the facilities. Such tours shall not unreasonably disrupt facility operation. City shall not be charged for labor, overhead, overtime, or any other costs associated with such tours. As part of such tours, Collector shall distribute an educational brochure, printed on recycled paper, on conservation, Recycling, and general Solid waste management programs.

F. Personnel

Collector shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for facility operations and to perform Collector's obligation under this Agreement. Collector shall train such staff to perform their work in a safe and efficient manner in accordance with the health and safety plan in the facility's operations and maintenance manual.

G. Recovery Standards

Collector shall use reasonable business efforts to maximize the recovery of delivered materials so as to maximize amount of material recycled and meet the goals of Chapter 403.706(2)(a), Florida Statutes.

H. Finished Product Standard

The processed Recyclables shall maintain physical and chemical specifications such as to: (a) achieve the results required under prudent business practice; and

(b) comply with all Applicable Laws, ordinances, regulations, and permit conditions.

I. Transportation of Residue

Collector shall transport and deliver all Residue to the disposal facility within 48 hours after its delivery to the facility and in no event longer than required by Applicable Law. Collector shall select routes from the facility to the Disposal facility that minimize inconvenience and disturbance to the public and comply with permits and Applicable Law. Collector shall enclose or cover all vehicles transferring Residue from the facility to prevent spillage.