

**City of Margate**  
**Franchise Agreement for Solid Waste and Recycling Collection Services**

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- EXHIBIT 1      General Map of Service Area
- EXHIBIT 2      Rates for Collection Services
- EXHIBIT 3      Interlocal Agreement Between the City of Margate and Broward County for Solid Waste Disposal Support Services
- EXHIBIT 4      Agreement Between Wheelabrator Environmental Services Inc. and Broward County, Florida for Solid Waste Disposal Services
- EXHIBIT 5      Agreement Between Sun-Bergeron Waste Services JV and City of Margate, Florida for Recyclables Processing Services
- EXHIBIT 6      Memorandum of Understanding Between Waste Management Inc. of Florida and the City of Margate, Florida for Implementation of Recyclebank Recycling Rewards
- EXHIBIT 7      List of City Properties to Receive Collection Services
- EXHIBIT 8      Contractor's Recycling Rewards Program
- EXHIBIT 9      Specifications for Carts
- EXHIBIT 10     Performance Bond

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## 1. DEFINITIONS

The following definitions shall be used herein:

- 1.1. Additional Waste shall refer to any Construction and Demolition Debris, tropical storm or hurricane related debris, Yard Waste, Recyclable Materials, any large household appliances (commonly referred to as “white goods”) including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters and the like, or other items of bulky waste, but in each case excluding any Unacceptable Waste.
- 1.2. Agreement shall refer to this franchise agreement for solid waste and recycling collection services.
- 1.3. Applicable Law shall mean any local, state, or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relate in any manner to the performance of the City or Contractor under this Agreement.
- 1.4. Biological Waste shall mean waste that causes or has the capability of causing disease or infection and includes Biomedical Waste, animals that died from disease, and other wastes capable of transmitting pathogens to humans or animals.
- 1.5. Biomedical Waste shall mean any solid or liquid waste which may present a threat of infection to humans, including, but not limited to, non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; discarded sharps; and absorbent materials saturated with blood or body fluids.
- 1.6. Building shall mean any structure, whether temporary or permanent, built for the support, shelter or enclosure of people, chattel, or property.
- 1.7. Bulk Waste shall mean large items that are discarded by a Customer on their property as a result of normal housekeeping activities, which cannot be placed in a Garbage Cart because of its size, shape or weight. Bulk Waste includes, but is not limited to, white goods, furniture, household goods, materials resulting from home improvement projects, fixtures, sinks, toilets, ladders, Electronic Equipment, and carpet. Bulk Waste specifically excludes Construction and Demolition Debris, Contractor Generated Waste, and Tires.
- 1.8. Business Day shall mean a calendar day, except Sunday and Holidays, from the inception to the conclusion of this Agreement.
- 1.9. City shall refer to the City of Margate either in reference to (a) the geographic area contained within the boundaries of the incorporated City or (b) the government of the City, acting through the City Commission or its designees.
- 1.10. City Manager shall mean the City’s chief executive officer.
- 1.11. Collection shall mean both the process of picking up waste materials from Customers and the process of transporting and delivering the waste materials to the Designated Facility.
- 1.12. Collection Plan shall mean the written plan submitted by the Contractor, and approved by the City, that details how the Contractor will fulfill the requirements of this Agreement.



- 1.13. Commercial Customer shall mean the owner, occupant, tenant, or other Person having control of Commercial Property.
- 1.14. Commercial Property shall mean any real property, or portions thereof, located in the Service Area that is used for purposes other than a Dwelling Unit. Commercial Property includes, but is not limited to, property primarily used for: (a) commercial purposes, such as hotels, motels, stores, restaurants, business offices, theaters, service stations, etc.; (b) institutional purposes, such as governmental offices, churches, hospitals, schools, etc.; and (c) not-for-profit organizations. Motels, hotels, guest houses, and Dwelling Units other than single family and multi-family Dwelling Units that are rented or leased for periods of time shorter than a week shall be considered Commercial Property.
- 1.15. Commercial Non-Municipal Solid Waste shall mean construction and demolition debris, Class III commercial waste, and hazardous waste, as defined by Florida Statute, generated by a Commercial Customer.
- 1.16. Commercial Waste shall refer to waste, refuse, Garbage, Trash, and rubbish generated within the City, excepting therefrom Residential Waste as defined herein and that is capable of being processed at the Designated Facility for Solid Waste, but shall not include Additional Waste, Recyclable Material that is Source Separated and recycled, or Unacceptable Waste.
- 1.17. Compactor shall mean a stationary or mobile mechanism that is used to compact Solid Waste in a Mechanical Container.
- 1.18. Construction and Demolition Debris shall mean, as defined in F.A.C. 62-701.200 (25) as amended from time to time, discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition project site. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project; clean cardboard, paper, plastic, wood, and metal scraps from a construction project; and de minimis amounts of other nonhazardous wastes that are generated at construction or demolition projects, provided such amounts are consistent with the best management practices of the construction and demolition industries. Mixing construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris.
- 1.19. Container shall refer to any receptacle used by Customers for the collection of Solid Waste or Recyclable Materials.
- 1.20. Contract Administrator shall mean the Director of the City department, or their designee, that the City Manager has assigned to be responsible for the administration of this Agreement.
- 1.21. Contract Year shall refer to each twelve month period, from October 1 to September 30, of this Agreement and any extensions. The first Contract Year shall refer to the period from the commencement of this Agreement through September 30, 2016.
- 1.22. Contractor shall refer to Waste Management (the Person awarded this Agreement).

- 1.23. Contractor Generated Waste shall mean all waste generated by an individual or company hired by a resident or business to provide a service. This is inclusive of, but not limited to, all work and waste related to construction and demolition activities, remodeling, landscaping, tree trimming, roofing, etc.
- 1.24. Curbside shall mean Collection service in which customers are required to place their containers immediately behind the curb or curblines where there is no curb.
- 1.25. Customer shall mean, depending on the context, a Commercial Customer, a Multifamily Solid Waste Customer, a Multifamily Recycling Customer, a Residential Solid Waste Customer, a Residential Recycling Customer, all, or any combination thereof.
- 1.26. Designated Facility shall mean the facility or facilities designated by the City for the recycling or disposal of all Waste Streams collected pursuant to this Agreement.
- 1.27. District Manager shall mean the employee designated by the Contractor as the Contractor's primary representative with regard to matters involving this Agreement.
- 1.28. Duplex shall mean and include a detached Building containing exactly two (2) Dwelling Units where no portion of a Dwelling Unit is located on top of any portion of another Dwelling Unit.
- 1.29. Dwelling Unit shall mean any type of structure or Building, or portion thereof, intended for or capable of being utilized for residential occupancy. A Dwelling Unit includes, at minimum, a room or rooms constituting a separate, independent living area with a kitchen or cooking facilities, a separate entrance, and bathroom facilities, which are physically separated from other Dwelling Units, whether located in the same structure or in separate structures.
- 1.30. Electronic Equipment shall mean large electronic devices that have been discarded, including but not limited to computers, monitors, televisions, cathode ray tubes, printers, scanners, and copying machines.
- 1.31. Excessively Contaminated shall refer to Recyclable Materials that are placed in a Recycling Container in which more than ten (10) percent of the materials by weight or volume, whichever applies, are Non-Conforming Materials.
- 1.32. Food Waste shall mean pre-consumer non-protein food limited to bakery goods, vegetables, decorative flowers, cereals, and similar items that have exceeded their expiration dates, have defects, or are otherwise not suitable for sale. Meat products, dairy products, and other protein products are excluded.
- 1.33. Food Service Establishment shall mean any commercial supermarket, grocery store, or bakery that generates Food Waste.
- 1.34. Franchise Fee shall mean the fee paid by the Contractor for the use of the streets, alleys, bridges, easements, and other public places in the City along with the right and privilege to provide Collection services in accordance with this Agreement.
- 1.35. Garbage shall mean, as defined in F.A.C. 62-701.200 (34) as amended from time to time, all kitchen and table food waste and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking, or handling of food materials.
- 1.36. Garbage Cart shall mean the Contractor provided container that has wheels and a lid that is intended to be used as a container for Garbage and Trash.
- 1.37. Garbage Can shall mean any commonly available light gauge steel or plastic container with a tightly fitting lid that is intended for use as a container for Garbage and Trash.

- 1.38. Generation Factor shall mean either the weight of material per cubic yard or the annual weight of material per household, as applicable, assigned to a particular Waste Stream.
- 1.39. Hazardous Materials shall mean Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Materials includes any material or substance identified as a hazardous waste, hazardous substance, or hazardous material in the Florida Administrative Code, Florida Statutes, or other Applicable Law.
- 1.40. Holiday shall mean a day when the Contractor would normally be required to provide Collection services but, pursuant to this Agreement, does not need to provide Collection services. The only Holiday is Christmas Day (December 25), unless the City and Contractor mutually agree to add additional Holidays.
- 1.41. Holiday Tree shall mean a live tree that is used indoors in conjunction with the celebration of a religious or non-religious holiday.
- 1.42. Household Hazardous Waste shall mean Hazardous Materials that are leftover as a result of use in residential applications.
- 1.43. Individually Metered shall mean a single Dwelling Unit which is metered by the City for water and sewer services.
- 1.44. Industrial Waste shall mean solid waste generated by manufacturing or industrial processes that is not a Hazardous Materials. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products or byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.
- 1.45. Land Clearing Debris shall mean rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing of land development operations for a construction project. Land clearing debris does not include vegetative matter from lawn maintenance, commercial or residential landscape maintenance, right-of-way or easement maintenance, farming operations, nursery operations, or any other sources not related directly to a construction project.
- 1.46. Legitimate Complaint shall mean any complaint by a Customer or the City in a case where the applicable requirements of this Agreement regarding Collection services were not satisfied by the Contractor. Legitimate Complaints include, but are not limited to: missed Collections; failure to respond to a complaint in compliance with this Agreement; mishandling of waste or collection Containers; failure to maintain vehicles, equipment, or collection Containers; damage to public or private property; failure to pick up litter; discourteous treatment of Customers; failure to pick up litter; and fluids leaking from vehicles.

- 1.47. Legitimate Missed Pickup shall mean any instance when a Customer reports their waste as not having been collected as scheduled and the Contractor did not place a Non-Collection Notice in accordance with Section 10.4.
- 1.48. Load shall mean the Solid Waste, Bulk Waste, Yard Waste, Recyclable Materials, or other cargo that is collected and transported in a collection vehicle.
- 1.49. Manual Solid Waste Collection shall mean Solid Waste Collection service for Residential Solid Waste Collection Customers in which Customers utilize Garbage Cans and securely-tied garbage bags for the Proper Placement of their Solid Waste. Customer Containers shall be limited to thirty-two (32) gallons in volume and forty (40) pounds when full.
- 1.50. Mechanical Container shall mean a dumpster, Roll-Off Container, Compactor, or other large container that is placed on and removed from a Person's property with mechanical equipment, and used for the Collection of Solid Waste or Recyclable Materials.
- 1.51. Multifamily Collection Service shall mean, depending on context, the Collection of Solid Waste, Bulk Waste, and/or Recyclable Materials from Multifamily Recycling Customers and Multifamily Solid Waste Customers pursuant to this Agreement.
- 1.52. Multifamily Recycling Customer shall mean all Persons on the Multifamily Recycling Customer List that receive or should receive Multifamily Collection Service for the Collection of Recyclable Materials. All Buildings with five (5) or more Dwelling Units; Buildings in which any portion of a Dwelling Unit is located on top of any portion of another Dwelling Unit; Rowhomes (where each Rowhome does not have its own private driveway); recreational vehicle parks; and all Dwelling Units located in mixed-use Buildings that are located in the Service Area and receive certificates of occupancy during the term of this Agreement shall be considered Multifamily Recycling Customers and shall be added to the Multifamily Recycling Customer List.
- 1.53. Multifamily Recycling Customer List shall mean the list provided by the City, as amended, that identifies the Buildings and Dwelling Units that are to receive Multifamily Recycling Collection Service from the Contractor.
- 1.54. Multifamily Solid Waste Customer shall mean all Persons on the Multifamily Solid Waste Customer List that receive or should receive Multifamily Collection Service for the Collection of Solid Waste. All Buildings with five (5) or more Dwelling Units; Buildings in which any portion of a Dwelling Unit is located on top of any portion of another Dwelling Unit; Rowhomes (where each Rowhome does not have its own private driveway); recreational vehicle parks; and Dwelling Units in mixed-use Buildings that are located in the Service Area and receive certificates of occupancy during the term of this Agreement shall be considered Multifamily Solid Waste Customers and shall be added to the Multifamily Solid Waste Customer List.
- 1.55. Multifamily Solid Waste Customer List shall mean the list provided by the City, as amended, that identifies the Buildings and Dwelling Units that are to receive Multifamily Solid Waste Collection from the Contractor.
- 1.56. New Commercial Customer shall mean a Commercial Customer which commences service with the Contractor and did not previously have service with the Contractor.

- 1.57. New Multifamily Customer shall mean a Multifamily Solid Waste Customer and/or Multifamily Recycling Customer which commences service with the Contractor and did not previously have service with the Contractor.
- 1.58. New Residential Customer shall mean a Residential Solid Waste Customer and/or Residential Recycling Customer who purchased their residence within the past sixty (60) days. Tenants of rental properties are not considered New Residential Customers.
- 1.59. Non-Collection Notice shall mean a form approved by the City that is placed on a customer's waste when the Contractor does not collect said waste due to non-compliance with proper placement procedures. Said form shall indicate the reason the waste was not collected by the Contractor.
- 1.60. Non-Collection Procedure shall mean the procedure, as outlined in Section 10.4.2, the Contractor is to follow when any waste that is placed for Collection by a customer is not collected by the Contractor.
- 1.61. Non-Conforming Material shall mean any material placed in a Recycling Cart that is not Recyclable Material.
- 1.62. Person shall mean any and all persons, natural or artificial, including any individual, firm, partnership, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any City or municipality; and any governmental agency of any state or the federal government.
- 1.63. Primary Fleet shall mean all of the Contractor's Collection vehicles that are not considered Reserve Vehicles that are used to fulfill the Contractor's responsibilities per the terms of this Agreement.
- 1.64. Proper Placement (and Properly Placed) shall mean a Container, Bulk Waste, Yard Waste, or Recyclable Material that is placed for Collection by the Customer in accordance with the specifications for the particular Waste Stream as outlined in this Agreement.
- 1.65. Quadplex shall mean and include a detached Building containing exactly four (4) Dwelling Units where no portion of a Dwelling Unit is located on top of any portion of another Dwelling Unit.
- 1.66. Recyclable Materials shall mean those materials that are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste and which are limited to, per the definition of recovered materials in F.S. 403.7046, paper, metal, plastic, glass, textiles, and rubber products that are Source Separated, the materials identified in Section 7.2.2., and any additional materials as agreed upon per Section 7.2.3.
- 1.67. Recycling Container shall mean any Contractor provided receptacle that is intended to be used as a container for Source Separated Recyclable Materials.
- 1.68. Recycling Cart shall mean the Contractor provided or City-owned container that has wheels and a lid that is intended to be used as a container for Source Separated Recyclable Materials.
- 1.69. Reserve Vehicles shall mean the Contractor's vehicles that are used solely to temporarily replace or fill-in for a vehicle that has broken down or is unable to complete its route as scheduled.

- 1.70. Residential Collection Service shall mean the Collection of Solid Waste, Bulk Waste, Yard Waste, and/or Recyclable Materials, as it may apply, from Residential Recycling Customers and Residential Solid Waste Customers pursuant to this Agreement.
- 1.71. Residential Recycling Customer shall mean all Persons on the Residential Recycling Customer List that receives or should receive Residential Collection Service. All Single Family Residences; Rowhomes (where each Rowhome has its own private driveway); mobile home pads; and each Dwelling Unit located in a Duplex, Triplex, and Quadplex that are located in the Service Area and receive certificates of occupancy during the term of this Agreement shall be considered Residential Recycling Customers and shall be added to the Residential Recycling Customer List.
- 1.72. Residential Recycling Customer List shall mean the list provided by the City, as amended, that identifies the Dwelling Units that are to receive Residential Recycling Collection from the Contractor.
- 1.73. Residential Solid Waste Customer shall mean all Persons on the Residential Solid Waste Customer List that receive or should receive Residential Collection Service. All Single Family Residences; Rowhomes (where each Rowhome has its own private drive); mobile home pads, and each Dwelling Unit located in a Duplex, Triplex, and Quadplex that are located in the Service Area and receive certificates of occupancy during the term of this Agreement shall be considered Residential Solid Waste Customers and shall be added to the Residential Solid Waste Customer List.
- 1.74. Residential Solid Waste Customer List shall mean the list provided by the City, as amended, that identifies the Dwelling Units that are to receive Residential Solid Waste Collection from the Contractor.
- 1.75. Residential Recyclable Materials shall mean Source Separated Recyclable Materials collected by the Contractor from Residential Solid Waste Customers and Multifamily Solid Waste Customers.
- 1.76. Residential Waste shall refer to waste, refuse, Garbage, Trash and rubbish generated within the Service Area from Residential Solid Waste Customers and that is capable of being processed at the Designated Facility for Solid Waste, but shall not include Additional Waste, Residential Recyclable Material, or Unacceptable Waste.
- 1.77. Roll-Off Container shall mean a large metal container used for the Collection of Solid Waste or Recyclable Materials, which is rolled-off of a vehicle when the container is placed at a site and then rolled onto the vehicle when the container is ready to be transported to a Solid Waste management facility.
- 1.78. Route Supervisor shall mean the Contractor's employee that is responsible for supervising the Contractor's Collection services in the City.
- 1.79. Rowhome shall mean a Dwelling Unit that shares a common wall with another Dwelling Unit and occupies the full frontage line (also known as townhouses and villas). A list of Rowhomes will be provided to the Contractor by the City and amended as needed.
- 1.80. Scheduled Collection Day shall mean the day when the Contractor is scheduled to provide a Collection for a Customer for Recyclable Materials or other components of Residential Waste.

- 1.81. Secure Document Shredding shall mean services provided that shred paper documents in such a manner that the information on the documents is effectively destroyed and kept confidential.
- 1.82. Service Area shall mean the area as defined in Section 2.1 for which the Contractor is responsible for providing all services as described in this Agreement.
- 1.83. Side Door Service shall mean the Collection of Solid Waste and/or Recyclable Material from a Residential Solid Waste Customer's and/or Residential Recycling Customer's side yard, back yard, or other location that is not Curbside.
- 1.84. Single Stream shall mean a recycling process that allows for Recyclable Materials to be collected commingled, with no sorting required by residents, businesses, or haulers.
- 1.85. Sludge shall mean a solid waste pollution control residual which is generated by any industrial or domestic wastewater treatment plant, water supply treatment plant, air pollution control facility, septic tank, grease trap, portable toilet or related operation, or any other such waste having similar characteristics. Sludge may be a solid, liquid, or semisolid waste but does not include the treated effluent from a wastewater treatment plant.
- 1.86. Solid Waste shall mean Garbage, Trash, and any other waste material that is accepted at the Designated Facility for Solid Waste. Additional Waste and Unacceptable Waste shall not be considered Solid Waste.
- 1.87. Source Separated shall mean Recyclable Materials that are separated from Garbage and Trash at the location where the recyclable materials are generated. Recyclable materials shall not be considered source separated if they are placed in the same container as Garbage and Trash or the Container has more than 10% by weight or volume of materials other than Recyclable Materials.
- 1.88. Supplemental Collection shall mean the Collection of Construction and Demolition Debris, Bulk Waste, or other materials, in response to a Customer's request, at times other than the Scheduled Collection Day or in quantities that are greater than the amounts authorized herein for Collection on the Scheduled Collection Day. However, Supplemental Collection shall not be utilized for the Collection of Solid Waste.
- 1.89. Tipping Fee shall mean a fee that must be paid for the disposal of a Waste Stream.
- 1.90. Tire shall mean discarded automotive, motor vehicle, and trailer tires, including rims.
- 1.91. Trash shall mean accumulations of paper, magazines, packaging containers, sweepings, and all other accumulations of a nature other than Garbage, Yard Waste, and Household Hazardous Waste, which is usual to the operation of a residence. Additional Waste and Construction and Demolition Debris shall not be considered Trash.
- 1.92. Triplex shall mean and include a detached Building containing exactly three (3) Dwelling Units where no portion of a Dwelling Unit is located on top of any portion of another Dwelling Unit.
- 1.93. Unacceptable Waste shall refer to: (a) Hazardous Materials, (b) lead-acid batteries, (c) nuclear waste, (d) radioactive waste, (e) sewage sludge, (f) explosives, (g) asbestos containing materials, (h) untreated biomedical waste, (i) Biological Waste, (j) appliances containing chlorofluorocarbons (CFC's), (k) Biomedical Waste, or (l) items of waste that a Customer reasonably believes would likely pose a threat to health or safety or the acceptance and

disposal of which may cause damage to the Designated Facility for Solid Waste or that are prohibited by Applicable Law.

- 1.94. Waste Stream shall mean any of the following types of waste, depending on the application: Solid Waste, Bulk Waste, Yard Waste, Recyclable Materials, Unacceptable Waste, Additional Waste, and any other type of waste generated by a Person.
- 1.95. Yard Waste shall mean all vegetative matter resulting from landscaping maintenance which is no larger than eight (8) inches in diameter and no longer than six (6) feet in length at its longest point. This includes, but is not limited to, shrub and tree trimmings, grass clippings, palm fronds, and tree branches. Yard Waste must be generated by the Residential Solid Waste Customer at the Dwelling Unit wherein the Yard Waste is collected.

## 2. CONTRACTOR'S FRANCHISE

### 2.1. Service Area

The Service Area includes all of the land located within the municipal limits of the City. A map of the City's current municipal limits can be found in Exhibit 1. Should lands be added or removed through annexation, the Contractor shall commence servicing newly annexed areas within twenty-four (24) hours after official written notification by the City. If land is removed from the City, the Contractor shall cease servicing these areas within twenty-four (24) hours after official written notification by the City. There will be no change to the rates set forth in this Agreement for any additions or deletions of service due to changes in the Service Area.

### 2.2. Customer Lists

The City shall provide to the Contractor the following customer lists for the following types of Customers: Residential Solid Waste Customers, Residential Recycling Customers, Multifamily Solid Waste Customers, and Multifamily Recycling Customers. The City shall maintain these lists and provide any additions, deletions, or changes to the Contractor. The Contractor shall notify the City if they locate a Residential Solid Waste Customer, a Residential Recycling Customer, a Multifamily Solid Waste Customer, and/or a Multifamily Recycling Customer that is, or should be, receiving Residential Collection Services or Multifamily Collection Services and is not on the customer list for the appropriate service. The Contractor shall be responsible for creating and maintaining a list of Commercial Customers. The Contractor shall make this list available to the City upon request.

### 2.3. Exclusive Franchise

The City grants to the Contractor the exclusive right and obligation to provide the Collection of Solid Waste for Residential Solid Waste Customers, Multifamily Solid Waste Customers, and Commercial Customers and the Collection of Source Separated Recyclable Materials from Residential Recycling Customers and Multifamily Recycling Customers within the Service Area, subject to the limitations and conditions set forth herein. The Contractor shall perform the obligations of collecting all waste materials covered by this Agreement through any recognized subsidiary or division of the Contractor. All such subsidiaries or divisions shall be registered with the office of the City Clerk.



## 2.4. Exceptions to Franchise

### 2.4.1. Commercial Recyclable Materials

The Contractor shall not have the exclusive right to collect Source Separated Recyclable Materials (which includes Source Separated Food Waste from Food Service Establishments as defined herein) from Commercial Customers. However, the Contractor shall retain the exclusive right to collect commercial Containers in which more than ten percent (10%) of the materials deposited are not Recyclable Materials. The City may, at its option, implement a commercial recyclable material hauler registration program and, if so, the Contractor shall register with the City as a registered commercial recyclable material hauler and comply with all terms of said commercial recyclable material hauler registration program.

### 2.4.2. Commercial Non-Municipal Solid Waste

The Contractor shall not have the exclusive right to collect Commercial Non-Municipal Solid Waste. The City may grant to any other Person a non-exclusive franchise to collect this Waste Stream. To collect this Waste Stream, the Contractor shall apply for a non-exclusive franchise and comply with all terms of said agreement.

### 2.4.3. Residential Construction and Demolition Debris

The Contractor shall not have the exclusive right to collect Construction and Demolition Debris from residentially zoned properties. The City may, at its option, require that any Person desiring to collect this Waste Stream obtain a non-exclusive franchise. Should the City begin requiring a non-exclusive franchise for the Collection of residential Construction and Demolition Debris, and the Contractor wishes to collect this waste stream, the Contractor shall apply for, and comply with all terms of, said non-exclusive franchise.

### 2.4.4. Residential and Multifamily Bulk Waste and Yard Waste

The Contractor shall not have the exclusive right to collect Bulk Waste and Yard Waste except for Bulk Waste and Yard Waste that is Properly Placed by Customers for Collection pursuant to this Agreement.

### 2.4.5. Owner-Occupied Multifamily Community Solid Waste and Recyclable Materials

The Contractor shall not have the exclusive right to collect Solid Waste and Recyclable Materials from owner-occupied multifamily communities unless the community is included on the Multifamily Solid Waste Customer List or the Multifamily Recycling Customer List. Communities which are not included on either list shall be provided the option to join the exclusive franchise for the Collection of Solid Waste and/or Recyclable Materials. If so opted, the Customer shall be provided such services per the terms of this Agreement and shall execute a form agreement provided by the City that confirms the Customer's desire to join the franchise. Any such agreement shall include wording that notifies the Customer that inclusion in the exclusive franchise is permanent and will extend beyond the terms of this Agreement. The Contractor shall notify the City of any Customers which desire to be included in the exclusive franchise and provide the City with an original copy of the agreement between the Customer and Contractor. Additionally, the Contractor shall provide Solid Waste Collection to any owner-occupied multifamily community that wishes to join the exclusive franchise at the Contractor's Rates without

owner-occupied multifamily as set forth in this Agreement. However, should at any time throughout the life of this Agreement the number of owner-occupied multifamily units meet or exceed seventy-five percent (75%) of the total owner-occupied multifamily units in the City, the City may opt, per Section 17.1, to utilize Contractor's Rates with owner-occupied multifamily included.

#### 2.4.6. Other Waste

The Contractor shall not have the exclusive right to collect Hazardous Waste, Industrial Waste, Sludge, and Land Clearing Debris nor shall the Contractor have the exclusive right to services and types of waste that are not explicitly addressed under this Agreement.

### 3. TERM OF AGREEMENT

#### 3.1. Initial Term of Agreement

This Agreement shall commence on December 1, 2015, and shall expire at 12:00 Midnight on September 30, 2021, unless terminated earlier.

#### 3.2. City's Option to Renew Agreement

At the end of the initial term and at the end of each renewal period (if any) of this Agreement, the City shall have the option to renew this Agreement for up to four (4) additional two (2) year periods. Should the City wish to renew this Agreement, it will notify the Contractor of its intent to renew the Agreement at least one hundred and eighty (180) days prior to the expiration of the current term of this Agreement. The cumulative duration of this Agreement, including renewals, shall not exceed fourteen (14) years. Should the Contractor not wish to have this this Agreement renewed, the Contractor shall notify the City in writing at least three hundred and sixty-five (365) days prior to the expiration of the initial term of this Agreement or any renewal.

#### 3.3. Extension Beyond Expiration of Agreement

At the City's option, this Agreement may be extended up to an additional one hundred and eighty (180) days beyond the expiration of the current term. The City shall notify the Contractor at least ninety (90) days prior to the expiration of the current term if it requires an extension. The terms of this Agreement shall remain in full effect and be unchanged during this extension period.

### 4. CONTRACTOR'S RESPONSIBILITIES PRIOR TO COMMENCEMENT

#### 4.1. Contractor's Transition Plan

Contractor shall draft a written plan to aid in the transition from the current franchise agreement to this Agreement. This plan is intended to ensure that there is no disruption in service for the residents and businesses within the City and shall be subject to the Contract Administrator's approval. At minimum, the plan shall include:

- 4.1.1. A detailed Collection Plan identifying how the Contractor will approach collecting all waste items per this Agreement. This plan shall include the year/make/model of equipment and the number of personnel the Contractor is proposing to utilize.

- 4.1.2. Proof that adequate equipment and personnel are in place and available to service the City on the effective date of this Agreement. This shall include any required back-up equipment and personnel.
  - 4.1.3. The Contractor shall provide a detailed plan identifying how the Contractor will deliver and/or exchange the Containers necessary to provide Collection services to the residents and businesses of the City. This shall include specific dates as to when the Contractor intends to order and begin delivery of any carts, dumpsters, and compactors.
  - 4.1.4. Name(s) and phone number(s) of Contractor's personnel responsible for management of this Agreement and supervisor(s) responsible for the daily operations for Collection services in the City.
  - 4.1.5. Mail a minimum of one (1) notification to residents and businesses regarding Collection services provided by the Contractor. The mailing shall also include information on vendor change (if any), additional services offered but not necessarily by the Contractor (e.g. bulk drop-off, recycled paint, etc.), and any changes to Collection services (e.g. Scheduled Collection Days, carts, materials allowed/disallowed, placement at curb, cart options, etc.). The mailers shall be approved by the Contract Administrator prior to mailing.
- 4.2. Deadlines of Specific Items Under the Transition Plan  
Contractor shall submit the required information to the City by the following deadlines:
- 4.2.1. Collection Plan – two (2) months prior to commencement of Agreement.
  - 4.2.2. Proof of Adequate Equipment and Personnel – one (1) month prior to commencement of Agreement.
  - 4.2.3. Container Transition – Container transition plan two (2) months prior to commencement of Agreement and all Containers shall be delivered to Customers prior to the initiation of this Agreement.
  - 4.2.4. Name(s) and phone number(s) of Contractor's responsible personnel – one (1) month prior to commencement of Agreement.
  - 4.2.5. Mailer – Approved by Contract Administrator and mailed one (1) month prior to the commencement of the Agreement.
- 4.3. Time Allowance for Transition  
Should the Contractor require additional time to obtain the equipment necessary to provide the Collection services as detailed in the Agreement, the City shall permit the Contractor to provide Residential Solid Waste Customers with Manual Solid Waste Collection and Collection of Yard Waste commingled with monthly Bulk Waste until such time that the Contractor is in possession of necessary equipment or March 1, 2016, whichever comes first. If the Contractor utilizes this extension, the City shall only be required to compensate the Contractor for Solid Waste Collection from Residential Solid Waste Customers based on the lesser of the Rates for Garbage Carts per the terms of this Agreement and the Contractor's Rates for Manual Solid Waste Collection in their response to RFP 2015-10. Additionally, the Contractor shall provide a minimum of a two week notice to Residential Solid Waste Customers prior to commencing Collection service to Residential Solid Waste Customers utilizing Garbage Carts pursuant to this Agreement.

## 5. ROUTES FOR CONTRACTOR'S COLLECTION SERVICES

### 5.1. Routes

Contractor shall establish collection routes and schedules to satisfy the requirements of this Agreement and to maximize the efficiency of the Contractor's operations. Contractor's routes established under this Agreement shall only include locations to be serviced pursuant to this Agreement and shall not include any locations from outside the Service Area. The Contractor shall submit its proposed routes and schedules to the Contract Administrator for approval with its Collection Plan. The Contractor shall make its best effort to utilize existing routes where possible. Once approved, the Contractor shall provide its Collection service in accordance with the approved routes and schedules in the Collection Plan.

### 5.2. Schedules for Twice Weekly Service

Wherever the Contractor is required to provide a Collection service twice per week pursuant to this Agreement, the Scheduled Collection Days shall be seventy-two (72) hours apart unless otherwise approved by the Contract Administrator.

### 5.3. Changes to Schedules and Routes

Contractor shall not make any changes to the City approved schedules and routes without obtaining the Contract Administrator's approval. To obtain approval for any schedule and route change, Contractor shall submit to the Contract Administrator all proposed changes at least thirty (30) calendar days prior to the proposed implementation of such changes. If the proposed changes are approved and affect Customers' Scheduled Collection Days, the Contractor shall provide all affected customers with written notice of the change at least fourteen (14) calendar days prior to the implementation of the change. The Contract Administrator shall approve of any such notices, including distribution method, prior to distribution to Customers.

### 5.4. Holiday Schedules

Should a Customer's Scheduled Collection Day fall on a Holiday, Contractor may delay the Collection service(s) that were scheduled for that day until that Customer's next Scheduled Collection Day. However, Contractor shall notify any affected Customers pursuant to Section 5.3 above.

### 5.5. Notice of Temporary Delays

Contractor shall notify the Contract Administrator as soon as practical, but no longer than two (2) hours, after the occurrence of an event (e.g. disabled vehicle, accident, etc.) that may cause delays in the Contractors normal collection schedule.

### 5.6. No Excused Delays Due to Fluctuations in Quantities of Waste Streams

It is anticipated that the quantity of Solid Waste, Recyclable Materials, Yard Waste, and Bulk Waste may fluctuate throughout the year and from year to year. These fluctuations shall not justify or excuse the Contractor from completing their Collections in compliance with the approved schedules and routes. The Contractor is responsible for the timely Collection of all materials that are Properly Placed for Collection on Scheduled Collection Days regardless of any fluctuations in the amount of that material.

## 6. HOURS AND DAYS OF CONTRACTOR'S COLLECTION SERVICES

### 6.1. Collection Days and Times

Contractor shall only conduct Collection operations Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor shall not operate within the Service Area outside of these hours without the express written approval of the Contract Administrator. If the City receives complaints about noise or disturbance caused by the Contractor's Collection services at a particular location, the Contract Administrator may restrict the times for the Contractor's Collection services at that location, without increasing the Contractor's rates.

### 6.2. Exceptions

#### 6.2.1. Emergencies

Should a one-time, unexpected situation arise, Contractor may make a written request to the Contract Administrator for permission to operate outside the allowable days and times specified in above in Section 6.1. Requests shall include the reason for the request, the affected area, and the anticipated time of completion. If the request is granted, Contractor shall only be able to operate until the anticipated time of completion as stated in the written request to the City. Should the Contractor require additional time beyond the original request, Contractor shall submit a written request for extension.

#### 6.2.2. Withdrawal of Extended Hours

If extended operating hours are granted, the Contract Administrator can withdraw such permission at any time and the Contractor shall cease operating outside the normal permissible hours, as specified in Section 6.1, immediately upon withdrawal notification from the City.

## 7. CONTRACTOR'S COLLECTION SERVICES

### 7.1. Solid Waste Collection

#### 7.1.1. Customers to Receive Service

All Residential Solid Waste Customers, Multifamily Solid Waste Customers, and Commercial Customers shall be provided Solid Waste Collection by the Contractor.

#### 7.1.2. Materials to be Collected

Garbage, Trash, and any other refuse which is accepted by the Designated Facility for Solid Waste except Unacceptable Waste, Biomedical Waste, Biological Waste, Sludge, dead animals, and any other material that the Contractor is not legally permitted to collect or which the Designated Facility for Solid Waste cannot accept. The Contractor shall not be required to collect any waste that presents a danger or risk of injury to the individual(s) collecting the waste. In addition, Contractor shall not be required to collect Additional Waste or any Contractor Generated Waste with this waste stream.

#### 7.1.3. Method of Collection

For all Residential Solid Waste Customers, the Contractor shall collect all Solid Waste that is Properly Placed by Customers in Contractor provided and maintained Garbage Carts. Contractor shall utilize vehicles which are capable of collecting Contractor provided Garbage Carts in a fully-automated manner.

For all Multifamily Solid Waste Customers and Commercial Customers, the Contractor shall collect all Solid Waste that is Properly Placed by Customers in Contractor provided and maintained Mechanical Containers or Customer-owned Compactors (as long as they are compatible with the Contractor's vehicles) using appropriate vehicles capable of servicing such Containers. Contractor shall, at the request of the Customer, provide the Customer with a locking Container to prevent unauthorized dumping of materials. The Contractor may elect to charge the Customer a reasonable (as determined by the Contract Administrator), additional one-time fee for the locking Container. In certain circumstances Multifamily Solid Waste Customers and Commercial Customers may utilize 95-gallon Garbage Carts for the Collection of Solid Waste. However, the Contractor shall obtain the Contract Administrator's approval prior to providing Garbage Carts to Multifamily Solid Waste Customers and Commercial Customers.

7.1.4. Level of Service

For all Customers with Garbage Carts, the Contractor shall collect each Customer's Solid Waste twice per week.

For all Customers with Mechanical Containers, Contractor and Customer shall mutually agree upon the number, size, and frequency of Collection of Mechanical Container(s). However, the Mechanical Container(s) will be appropriately sized so that all Solid Waste to be placed in the Container(s) between Scheduled Collection Days is contained within the Container(s) such that their lid(s) may fully close. For Multifamily Solid Waste Customers and Commercial Customers who dispose of Garbage or otherwise putrescible waste, Collection shall occur, at minimum, twice per week. For Commercial Customers that do not dispose of Garbage or otherwise putrescible waste, Collection shall occur, at minimum, once per week. However, for Customers that utilize Compactors for Solid Waste, Collection may occur on an as-needed basis.

7.1.5. Proper Placement of Solid Waste by Solid Waste Customers

Customers with Garbage Carts shall place all of their Solid Waste inside the Contractor provided Garbage Carts so that the lids may completely close. The Garbage Carts shall be placed Curbside by 7:00 a.m. on their Scheduled Collection Day with the attachment bar facing the street and at least three (3) feet from other objects on all sides of the Garbage Cart. Customers shall also ensure that there are no objects or obstructions in front of the Recycling Cart and no items placed on top of the Recycling Cart when placed Curbside. Full Garbage Carts shall, at maximum, contain the lesser of one hundred fifty (150) pounds of materials or the maximum capacity of the Garbage Cart.

Customers with Mechanical Containers shall place all of their Solid Waste inside the Mechanical Containers so that the lids may completely close. Customers shall ensure that the Contractor's vehicles are able to access the Mechanical Containers on Scheduled Collection Days.

#### 7.1.6. Collection Following Holidays

For Residential Solid Waste Customers, on the first Scheduled Collection Day following a Holiday for which Solid Waste was not collected, the Contractor shall also collect all Solid Waste that is set out in Garbage Cans and/or heavy-duty securely tied plastic garbage bags. For example, if Christmas Day falls on a Monday and there is no Collection on Christmas Day; Customers that did not receive their regular Monday Solid Waste Collection shall be permitted to place Solid Waste into Garbage Cans and/or heavy-duty securely tied garbage bags on their next Scheduled Collection Day and Contractor shall collect the additional Solid Waste that is placed outside of the Contractor provided Garbage Carts.

For Multifamily Solid Waste Customers and Commercial Customers, should a Customer's Scheduled Collection Day fall on a Holiday for which Solid Waste is not collected, the Contractor shall schedule with the Customer for their Solid Waste to be collected either the day before or the day after the Holiday.

#### 7.1.7. Supplemental Solid Waste Collection

Contractor shall provide, upon written request from the City or Customer, unscheduled Collection of Solid Waste to Multifamily Solid Waste Customers and Commercial Customers based on the Rates set forth in Exhibit 2 for Supplemental Solid Waste Collection. Contractor shall be solely responsible for billing and collecting payment directly from Customers for all unscheduled Solid Waste Collections.

### 7.2. Recyclable Materials Collection Service

#### 7.2.1. Customers to Receive Service

All Residential Recycling Customers and Multifamily Recycling Customers shall receive Recyclable Materials Collection by the Contractor. The Contractor shall offer and make available its Recyclable Materials Collection service to all Commercial Customers; however, Commercial Customers are not required to subscribe to Recyclable Materials Collection with the Contractor.

#### 7.2.2. Materials to be Collected

Recyclable Materials to be collected by the Contractor shall include the following at a minimum: office paper, cardboard, newspaper, magazines, metal cans and lids, plastic containers numbered 1-7, aseptic and paperboard containers, glass food and beverage containers, and any other Recyclable Material that is accepted at the Designated Facility for Source Separated Recyclable Materials.

#### 7.2.3. Additional Materials

At the City's request, Contractor shall collect additional Source Separated Recyclable Materials which are not currently accepted at the Designated Facility for Source Separated Recyclable Materials. Should Collection of these materials cause the Contractor to incur substantial additional costs, the City and Contractor shall, in good faith, negotiate additional compensation for the Collection of the additional materials. To request additional compensation, Contractor must provide evidence of substantial increased costs and demonstrate that they are attributable to the Collection of the additional requested

materials. If there is no change made to routes or collection procedures, additional route hours and miles traveled due to an increase in volume from the additional materials shall not be considered for additional compensation.

#### 7.2.4. Method of Collection

All Recyclable Materials shall be collected in Single Stream. Contractor shall provide all Residential Recycling Customers using Garbage Carts with one (1) 35- or 65-gallon Recycling Cart. See Section 14.2.2.b.2 for initial distribution requirements. Contractor shall provide all Multifamily Recycling Customers using Mechanical Solid Waste Containers with 95-gallon Recycling Carts such that there is a minimum of one Recycling Cart for every eight (8) units in the community or provide equivalent capacity using Mechanical Containers or more frequent collections of Recycling Carts. Should Multifamily Recycling Customers request additional capacity; Contractor shall provide additional capacity as requested by the Customer. Contractor shall utilize vehicles which are capable of collecting Recycling Carts in a fully-automated manner and Mechanical Containers in a fully automated manner. Upon being emptied, Recycling Carts and Mechanical Containers shall be returned to their original locations with their lids closed and Contractor shall close any enclosures. The Contractor's vehicles shall also be equipped with Radio Frequency Identification (RFID) equipment which shall scan and record the pertinent data for each Recycling Cart when it is serviced.

Should Commercial Customers elect to contract with the Contractor for Source Separated Recyclable Materials Collection Service, Contractor and Commercial Customers shall agree upon the method of Collection while ensuring that any Container(s) and their placement meet the requirements set forth in the City of Margate Code of Ordinances.

#### 7.2.5. Level of Service

Recyclable Materials shall be collected, at minimum, one (1) time per calendar week from both Residential Recycling Customers and Multifamily Recycling Customers. Scheduled Collection Days for Residential Recycling Customers shall coincide with one of the Customer's Scheduled Collection Days for Solid Waste. All Source Separated Recyclable Materials collected from Residential Recycling Customers and from Multifamily Recycling Customers using Recycling Carts shall be collected on the same routes. Therefore, unless otherwise approved by the Contract Administrator, Multifamily Recycling Customers using Recycling Carts shall be serviced the same day, using the same vehicles, as the surrounding Residential Recycling Customers. For Multifamily Recycling Customers which use Recycling Carts and are serviced more than once per week, the Multifamily Recycling Customer's Scheduled Collection Days shall be separated by at least seventy-two (72) hours. For Multifamily Recycling Customers which use Mechanical Containers, the Contractor and Multifamily Recycling Customer shall agree upon the desired size of Container and frequency of Collection. However, Mechanical Containers shall be collected a minimum of one (1) time per calendar week.



If a Commercial Customer elects to utilize the Contractor for Recyclable Materials Collection, the Contractor and Commercial Customer shall agree upon the desired level of service and shall formalize this agreement in writing. Since the Collection of Recyclable Materials from Commercial Customers is not a service included in the Contractor's exclusive franchise, the City shall not be a party to any such agreements. However, in no instance shall the Contractor's rate for Commercial Recycling Collection exceed the Collection portion of the comparable Solid Waste Collection Rate as set forth in this Agreement.

7.2.6. Proper Placement of Recyclable Materials

Customers shall place all of their Source Separated Recyclable Materials directly into the Contractor provided Recycling Carts and Mechanical Containers such that the lid(s) may completely close. Customers shall not be required to further separate their Recyclable Materials. Cardboard containers shall be flattened and be no larger than three (3) feet by three (3) feet and may be placed next to Recycling Carts. All containers shall be rinsed clean prior to being placed inside a Recycling Cart. Residential Recycling Customers shall place Recycling Carts Curbside by 7:00 AM on their Scheduled Collection Day with the attachment bar facing the street and at least three (3) feet from other objects on all sides of the cart. Residential Recycling Customers shall also ensure that there are no objects or obstructions in front of the Recycling Cart and no items placed on top of the Recycling Cart when placed Curbside. Recycling Carts located at Multifamily Recycling Customers' properties may need to be moved by the Contractor's personnel to be serviced; however, Recycling Carts must be reasonably accessible to the Contractor.

7.3. Bulk Waste Collection Service

7.3.1. Customers to Receive Service

All Residential Solid Waste Customers and Multifamily Solid Waste Customers shall receive Bulk Waste Collection service from the Contractor. Additionally, the Contractor shall make Supplemental Bulk Waste Collection available to all Customers (Residential, Multifamily, and Commercial).

7.3.2. Materials to Be Collected

Contractor shall collect all Bulk Waste as defined in this Agreement. Contractor shall not be responsible for collecting Construction and Demolition Debris, Contractor Generated Waste, Land Clearing Debris, Yard Waste, or Solid Waste with this Waste Stream. The Contractor shall also not be required to collect any materials which the Designated Facility for Bulk Waste does not accept.

For Residential Solid Waste Customers, there shall be no limit to the volume of Bulk Waste Collected on each Scheduled Collection Day; however, Contractor shall only be responsible for Collection of Bulk Waste generated at the Dwelling Unit. Contractor and Customer may arrange for a Supplemental Collection, at the rate specified in this Agreement, for the Collection of Bulk Waste on a day that is not a Scheduled Collection Day unless it is a Legitimate Missed Pickup.

For Multifamily Solid Waste Customers, there shall be no limit to the volume of Bulk Waste Collected on each Scheduled Collection Day; however, Contractor shall only be responsible for collecting Bulk Waste generated by the residents of the community. During the months of December and January the Contractor shall also collect Holiday Trees placed out by Multifamily Customers with Bulk Waste.

7.3.3. Method of Collection

Contractor shall utilize equipment and personnel as Contractor deems necessary to service this Waste Stream. This may include claw trucks, rear loaders, etc. Contractor will ensure that sufficient and appropriate equipment and personnel are available to service each route on its Scheduled Collection Day. Contractor also recognizes that there will be fluctuations in the volume of this waste stream and said fluctuations shall not excuse the Contractor from completing a route on its Scheduled Collection Day.

7.3.4. Level of Service

Bulk Waste shall be collected one (1) time per calendar month. For Residential Solid Waste Customers, the collection day shall coincide with the Customer's second Scheduled Collection Day for Solid Waste during the first full week of each month. For Multifamily Solid Waste Customers, the collection day shall coincide with the Scheduled Collection Day for Bulk Waste of the surrounding Residential Solid Waste Customers.

7.3.5. Proper Placement of Bulk Waste

Residential Solid Waste Customers shall place their Bulk Waste Curbside by 7:00 a.m. on their Scheduled Collection Day. Multifamily Solid Waste Customers shall reach a mutual agreement with the Contractor on a location where Bulk Waste shall be placed for Collection. Any such locations shall comply with the City of Margate Code of Ordinances. Glass items shall be enclosed and sealed in a sturdy container and marked as glass. Holiday Trees, for Multifamily Customers, must be free from any lights, wiring, ornaments, etc. Customers shall not place Garbage, Trash, Construction and Demolition Debris, Tires, Yard Waste, or Unacceptable Waste with this waste stream.

7.3.6. Supplemental Bulk Waste Collection

Supplemental Bulk Waste Collection shall be provided as requested by the Customer. If a Customer requests a Supplemental Collection from the Contractor, the Contractor shall provide a written estimate to the Customer based on the Rates as set forth in Exhibit 2. Contractor shall obtain written consent from the Customer prior to the removal of any waste material. Contractor shall be solely responsible for billing and collecting payment directly from the Customer.

7.4. Yard Waste Collection Service

7.4.1. Customers to Receive Service

All Residential Solid Waste Customers shall receive Yard Waste Collection service from the Contractor.

7.4.2. Materials to Be Collected

Contractor shall collect all Yard Waste as defined in this Agreement. There shall be no limit to the volume of Yard Waste per Collection. Contractor shall not collect Contractor

Generated Waste, Land Clearing Debris, Bulk Waste, Recyclable Materials, Solid Waste, or Unacceptable Waste with this Waste Stream.

#### 7.4.3. Method of Collection

Contractor shall utilize equipment and personnel as Contractor deems necessary to service this Waste Stream. This may include claw trucks, rear loaders, etc. Dependent upon the requirements of the Designated Facility for Yard Waste, Contractor may be required to completely empty plastic bags containing Yard Waste at the curb into the collection vehicle and, if so required, Contractor shall be responsible for consolidating and properly disposing of empty plastic bags. Contractor will ensure that sufficient and appropriate equipment and personnel are available to service each route on its Scheduled Collection Day. Contractor also recognizes that there will be fluctuations in the volume of this waste stream and said fluctuations shall not excuse the Contractor from completing a route on its Scheduled Collection Day.

#### 7.4.4. Level of Service

Yard Waste shall be collected one (1) time per week. The collection day shall coincide with the Residential Solid Waste Customer's first Scheduled Collection Day for Solid Waste each week.

#### 7.4.5. Proper Placement of Yard Waste

Customers shall place their Yard Waste Curbside by 7:00 a.m. on their Scheduled Collection Day. Customers shall place leaves and clippings in clear plastic bags or Garbage Cans but shall not be required to bundle, bag, or containerize tree limbs. Holiday Trees must be free from any lights, wiring, ornaments, decorations, etc. Customers shall not place, and Contractor shall not Collect, Garbage, Trash, Recyclable Materials, Bulk Waste, or any other type of waste with this Waste Stream.

#### 7.5. Side Door Service

The Contractor shall provide Side Door Service to any Residential Solid Waste Customer and/or Residential Recycling Customer in which there is no individual that resides in the Dwelling Unit that is capable of bringing the Garbage Cart(s) and/or Recycling Cart(s) to the curb. Contractor may require the Customer to provide proof of disability for each household member. Any disputes between the Customer and the Contractor regarding whether or not this service is to be provided to the Customer shall be referred to the Contract Administrator. For all Customers that receive Side Door Service, the Contractor shall only be required to collect the Customer's Garbage Cart(s) and/or Recycling Cart(s) and not any other type of waste or any waste placed outside of the Garbage Carts and/or Recycling Carts with the exception of cardboard containers that have been broken down to no larger than three feet by three feet.

### 8. CONTRACTOR'S SERVICES FOR THE CITY

#### 8.1. Solid Waste Collection

Contractor shall provide Solid Waste Collection from City properties as determined by the Contract Administrator. The Contractor shall collect Solid Waste from these designated City properties a minimum of two (2) times per week. Solid Waste shall be collected, as

determined by the Contract Administrator, in either Mechanical Containers or Garbage Carts. Exhibit 7 details the City properties that shall receive Solid Waste Collection services and includes the current level of service for each property. All materials shall be delivered to the Designated Facility for Solid Waste. As deemed necessary, the Contract Administrator may make changes to the City properties served and/or the level of service at each property. Contractor shall provide all Solid Waste Containers along with Collection and Disposal at no cost to the City.

8.2. Recycling Collection

The Contractor shall provide Recyclable Materials Collection from City properties as determined by the Contract Administrator. The Contractor shall collect Recyclable Materials from these designated City properties a minimum of one (1) time per week. Recyclable Materials shall be collected in Contractor provided Recycling Carts or Mechanical Containers. Exhibit 7 details the City properties that shall receive Recyclable Materials Collection and includes the level of service for each property. As deemed necessary, the Contract Administrator may make changes to the City properties served and/or the level of service at each property. All materials shall be delivered to the Designated Facility for Source Separated Recyclable Materials and the City shall receive credit for all Recyclable Materials collected from City properties. All Recyclable Materials Containers and Collection shall be provided at no cost to the City.

8.3. Roll-off Containers

8.3.1. General City Use

The Contractor shall provide the City up to six (6) Roll-off Containers, up to thirty (30) yards each, for the disposal of waste generated by City staff from City operations. This waste may include, but is not limited to, Bulk Waste, Yard Waste, Garbage, Trash, and Construction and Demolition Debris. Contractor shall place the Roll-off Containers in locations as directed by the Contract Administrator, or their designee, and shall collect any of the Containers within one Business Day of being notified by the City. The City shall only use these Containers for work done by City staff and not for work done by outside companies contracted by the City. Contractor shall provide these Roll-off Containers along with Collection and Disposal at no cost to the City.

8.3.2. Water Treatment Plant

At no cost to the City, the Contractor shall provide one (1) Roll-off Container, up to thirty (30) yards, at the Department of Environmental and Engineering Services (DEES) Water Treatment Plant (WTP) along with up to two (2) pulls (including disposal) per calendar month. This waste may include, but is not limited to, Bulk Waste, Yard Waste, Trash, Construction and Demolition Debris, and excavation debris. Contractor shall collect the WTP Roll-off Container within one Business Day of being notified by the City. Should the City exceed two pulls of the WTP Roll-off Container in a calendar month, the Contractor may invoice the City for those pulls in excess of the allotted two (2) free monthly pulls at the rate as specified in this Agreement for such services.

#### 8.4. City Sponsored Events

The Contractor shall provide Containers and equipment required for Solid Waste and Recyclable Materials Collection at up to twelve (12) City-sponsored, or co-sponsored, events per Contract Year. Contractor shall collect and deliver the Solid Waste and Recyclable Materials to the appropriate Designated Facilities. Additionally, at the Contract Administrator's request the Contractor shall provide up to six (6) portable toilets per event. The City shall be credited for all Recyclable Materials collected at these City-sponsored, or co-sponsored, events. These Collection services, disposal, and portable toilets shall be provided at no cost to the City.

#### 8.5. Household Hazardous Waste Collection Events

##### 8.5.1. Collection Events

During Term of this Agreement, the Contractor shall hold a minimum of two (2) Household Hazardous Waste collection events each Contract Year. The events shall occur on mutually agreed upon dates and at mutually agreed upon locations within the Service Area. The Contractor shall submit to the City, in writing, its proposed event dates and locations at least ninety (90) days prior to the start of each Contract Year. The Contractor shall accept Household Hazardous Waste, Electronic Equipment, Tires (limit of four (4) per household), and other materials as agreed upon with the City. Contractor shall be responsible for all aspects of planning, permitting, and operation of the events along with the transportation and proper disposal of all materials collected at the events. The events shall be open to City of Margate residents and shall accept waste from the City for waste generated by the City's operations. Each event shall occur for a minimum duration of five (5) hours each. The Contractor shall screen Customers to ensure eligibility, record user information, and provide data to the City. The City will provide the personnel necessary to assist the Contractor in coordinating the events, marketing the events, and, if desired by the City, providing any City materials at the event. Contractor may elect to employ a sub-contractor to fulfill, or assist in fulfilling, these responsibilities and, if so, shall obtain the City's approval of the sub-contractor. There shall be no charge to the City or its residents for this service including any events that the Contractor opts to provide above the two (2) event per Contract Year minimum. The City reserves the right, in its sole discretion, to join the Interlocal Agreement Among the Cities of Coral Springs, Fort Lauderdale, Pompano Beach, Tamarac, and Coconut Creek (HHW ILA Co-op) for Household Hazardous Waste collection events. Should the City opt to join this HHW ILA Co-op, the Contractor shall accept Household Hazardous Waste from residents of member HHW ILA Co-op cities, bill HHW ILA Co-op cities accordingly for their portion of event costs, keep records in accordance with the HHW ILA Co-op agreement, and pay HHW ILA Co-op cities for the City's proportional share of event costs in HHW ILA Co-op cities' events.

##### 8.5.2. Secure Document Shredding at Household Hazardous Waste Collection Events

The Contractor shall provide Secure Document Shredding services at a minimum of two of the Household Hazardous Waste collection events the Contractor is to hold each Contract Year. The Secure Document Shredding service shall be open only to City of Margate

residents and shall allow residents to have a maximum of three standard paper boxes worth of documents securely destroyed at no cost to the resident. Should residents wish to have more than the three standard paper boxes of documents destroyed, the Contractor may charge residents a fee for each additional standard paper box a resident wishes to have destroyed. The Contractor shall be responsible for collecting any such fees from residents.

8.5.3. Program Review

At the conclusion of each Contract Year, the City and the Contractor may review the Household Hazardous Waste Collection Events with Secure Document Shredding service to determine their effectiveness. If the parties mutually agree that the Contractor may cease providing these events, the Contractor shall compensate the City annually for the equivalent cost of these events in lieu of providing these events. However, should the City and Contractor mutually agree to cease providing these events, the City, in its sole option, shall have the right in any subsequent Contract Year to forgo this compensation and again require the Contractor to provide the Household Hazardous Waste Collection Events with Secure Document Shredding services per Sections 8.5.1 and 8.5.2.

8.6. Illegal Dumping

The Contractor shall collect and dispose of, at the Contract Administrator's request, up to fifty (50) tons of waste that has been illegally dumped on City Property and right-of-ways within the Service Area per Contract Year. There shall be no charge to the City or its residents for this service. For each request, the Contractor shall report to the Contract Administrator the weight of the waste materials that the Contractor collected. Should the Contractor find Hazardous Waste, Biomedical Waste, Biological Waste, or any other waste material that the Contractor is not legally permitted to collect with illegally dumped materials, the Contractor shall coordinate with the City to ensure safe handling and proper disposal of the materials.

8.7. Adopt-a-Street Program

The City has implemented an Adopt-a-Street Program. The Contractor shall, at no cost to the City or the volunteer organizations, collect and dispose of all waste collected during cleanup events. Prior to each cleanup event, the City shall notify the Contractor of the date and location of the event and the Contractor shall collect all event waste by the end of the first Business Day following the event. Volunteer organizations will place bags filled with waste collected at the event under one or both of the recognition signs located on the roadway(s) that they have adopted, for Collection by the Contractor. Should the Contractor find Hazardous Waste, Biomedical Waste, Biological Waste, or any other waste material that the Contractor is not legally permitted to collect with materials collected at such events, the Contractor shall coordinate with the City to ensure safe handling and proper disposal of the materials. The waste collected in connection with these events will count towards the fifty (50) tons of illegal waste the Contractor is to provide in Section 8.6.

8.8. Wastewater Material

As requested by the Contract Administrator, Contractor shall provide Mechanical Containers as well as Collection and disposal for wastewater material at the DEES Wastewater Treatment Plant. The Contractor shall not charge the City for the Container(s) or Collection. However,

Contractor may invoice the City for disposal at the Rate specified in Exhibit 2. The Contract Administrator or the Contractor may request, in writing, for this rate to change in proportion to any change in the disposal fee.

8.9. Recyclable Materials Drop-off

At the request of the Contract Administrator, the Contractor shall provide one (1) enclosed Mechanical Container for the purpose of establishing a City-wide Recyclables Materials drop-off center that is open to the public. The Mechanical Container shall be placed at a location to be determined by the Contract Administrator. The Contractor shall pull the Mechanical Container when full or as reasonably directed by the Contract Administrator, and deliver it to the Designated Facility for Recyclable Materials. The City shall receive credit for all Recyclable Materials collected at this drop-off. The Contractor shall provide this service at no cost to the City.

8.10. Educational Services

8.10.1. Annual Notice

At no cost to the City, the Contractor shall design, print, and mail, or hand deliver via door hangers, an annual notice to all Customers. The notice shall include, at minimum, the Customer's Scheduled Collection Day(s), summarize the requirements of the Customer (e.g. proper placement, allowable materials, etc.), other relevant information concerning the Contractor's services, and other educational and promotional information regarding Collection Services. Along with the annual notice, the Contractor shall provide Residential Solid Waste Customers and Residential Recycling Customers magnets with their Scheduled Collection Days. All such annual notices shall be distributed to Customers by the Contractor in December of each Contract Year and approved by the Contract Administrator prior to distribution. In addition to mailing or hand delivering the annual notices, the Contractor shall provide copies of the annual notice(s) as follows: to all New Commercial Customers upon commencement of new service, sufficient copies to the City (along with magnets) for distribution to New Residential Customers, and sufficient copies to the management of each Multifamily Solid Waste Customer and each Multifamily Recycling Customer for distribution to new residents.

8.10.2. City Sponsored Events

As requested by the Contract Administrator, the Contractor shall provide personnel and equipment at City sponsored, or co-sponsored, events or activities for up to forty (40) hours per Contract Year. At any such events, and as applicable, the Contractor shall provide educational materials and demonstrate equipment to the public. Contractor shall provide requested personnel and equipment for a City event as long as the City provides a minimum of a ten (10) day notice. If the City's request is less than ten (10) days from the event, the Contractor can opt not to attend.

8.10.3. Contractor's Marketing Personnel

To ensure consistent messaging and to assist with the creation of marketing materials, the Contractor shall make their marketing personnel available to the City for a

maximum of twenty (20) hours per Contract Year. If assistance is requested by the City, the City will, at minimum, provide all relevant content.

8.11. Pilot Projects

The Contractor shall cooperate with the City to implement pilot projects that have a goal of reducing or diverting waste from disposal or incineration facilities and/or decreasing the environmental impact of the Collection process. In the event the City wishes or agrees to implement a pilot project, any project shall not exceed six (6) months in duration. The party that requests implementation of the pilot project would pay for any equipment, and its installation, that may be required for any such projects. For pilot projects requested by the City, the City and Contractor shall equally share incremental operating expenses directly related to the implementation of the pilot project. Should the City elect to continue with or expand the project beyond the six (6) month pilot period; the City and Contractor shall, in good faith, negotiate any changes in the Contractor's rates, if any, based on only the incremental costs associated with the new program. However, the Contractor shall bear all costs associated with the implementation of any Contractor-requested pilot projects and their full implementation, if opted, unless otherwise agreed upon with the City.

9. OPERATION DURING STORMS

In the case of a hurricane, tornado, severe storm, or other disaster, the Contract Administrator may grant the Contractor reasonable variance from regular schedules and routes. As soon as practicable after such storm or disaster, the Contractor shall advise the Contract Administrator of the estimated time required before regular schedules and routes can be resumed. The City may request help from the Contractor to provide additional service after any such storm or disaster in the cleaning up of the City. In such case, the Contractor shall use its best efforts to comply with such request and, depending on the magnitude of the disaster, shall abide by FEMA, DEM, FDOT, City, and any other regulatory requirements that may pertain. The City and the Contractor shall, prior to the Contractor's commencement of additional service, enter into a written agreement specifying the terms and compensation of such services. The Contractor shall not expect to be reimbursed by the City for its costs incurred prior to any written agreement or for cleanup services provided which are not specified in the written agreement.

10. COLLECTION PROCEDURES

10.1. Proper Collection

When providing a Collection service, Contractor shall thoroughly empty a Customer's Container and return it in an upright position to where it was collected from. Contractor shall ensure that empty Containers are placed in such a manner as to not impede the flow of traffic including, but not limited to, not being placed in the roadway or in front of a Customer's driveway. If the Container has a lid, the lid shall be returned to the closed position. Contractor shall handle Containers carefully and in a manner so as to not damage the Containers and their lids. If a Container is in an enclosure, the Contractor shall close the enclosure after returning the Container. For Waste Streams without Containers, e.g. Bulk Waste and Yard Waste, Contractor shall make every effort to collect all allowable materials



placed for Collection. Contractor shall provide Collection services with as little noise and disturbance as possible.

The Contractor shall be responsible for the proper handling of any White Goods and Electronic Equipment that the Contractor collects and shall take appropriate steps to minimize the release of Freon, coolants, and other similar materials from White Goods. The Customer shall be required to remove Freon, coolants, or other similar materials from White Goods, and certified as such, before they are placed out for Collection. The Contractor shall not be required to remove such materials before the White Goods are collected.

#### 10.2. Spillage and Litter

Contractor shall make every effort to properly collect and completely empty all Containers during Collection. This includes, but is not limited to, using fully enclosed vehicles or covered vehicles or other devices to prevent material from falling, blowing, or escaping the vehicle while any material is hauled or transported over roads in the City. Contractor shall not litter premises or public right-of-way in making Collections or hauling Waste Streams. In the event of spillage by the Contractor, the Contractor shall immediately clean up such litter.

#### 10.3. Mixing of Loads

##### 10.3.1. Solid Waste

Loads of Solid Waste collected from Residential Solid Waste Customers shall not be collected with Solid Waste collected from any other Customers. Contractor may combine loads of Solid Waste collected from Commercial Solid Waste Customers, Multifamily Solid Waste Customers, and the City. Solid Waste collected from within the Service Area shall not be combined with any Solid Waste collected outside the Service Area.

##### 10.3.2. Recyclable Materials

Under no circumstances shall the Contractor mix Source Separated Recyclable Materials with Solid Waste, Yard Waste, Bulk Waste, or any other waste material. However, Contractor shall not be required to separate Recyclable Materials from Solid Waste if it is placed with Solid Waste by the Customer. Contractor may collect loads of Recyclable Materials from Residential Recycling Customers, Multifamily Recycling Customers, and the City together. Should the Contractor choose to collect Recyclable Materials from Commercial Customers along with Recyclable Materials collected from Residential Recycling Customers, Multifamily Recycling Customers, or the City, the City shall receive full credit for all such loads. The Contractor shall not collect or combine any Recyclable Materials collected from outside the Service Area with Recyclable Materials collected from Residential Recycling Customers, Multifamily Recycling Customers, or the City. For loads containing only Recyclable Materials collected from Commercial Customers, the Contractor may combine these loads with Recyclable Materials collected from outside the Service Area.

##### 10.3.3. Bulk Waste

Contractor shall collect loads of Bulk Waste from Residential Solid Waste Customers separately from Bulk Waste collected from Multifamily Solid Waste Customers and

Supplemental Collections. Contractor may combine Bulk Waste collected from Multifamily Solid Waste Customers and Supplemental Collections. Contractor shall not collect any other Waste Stream with Bulk Waste nor shall the Contractor collect any waste from outside the Service Area with Bulk Waste collected from Residential Solid Waste Customers and Multifamily Solid Waste Customers. Contractor may collect waste from outside the Service Area with Supplemental Collections only if Supplemental Collections are collected separately from Bulk Waste collected from Multifamily Solid Waste Customers.

10.3.4. Yard Waste

Contractor shall collect Yard Waste from Residential Solid Waste Customers separately from, and shall not mix it with, all other Waste Streams. Contractor shall not mix Yard Waste collected from Residential Solid Waste Customers with any waste materials collected outside the Service Area.

10.4. Non-Collection

10.4.1. Non-Collection Notice

Contractor shall design the form and content of a Non-Collection Notice that is to be placed on Customers' Containers and/or waste material that are not collected by the Contractor. The Non-Collection Notice shall, at minimum, inform the Customer as to the issuance date, the reason of non-collection, how the Customer can correct the problem, and the Contractor's contact information. The Contract Administrator shall approve the final form and content of the Non-Collection Notice.

10.4.2. Non-Collection Procedure

Should the Contractor elect not to collect a Customer's Container and/or waste because it was not Properly Placed per applicable requirements or contains materials not listed as "Materials to be Collected" for that particular Waste Stream (e.g. Garbage placed with Yard Waste), the Contractor shall place a Non-Collection Notice on the Customer's Container and/or waste item(s) placed for Collection. If a Customer's Container and/or waste materials are not tagged, it will be considered a Legitimate Missed Pickup and the Contractor may be required to return to the Customer's property to collect the waste. However, the Contractor shall not be required to tag Containers and/or waste items when it is not that route's Scheduled Collection Day for a particular Waste Stream. Additionally, should the non-collected waste be located at a Multifamily Solid Waste Customer's or Commercial Solid Waste Customer's property, in addition to placing a Non-Collection Notice, the Contractor shall attempt to contact the Customer. If contact is made and the reason for non-collection is immediately correctable, the Contractor shall provide the Customer with the opportunity to correct the issue prior to leaving the property and shall collect the Container or Bulk Waste.

10.4.3. Non-Conforming Material and Contamination in Recycling Containers

The Contractor may leave Non-Conforming Material and Excessively Contaminated Recyclable Materials in Recycling Carts. If the Contractor elects to leave material in the Recycling Cart, the Contractor shall place a Non-Collection Notice on the Recycling Cart explaining why the material was not collected. The Contractor is responsible for

determining whether Recycling Carts contain Non-Conforming Material and/or is Excessively Contaminated.

10.4.4. Waste Containing Dangerous and/or Unacceptable Materials

The Contractor shall not collect any waste from Customers that the Contractor believes contains dangerous material such as Hazardous Waste, Biomedical Waste, Explosives, Radioactive Waste, or Unacceptable Materials. In such instances, and if safely able to do so, the Contractor's personnel shall place a Non-Collection Notice on the Container or waste material and immediately notify their supervisor. If safely possible, the driver shall also take a photograph of the material. The Contractor shall work with the Customer and/or the City to ensure that the waste is properly removed and lawfully disposed. If the material poses an immediate danger, collection personnel shall contact the appropriate emergency response agency (fire, police, etc.); the Contractor's supervisory personnel; and the Contract Administrator.

10.4.5. Inaccessible Container(s)

Should a Customer's Container be temporarily inaccessible (e.g. blocked by a vehicle in the roadway), the Contractor shall, if feasible, return to collect that Container later the same day. If it is unfeasible to return to the Container the same day, the Contractor shall place a Non-Collection Notice on the Container and return to collect it the next Business Day.

10.4.6. Routine Non-Collections

Should a Customer routinely place waste in such a manner that the Contractor is regularly placing Non-Collection Notices on the Customer's Container(s) and/or waste due to it not being Properly Placed; the Contractor shall provide educational materials to the Customer regarding Proper Placement along with the Non-Collection Notice. Additionally, if the Customer routinely places Solid Waste outside of their Garbage Container(s) and/or has Non-Conforming Material or Excessively Contaminated Recyclable Materials in their Recycling Cart, the Contractor shall include educational materials about recycling along with the Non-Collection Notice. Further, the Contractor shall notify the City of the Customer's failure to comply with the requirements of this Agreement.

11. CONTRACTOR'S LOCAL OFFICE

The Contractor shall maintain a local office within Broward County for the purposes of receiving and handling Customer complaints and inquiries. Contractor may also utilize its call center outside Broward County, which shall be located within the continental United States, to manage Customer complaints and inquiries. Such call center shall have a local phone number. The office shall be equipped with sufficient personnel and equipment to receive and respond to all calls received from Customers in a timely manner. A supervisor shall be present in the office and in charge at all times during normal business hours. The office shall be open, at minimum, Monday through Friday from 8:00 a.m. to 5:00 p.m. and Saturday from 8:00 a.m. to 12:00 p.m. The office shall not be required to be open during Holidays. The Contractor shall be prepared for higher than normal volume of calls during the first six (6) months after the commencement of this Agreement.

## 12. COMPLAINTS

### 12.1. Complaint Tracking System

The Contractor shall utilize a real-time, web-based system for tracking Customer complaints. The Contractor's complaint tracking system shall allow the Contract Administrator to access the system to monitor complaints from the City's computers. The complaint tracking system shall be able to generate customizable reports using the type of complaint, location, and other requested metrics.

### 12.2. Handling of Customer Complaints

The Contractor shall establish a procedure for, and be responsible for, receiving and resolving all complaints from Customers. All complaints received by the Contractor shall be entered into the complaint tracking system within one (1) hour of receipt of the complaint or within two (2) hours of opening if the complaint is received after regular business hours. The Contractor shall initially determine if a complaint is a Legitimate Complaint. If a Legitimate Complaint is received by the Contractor before 12:00 p.m. on a Business Day, the Contractor shall remedy that complaint by the end of that day. All Legitimate Complaints received after 12:00 p.m. on Business Days, weekends, or Holidays shall be resolved by 12:00 p.m. of the next Business Day. The Contractor may request additional time to remedy a Legitimate Complaint when the Contractor has made its best efforts to correct the problem but has been unable to do so in the time provided herein. The Contractor is also encouraged, but shall not be required, to resolve complaints that are not Legitimate Complaints (late set outs, waste placed out on the incorrect day, etc.) in the timeframe provided herein.

### 12.3. Dispute Resolution Process for Customers

All disputes between the Contractor and Customers shall be referred to the Contract Administrator. This includes, but is not limited to, whether a complaint is a Legitimate Complaint and all Legitimate Complaints that the Contractor has not been able to resolve with the Customer within two (2) Business Days of the Contractor having received the complaint. The Contract Administrator shall respond in writing with a fair and impartial remedy for all disputes. The Customer and/or Contractor shall either comply with the Contract Administrator's decision within three (3) Business Days or may provide the Contract Administrator with a written request for a hearing before the City Manager. The City Manager shall provide both parties the opportunity to present their case and shall provide a decision within twenty (20) Business Days of receiving the request for the hearing. The City Manager's decision shall be final.

## 13. MULTIFAMILY AND COMMERCIAL SOLID WASTE CONTRACTS

### 13.1. Standard Service Agreements

The Contractor shall develop standard forms to be used as service contracts with all Multifamily Solid Waste Customers, Multifamily Recycling Customers, and Commercial Customers. The terms and conditions of these forms shall be consistent with the terms of this Agreement and subject to the approval of the Contract Administrator. At minimum, the service contracts shall: identify the services being provided; the rates to be charged for the

provided services; and that the contract and the rates are regulated by the Agreement the Contractor has with the City of Margate.

13.2. Initiation of Service

The Contractor shall use its best efforts to enter into a service contract with all Multifamily Solid Waste Customers, Multifamily Recycling Customers, and Commercial Customers prior to, and shall begin providing Collection services to these Customers, December 1, 2015. After this date, all new Multifamily Solid Waste Customers, Multifamily Recycling Customers, and Commercial Customers shall enter into a written service contract with the Contractor prior to the initiation of Collection services and the Contractor shall begin Collection services within three (3) Business Days after receiving such a request, if the service contract is signed.

13.3. Termination of Service

The Contractor shall have the right to terminate Solid Waste Collection to a Multifamily Solid Waste Customer, a Multifamily Recycling Customer, or a Commercial Customer who is delinquent in payment for Solid Waste Collection services. However, the Contractor shall notify the Contract Administrator at least fifteen (15) calendar days before service is to be terminated and the City shall take whatever action it deems appropriate to enforce compliance with the City of Margate Code of Ordinances. If Solid Waste Collection or Recyclable Materials Collection is terminated, the Contractor may remove any Solid Waste and/or Recyclable Materials Collection Containers belonging to the Contractor from the Customer's property. Subject to Applicable Laws, the Contractor may charge interest on delinquent accounts and may charge a reasonable fee, to be approved by the Contract Administrator, for the resumption of service.

14. COLLECTION CONTAINERS

14.1. Purchase and Ownership

14.1.1. Garbage Cans, Plastic Bags, and Biodegradable Bags

Each Customer shall purchase and provide any Garbage Cans, plastic bags, and biodegradable bags that the Customer uses. Garbage Cans shall remain the property of the Customer.

14.1.2. Recycling Bins

Recycling Bins were previously purchased and distributed to Customers in the Service Area. These Recycling Bins are and shall remain the property of the Customers.

14.1.3. Garbage Carts and Recycling Carts

The Contractor shall purchase and assemble all of the Garbage Carts and Recycling Carts that the Contractor is required to provide under this Agreement. Garbage Carts will be made available in 35-, 65-, and 95-gallon capacities. Recycling Carts will be made available in 35- and 65-gallon capacities. Garbage Carts and Recycling Carts purchased by the Contractor shall become the property of the City when the carts are delivered to a Customer or to the City. Upon termination or expiration of this Agreement, all Garbage Carts and Recycling Carts held in the Contractor's inventory for the City (e.g. carts that are hot-stamped or labeled with the City's name or logo) shall be delivered to,

and become the property of, the City. Carts purchased by a Customer shall be the property of the Customer.

The City has previously purchased and distributed 65-gallon Recycling Carts to Residential Recycling Customers. These Recycling Carts are and shall remain the property of the City.

14.1.4. Mechanical Containers

The Contractor shall be responsible for the purchase of all Mechanical Containers and Compactors that the Contractor is required to provide under this Agreement.

Mechanical Containers and Compactors purchased by the Contractor shall remain the property of the Contractor, unless sold.

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

14.2. Storage, Distribution, and Replacement of Containers

14.2.1. Garbage Cans and Recycling Bins

Each Customer shall be responsible for storing and replacing their Garbage Can(s) and/or Recycling Bin(s) (if any). However, should the Contractor be notified that they damaged a Customer's Garbage Can or Recycling Bin; the Contractor shall replace the Customer's Garbage Can or Recycling Bin with one of like size, style, and quality.

14.2.2. Garbage Carts and Recycling Carts

(a) Storage of Carts

Contractor shall store all Garbage Carts and Recycling Carts not delivered to Customers at the Contractor's local office. In addition, the Contractor shall take possession of, and store, the City's existing stock of 65-gallon Recycling Carts. The Contractor shall be responsible for procuring, maintaining at all times, and storing an adequate supply of Garbage Carts and Recycling Carts for distribution. Each Customer shall be responsible for storing Garbage Cart(s) and Recycling Cart(s) that are delivered to them.

(b) Initial Distribution

14.2.2.b.1. Garbage Carts

The Contractor shall purchase, assemble, and deliver one (1) new Garbage Cart to each Residential Solid Waste Customer. Prior to the distribution of Garbage Carts, Customers shall have the opportunity to select the size and quantity of the Garbage Cart(s) they wish to receive. Customers that request more than one (1) Garbage Cart shall be responsible for paying Contractor, pursuant to Section (d) below, for each Garbage Cart in excess of the Customer's one (1) free Garbage

Cart. For Customers that do not choose a Garbage Cart size prior to the distribution of Garbage Carts, the Contractor shall deliver a 35-gallon Garbage Cart to each Rowhome and a 65-gallon Garbage Cart to all other Residential Solid Waste Customers. As described in Section 14.4.1, Customers shall be provided a one-time, free opportunity to exchange their Garbage Cart for one of a different size within three (3) months after the completion of the initial distribution of Garbage Carts.

14.2.2.b.2. Recycling Carts

Before December 1, 2015, the Contractor shall provide Recycling Carts or Mechanical Recycling Containers to each Multifamily Recycling Customer. The Recycling Carts shall be approximately ninety-five (95) gallons in capacity. A minimum of two (2) Recycling Carts shall be provided to each Multifamily Recycling Customer. In addition, there shall be at least one 95-gallon Recycling Cart provided for every eight (8) Dwelling Units in each Multifamily Recycling Customer's complex. Instead of providing Recycling Carts, the Contractor may provide one or more Mechanical Recycling Containers which capacity shall provide at least an equivalent capacity as the number of 95-gallon Recycling Carts required pursuant to this paragraph. Furthermore, if there are space constraints which inhibit the placement of sufficient capacity, as required in this paragraph, Contractor may provide lesser capacity but shall collect it at a frequency so that the required capacity is collected each week. For example, if the Contractor provides Recycling Carts at fifty percent (50%) of the required capacity they shall collect the Customer's Recycling Carts twice per week. Nothing in this paragraph inhibits the Customer from requesting, which the Contractor shall provide, Recyclable Materials Container capacity greater than one 95-gallon Recycling Cart per eight (8) Dwelling Units.

During the initial distribution of the City's current 65-gallon Recycling Carts, a number of Residential Recycling Customers declined or returned their Recycling Cart. Therefore, for Customers currently without Recycling Carts, the Contractor shall provide residents the opportunity to request a Recycling Cart, in the size of their choice, to be delivered before December 1, 2015.

Additionally, before December 1, 2015, the Contractor shall purchase, assemble, and deliver one new Recycling Cart to each of the approximately 450 Residential Recycling Customers living in Rowhomes in the City which currently have and utilize Recycling Bins for recycling. Prior to distribution, the Contractor shall provide these Customers the opportunity to select the size of Recycling Cart they wish to receive.

The Contractor shall deliver a 35-gallon Recycling Cart to each Customer that does not choose a Recycling Cart size prior to distribution.

(c) New Residential Customers

During the term of this Agreement, the Contractor shall purchase, assemble, and deliver one new Garbage Cart to each New Residential Solid Waste Customer and one new Recycling Cart to each New Residential Recycling Customer which requests one. There shall be no charge to these Customers for these carts. The carts shall be the size as requested by the Customer and be delivered within three (3) Business Days after the Customer or the City requests the Contractor to deliver the cart(s). If there are any Garbage Carts or Recycling Carts on the premises that were left by the previous Customer, the Contractor shall take possession of those carts.

(d) Replacement and Purchased Carts

During the term of this Agreement, the Contractor shall purchase, assemble, and deliver: one new or refurbished Garbage Cart to each Residential Solid Waste Customer that needs to replace a cart because their cart has been stolen or damaged beyond repair; one new or refurbished Recycling Cart to each Residential Recycling Customer that needs to replace a cart because their cart has been stolen or damaged beyond repair; and/or a new Garbage Cart or Recycling Cart, as the case may be, to each Customer that wishes to purchase a cart pursuant to this section. For such Customers, the Contractor shall deliver the carts within three (3) Business Days after the cart(s) is (are) requested by the City or Customer. Additionally, the Contractor shall be responsible for replacing or repairing, at no charge to the Customer, all Garbage Carts and Recycling Carts for which the Contractor, as determined by the Contract Administrator, is responsible for damaging.

If a Customer has exceeded their one (1) allotted replacement cart for each Cart originally provided pursuant to this Agreement and requires a replacement cart or would like to purchase an additional Garbage Cart or Recycling Cart, the Contractor may charge the Customer a fee for the replacement cart and a delivery fee for the delivery of the replacement cart to the Customer's residence, if applicable. Any fees charged shall be pursuant to the rates set forth in Exhibit 2. Notwithstanding, the cost of a replacement or purchased cart shall not exceed fifty dollars (\$50.00) and the delivery fee shall not exceed twenty-five dollars (\$25.00). The Contractor may charge only one delivery fee per required trip to the Customer. For example, a Customer that requests to have a Garbage Cart exchanged for a larger one and an additional Garbage Cart delivered would only require one trip to the Customer by the Contractor and, therefore, the Contractor may not charge the Customer for more than one delivery fee. However, the Contractor shall not charge the Customer a delivery fee if the Customer obtains the replacement cart from



the Contractor's local office. The Contractor shall be responsible for billing and collecting any cart and delivery fees directly from the Customer.

14.2.3. Mechanical Containers

The Contractor shall be responsible for the storage, distribution, and replacement of its inventory of Mechanical Containers. The Contractor shall provide a Mechanical Container within three (3) Business Days after receiving a request from the City or a Customer.

14.3. Maintenance and Repair of Containers

14.3.1. Garbage Cans and Recycling Bins

Each Customer shall be responsible for cleaning, maintaining, and repairing their Garbage Can and/or Recycling Bin (if any). Garbage Cans and Recycling Bins shall be maintained in good condition and shall be free from sharp edges or other hindrances to efficient Collection services. However, should the Contractor be notified that they are responsible for damaging a Customer's Garbage Can or Recycling Bin; the Contractor shall replace the Customer's Garbage Can or Recycling Bin with one of like size and quality.

14.3.2. Garbage Carts and Recycling Carts

Each Customer shall be responsible for cleaning their Garbage Cart(s) and Recycling Cart(s), and maintaining the carts in a sanitary condition. The Contractor shall procure, and maintain at all times, an adequate supply of spare parts (e.g. wheels, lids, etc.) for the Garbage Carts and Recycling Carts it provides per the terms of this Agreement. The Contractor shall be responsible for maintaining such carts in good working condition. The Contractor shall repair or replace a Garbage Cart or Recycling Cart within three (3) Business Days of the Contractor observing that the cart is defective or after the Contractor is informed by the Customer or City that the cart needs to be repaired. The Contractor shall clean and repair, as necessary, all Garbage Carts and Recycling Carts that the Contractor receives as a result of exchanges pursuant to Section 14.4.1.

14.3.3. Mechanical Containers

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

Customers shall be responsible for cleaning, maintaining, and repairing any Mechanical Container that the Customer owns, as well as any Mechanical Container the Customer leases from a Person other than the Contractor. However, the Contractor shall be responsible for repairing or replacing any Mechanical Container they do not own for which the Contractor is found to be responsible for damaging.

#### 14.4. Exchange (Swap Out) of Carts and Containers

##### 14.4.1. Garbage Carts and Recycling Carts

The Contractor shall deliver a different Garbage Cart and/or Recycling Cart to any Customer that wishes to exchange (i.e. “swap out”) its cart for one that is a different size. A Customer shall be allowed to exchange their Garbage Cart and/or their Recycling Cart for a different size, without charge, one time within the first three (3) months following the initial distribution of Garbage Carts. For exchange requests made on or after this three (3) month period, the Contractor may charge and collect only a delivery fee for exchanging a Customer’s cart with the following exceptions: if a Customer delivers their cart to the Contractor’s local office and exchanges it for a new or refurbished cart, if a Customer is exchanging a Garbage Cart for one that is a smaller size, or if a Customer is exchanging a Recycling Cart for one that is a larger size. The Contractor’s delivery fee shall be pursuant to the rates set forth in Exhibit 2 however, the delivery fee shall not exceed twenty-five dollars (\$25.00). The Contractor may charge only one delivery fee per required trip to the Customer. For example, a Customer that requests to have a Garbage Cart exchanged for a larger one and to purchase an additional Garbage Cart would only require one trip to the Customer by the Contractor and, therefore, the Contractor shall only charge the Customer one delivery fee. The Contractor may use either new or refurbished Garbage and Recycling Carts when exchanging carts. For the purposes of this Section, a “refurbished” cart shall mean a cart that was exchanged pursuant to this section and cleaned and repaired to “like new” condition. The Contractor shall be responsible for billing and collecting its delivery fee directly from the Customer. The Contractor shall make any requested exchanges within three (3) Business Days after receiving the request.

##### 14.4.2. Mechanical Containers

The Contractor shall provide the size of Mechanical Container requested by the City or Customer, if the Contractor has the requested size in stock, within five (5) Business Days after receiving the request. Should the Customer wish to exchange their Mechanical Container for one of a different size, the Contractor shall fulfill the Customer’s request within five (5) Business Days of receiving it. As specified in Exhibit 2, Contractor may charge a delivery fee for the delivery of a Roll-Off Container however; there shall be no charge for the delivery or exchange of other Mechanical Containers.

#### 14.5. Technical Specifications for Collection Containers

##### 14.5.1. Garbage Carts and Recycling Carts

The Garbage Carts and Recycling Carts provided by the Contractor shall comply with the size, color, and technical specifications as established by the City. In general, the carts shall: have a nominal rated capacity of approximately thirty-five (35), sixty-five (65), and

ninety-five (95) gallons, as applicable; be hot-stamped or labeled in accordance with specifications provided by the City; and be compatible with the hydraulic lifting and dumping mechanism mounted on the Contractor's Collection vehicles. Each cart shall have a flat area on top (outside) of the lid, which shall be at least eight (8) inches by sixteen (16) inches in size and suitable for the placement of informative stickers or decals. Each Cart shall be equipped with RFID tags. Each type of cart and each size shall be uniform with regard to color, volumetric capacity, dimensions, finished surfaces, and hot stamping/labeling; however, the specifications for Garbage Carts may be different than the specifications for Recycling Carts. Each cart shall be constructed to prevent the intrusion of water and animals, with covers that are free from sharp edges, and without any inside structures that prevent the discharge of its contents. Each cart shall be constructed with a minimum of ten (10) percent post-consumer recycled plastic and shall be 100% recyclable. The Contractor shall replace the labels on its Collection Containers on an as-needed basis, subject to the Contract Administrator's approval.

14.5.2. Mechanical Containers

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

14.5.3. Other Requirements

Prior to placing an order for new Recycling Carts, Garbage Carts, and/or Mechanical Containers, the Contractor shall provide the Contract Administrator with the manufacturer's specifications sheets which shall, at minimum, address the following items where applicable: company of manufacture, material of manufacture (including pre-consumer and post-consumer recycled content), molding technology, standards of design (e.g. American National Standards Institute), UV stabilization certification, load rating, design standards for lid, handles, lifting, bottom, wheels, axle, and fasteners, interior and exterior finish surfaces, color, volumetric capacity, nestability, identification and marking, RFID technology, and manufacturer's warranty.

14.5.4. Minimum Warranty

Each Recycling Cart and Garbage Cart shall be protected by a manufacturer's warranty of at least ten (10) years.

14.5.5. Cart Specifications in City's RFP

Exhibit 9 details the specifications for Recycling Carts as was attached to the City's RFP for Rollout Recycling Carts. The carts provided by the Contractor pursuant to this Agreement shall, at a minimum, comply with all of the specifications set forth in Exhibit 9, unless the City waives a requirement in writing.

14.6. Disposal of Old Containers

On mutually agreed upon dates, the Contractor shall collect all of the Garbage Cans, Recycling Bins, and similar containers that are discarded by Residential Customers and shall deliver such cans, bins, and unrepairable carts to the Designated Facility for Source Separated Recyclable Materials for recycling or the Designated Facility for Solid Waste if not accepted at the Designated Facility for Source Separated Recyclable Materials. After the mutually agreed upon collection of these containers, the Contractor shall collect these containers with Bulk Waste.

14.7. Record Keeping

The Contractor shall keep accurate records regarding the number and size of Containers provided to each Customer. In order to keep accurate records and to keep track of their Garbage Cart inventory, the Contractor may, at their sole option and expense, utilize RFID technology on Garbage Carts and Mechanical Containers.

15. RECYCLING REWARDS PROGRAM

15.1. Intent and City Option

It is the City's intent to continue encouraging residents to recycle by offering a recycling rewards program. As such, the Contractor submitted with its proposal a proposed recycling rewards program. Participation in the Contractor's recycling rewards program shall be solely the option of the City and, if opted, the City may cancel participation in the Contractor's recycling rewards program at any time by providing the Contractor with at least a sixty (60) day notice in writing.

15.2. Current Recycling Rewards Program

The City currently provides Residential Recycling Customers with the Recyclebank recycling rewards program via a Memorandum of Understanding (MOU) with Waste Management (Exhibit 6). This MOU is set to expire on December 3, 2015. Residential Recycling Customers received this service at no cost for the first two years of the MOU and paid \$0.37 per month in the third year of the MOU. The Recyclebank program is a web-based rewards program that provides residents with opportunities to earn points by recycling and learning about, or committing to, other green actions. Customers must register for an account to begin accumulating points, which are received based on the per-household average weight of Recyclable Materials collected on each route. Once they have accumulated sufficient points to do so, Customers can then redeem them for coupons, gift cards, free items, etc. from local and national businesses.

15.3. Contractor's Recycling Rewards Program

15.3.1. Minimum Requirements of Contractor's Recycling Rewards Program

The actual recycling rewards program to be implemented, if opted, shall be substantially as set forth in the Contractor's proposal Cost Form (Exhibit 2) and at a monthly cost to the Customer pursuant the rates set forth in Exhibit 2. The following are the minimum requirements of the Contractor's recycling rewards program.

- (a) Include all Residential Recycling Customers and each Dwelling Unit in Multifamily Recycling Customers' communities.

- (b) Maintain a website and a database of Customer accounts. For Customers without internet access, Contractor shall provide a method other than the website for Customers to register, maintain their accounts, and redeem rewards.
- (c) Provide rewards to Customers based on the volume of Recyclable Materials collected on recycling routes. Contractor shall utilize RFID to determine which Residential Recycling Customers to award recycling points to and manual reporting (or other proposed method) for Multifamily Recycling Customers. The per-household weight shall be calculated based on the number of Residential Recycling Customers that placed out their Recycling Carts for Collection (registered or not) and Multifamily Recycling Customers that reported recycling. To account for the differing generation rates of Residential and Multifamily Recycling Customers, Contractor may use a different formula for calculating points earned by each Customer type.
- (d) Provide Residential Recycling Customers with the option to receive a weekly email and/or text message reminder to place their Recycling Cart out for Collection.
- (e) The rewards portion of the program must include a minimum of twelve (12) businesses with locations within the Service Area.
- (f) Utilize account contact information and website to provide Customers with tips on recycling as well as waste reduction and diversion. The City shall be able to include solid waste program related information in such emails to Customers. Customers shall be provided the option to unsubscribe from any emails as they pertain to this portion of the program.
- (g) There shall be additional opportunities throughout the year for Customers to earn points in addition to those earned by recycling.

15.3.2. Continuity with Current Recycling Program

Should the Contractor select to utilize Recyclebank as their recycling rewards program provider, the Contractor shall work with Recyclebank to ensure continuity with Customers' existing Recyclebank accounts.

15.4. Contractor's Work with Other Recycling Rewards Programs

Should the City choose to implement a recycling rewards program other than, or in addition to, the one provided by the Contractor, the Contractor shall cooperate with the Person operating the recycling rewards program. Cooperation shall entail, at minimum, the timely sharing of pertinent data regarding recycling tonnages, set-outs, and other pertinent recycling data along with the installation of pertinent technology to the Contractor's vehicles (at no cost to the Contractor).

16. CONTRACTOR INCENTIVE PROGRAM

16.1. Intent

The City considers the Contractor to be a partner in its endeavors to increase the diversion of waste materials from disposal facilities. As such, the City is providing this program to the Contractor to serve as a financial incentive for the Contractor to actively engage the

community (in addition to that which is specifically required of the Contractor per the terms of this Agreement) to increase the tonnage of waste materials diverted from disposal.

16.2. Contractor's Incentive

If the Contractor is found to be actively engaged (as specified in Section 16.3), the City will pay the Contractor fifty percent (50%) of the revenue the City receives from the sale of Recyclable Materials delivered to the Designated Facility for Source Separated Recyclable Materials.

16.3. Active Engagement by the Contractor

In order to be considered actively engaged, the Contractor shall implement, with the City's approval, additional programs and/or initiatives with the goal of increasing the tonnage of waste materials diverted from disposal. These additional programs and/or initiatives shall be in addition to those required of the Contractor per the terms of this Agreement. To qualify for this incentive, the Contractor shall, at minimum, implement such programs based on the following schedule:

<u>Contract Year</u>	<u>Minimum Programs Required</u>
1	1
2	1
3	2
4	2
5	3
6	3
7 (if applicable)	3
8 (if applicable)	4
9 (if applicable)	4
10 (if applicable)	4
11 (if applicable)	4
12 (if applicable)	5
13 (if applicable)	5
14 (if applicable)	5

The Contractor will initially be considered actively engaged once the Contractor has fully implemented the number of minimum required programs for that Contract year and thereafter if the Contractor has the minimum required number of programs implemented by the end of the specified Contract Year.

Should the Contractor fail, at any time, to have the minimum number of programs required for that Contract Year, the City will cease making incentive program payments to the Contractor. If the City has ceased making incentive program payments to the Contractor, the City shall reinstate incentive program payments only once the Contractor has once again been considered to be actively engaged for a minimum of ninety (90) days.

16.4. Payment to Contractor

Once the Contractor is considered to be actively engaged, the City will begin making incentive program payments following the first full calendar month in which the Contractor is

considered actively engaged. Payment will be issued to the Contractor within thirty (30) days of the City having received payment for Recyclable Materials from the Designated Facility for Source Separated Recyclable Materials for Recyclable Materials delivered to the facility in the prior month. For example, if the Contractor is considered to be actively engaged on March 10, April would be the first full month the Contractor would be eligible for payment. The City would issue payment to the Contractor within thirty (30) days of receiving payment for April's Recyclable Materials from the Designated Facility for Source Separated Recyclable Materials.

## 17. RATES FOR CONTRACTOR'S SERVICES

### 17.1. Uniform Rates for All Collection Services

The rates in Exhibit 2 are the maximum amounts that shall be charged for any Collection services provided by the Contractor pursuant to this Agreement. The Rates shall be applied uniformly to all Customers within the Service Area after the effective date of this Agreement. Contractor shall utilize rates in Exhibit 2, and no others, when billing Customers or the City. Where the Contractor's Rates are stated as per yard or per collection, the monthly rate shall be calculated by multiplying the rate by the size of the Container (not applicable for per collection rates) by the number of Collections per week by 4.33 (the number of weeks in a month). For example, if the commercial per yard rate for non-compacted Solid Waste is \$5.00 per yard and the Customer has a 2-yard dumpster collected twice per week, the monthly rate for Solid Waste Collection would be calculated as follows: \$5.00 (Rate) x 2 (Container size in yards) x 2 (number of Collections per week) x 4.33 (weeks in a month) = \$86.60 per month. However, if, at any time during this Agreement, the number of Multifamily Solid Waste Customers which are owner-occupied meets or exceeds seventy-five percent (75%) of the total number of owner-occupied units in the City, then the City shall have the option to utilize the rates (as specified on Exhibit 2 and adjusted for CPI) provided for the inclusion of owner-occupied communities in the Contractor's RFP proposal.

### 17.2. Annual Adjustment to Collection Component of Rates

On October 1, 2016 and each October 1 thereafter during the term of this Agreement the rates shall be adjusted upward or downward to reflect changes in the cost of Collection during the previous year due to inflation or deflation. Specifically, the Collection portion of the rates in Exhibit 2 may be adjusted by an amount that is equal to the percentage change in the non-seasonally adjusted Consumer Price Index (CPI), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor agency for all urban consumers in the Miami-Fort Lauderdale area, during the most recent twelve consecutive month period from June of the previous year. For example, with regard to the adjustment on October 1, 2016, any percent change would be based on the published CPI for June 2015 (CPI1) and June 2016 (CPI2). The calculation is as follows:

$$\text{Percent Change} = [(CPI2 - CPI1)/CPI1] \times 100$$

Where:

CPI1 is the CPI index number published for June of the previous year.

CPI2 is the CPI index number published for June of the current year.

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

For any adjustments to the Collection portion of the Contractor’s rates to be effective, the Contractor or the City must notify the other party, in writing, of any adjustments by August 31<sup>st</sup> of the current Contract Year to be effective October 1<sup>st</sup> of the following Contract Year.

17.3. Change in Designated Facilities

If the City selects a new or alternate Designated Facility for any Waste Stream collected pursuant to this Agreement, the Contractor shall continue to be paid at the rates set forth in this Agreement, unless the new or alternate facility is located more than thirty (30) miles (measured in a straight line) from the City of Margate City Hall (5790 Margate Boulevard, Margate, FL). If the new or alternate Designated Facility is located beyond this distance, the City and the Contractor shall, in good faith, negotiate an appropriate adjustment in the rates based solely on the documented incremental costs incurred by the Contractor to travel beyond thirty (30) miles from the City of Margate City Hall. However, should the Contractor, its parent company, partner, or otherwise affiliated organization own and/or operate a waste management or materials recovery facility that is beyond the distance specified herein and request the City utilize such a facility; the Contractor shall not be entitled to additional compensation.

17.4. Extraordinary Rate Adjustment

Once per Contract Year, the Contractor may petition the City to adjust the rates listed based upon extraordinary and unusual increases in the cost of conducting business that could not have been reasonably foreseen by a prudent Person, including, but not limited to, changes in laws or regulations. Any such petition shall be submitted to the Contract Administrator and supported by detailed documentation establishing the increase in operating costs and the reasons therefore. The Contract Administrator may request from the Contractor, and the Contractor shall provide, all of the information that is reasonably necessary for the Contract Administrator to evaluate the Contractor’s petition. The Contract Administrator shall evaluate Contractor’s request and submit to the City Manager a recommendation for the City Commission’s consideration. The City Commission’s decision shall be final and non-appealable. If the Contractor’s request is granted in whole or in part, the City Manager, with notice to the City Commission, shall have the right to reduce the Contractor’s rates, if and to the extent that the factors causing the Contractor’s price increase have been ameliorated or eliminated.

17.5. Adjustment to the Disposal Component of Rates

The disposal component of the Rates for all Collection services provided for per the terms of this Agreement shall be adjusted to reflect any changes in the Tipping Fee at the Designated



Facility. The Contractor shall provide the City, Multifamily Solid Waste Customers, and Commercial Customers written notice of any changes in the Tipping Fee. The new disposal component shall be effective on the date the change in the Tipping Fee at the Designated Facility goes into effect or the date when the Contractor gave notice of the rate adjustment to its Customers and the City, whichever occurs later. The Contractor shall calculate the new disposal component by using the following formula:

Old Disposal Component X (New Tipping Fee/Old Tipping Fee) = New Disposal Component

## 18. BILLING AND COLLECTIONS

### 18.1. Residential Solid Waste Customers

#### 18.1.1. Residential Solid Waste Customers Individually Metered for Water and Sewer

For all Solid Waste, Bulk Waste, and Yard Waste Collection services (including disposal) provided to Residential Solid Waste Customers pursuant to this Agreement, the City will bill and collect payment from all Residential Solid Waste Customers which are Individually Metered for water and sewer service.

#### 18.1.2. Residential Solid Waste Customers Not Individually Metered for Water and Sewer

For all Solid Waste, Bulk Waste, and Yard Waste Collection services (including disposal) provided to Residential Solid Waste Customers pursuant to this Agreement, the Contractor shall be responsible for billing and collecting payment from all Residential Solid Waste Customers that are not Individually Metered for water and sewer service.

### 18.2. Residential Recycling Customers

For Residential Recyclable Materials Collection service and the Contractor's recycling rewards program (if opted) provided pursuant to this Agreement, the City shall bill, and collect payment from, all Residential Recycling Customers.

### 18.3. Multifamily Solid Waste Customers

The Contractor shall be responsible for billing and collecting payment from all Multifamily Solid Waste Customers for all Multifamily Solid Waste and Bulk Collection services and disposal provided pursuant to this Agreement.

### 18.4. Multifamily Recycling Customers

The Contractor shall be responsible for billing and collecting payment from all Multifamily Recycling Customers for all Multifamily Recycling Collection services and, if opted, the Contractor's recycling rewards program provided to Multifamily Recycling Customers pursuant to this Agreement.

### 18.5. Commercial Solid Waste Customers

The Contractor shall be responsible for billing and collecting payment from all Commercial Solid Waste Customers for all Commercial Solid Waste Collection services and disposal provided pursuant to this Agreement.

### 18.6. Supplemental Collection Services

The Contractor shall be responsible for billing and collecting payment from all Customers for all Supplemental Collection services provided pursuant to this Agreement.

### 18.7. Residential Garbage Carts and Recycling Carts and Cart Delivery Fees

The Contractor shall be responsible for billing and collecting payment from all Residential Solid Waste Customers and Residential Recycling Customers for all fees due to the Contractor in relation to additional carts, replacement carts, and deliveries/exchanges of carts pursuant to the limitations set forth in this Agreement.

## 19. PAYMENTS TO THE CITY

### 19.1. Franchise Fee

To compensate the City in exchange for the rights and privileges granted to the Contractor pursuant to this Agreement, the Contractor shall annually pay the City a Franchise Fee of one million three hundred thousand dollars (\$1,300,000). The City shall collect Franchise Fee payments by deducting one twelfth of the current annual Franchise Fee from monthly payments to the Contractor pursuant to Section 20.3.1.

The franchise fee shall be adjusted at the same percentage change in CPI, upward or downward, as any CPI based changes to the Contractor's rates, as specified in Section 17.2. For example, if the CPI increases by two percent (2%) and the Contractor notifies the City of a rate increase, the franchise fee will increase to one million three hundred twenty-six thousand dollars (\$1,326,000), a two percent (2%) increase.

Additionally, should at any time during the life of this Agreement the number of owner-occupied multifamily units that have opted to be included in the exclusive franchise meet or exceed seventy-five percent (75%) of the total owner-occupied multifamily units in the City, the annual Franchise Fee due to the City from the Contractor shall become one million six hundred thousand dollars (\$1,600,000), adjusted for CPI.

### 19.2. Solid Waste Activities

To support the City's promotional and educational activities related to the solid waste system, solid waste management, solid waste diversion, or other solid waste related activities, the Contractor shall annually pay a lump sum of twenty-five thousand dollars (\$25,000) to the City. This payment shall be due to the City no later than December 31, 2015 and no later than October 1 of each subsequent Contract Year. A late payment charge of one and one half percent (1.5%) of the monies due shall be assessed monthly until full payment is received.

### 19.3. Solid Waste Staff

To provide support for the management of this Agreement and to implement Solid Waste related programs and activities, the Contractor shall make an annual lump sum payment of one hundred thousand dollars (\$100,000) to the City. This payment shall fully fund and/or supplement the City staff position(s) responsible for the management of this Agreement and/or other Solid Waste related programs or activities. Any such staff positions will be in the City's sole discretion. Additionally, the City, at its option, may use funds that are in excess of City staff salary and benefits to employ a consultant to aid in the development or implementation of plans, programs, projects, studies, etc. related to Solid Waste and recycling. This payment shall be due to the City no later than December 1, 2015 and no later than October 1 of each subsequent Contract Year. A late payment charge of one and one half

percent (1.5%) of the monies due shall be assessed monthly until full payment is received. This payment shall be adjusted at the same percentage change in CPI, upward or downward, as any CPI based changes to the Contractor's rates, as specified in Section 17.2. For example, if the CPI increases by two percent (2%) and the Contractor notifies the City of a rate increase, the Solid Waste staff payment will increase to one hundred two thousand dollars (\$102,000), a two percent (2%) increase.

19.4. Special Activities

To provide support for the City's special events, the Contractor shall annually pay a lump sum of five thousand dollars (\$5,000) towards the City's special activities. This payment shall be due to the City no later than December 31, 2015 and no later than October 1 of each subsequent Contract Year. A late payment charge of one and one half percent (1.5%) of the monies due shall be assessed monthly until full payment is received.

19.5. Scholarship Program

To provide continued funding of the City's scholarship program, the Contractor shall annually pay a lump sum of five thousand dollars (\$5,000) to fund two scholarships which are to be awarded to Margate residents annually. The City shall specify any requirements of the recipients of these scholarships. The Contractor, if they choose, may have a representative on the scholarship committee. The Contractor shall issue payment directly to the educational institutions which they are attending. The Contractor shall provide the City with proof of payment.

19.6. Preparation of Agreement

The City has expended considerable effort and staff time related to the preparation and negotiation of this Agreement pursuant to a public procurement process. This public procurement process has resulted in a direct economic benefit to the Contractor. As such, to reimburse the City for these efforts, the Contractor shall make a one-time, lump sum payment of twenty-five thousand dollars (\$25,000) to the City no later than thirty (30) calendar days after the execution of this Agreement.

19.7. Disposal Fee Refund

As described and calculated in Section 21.1.2, the Contractor shall refund the City for any disposal fees collected by the Contractor from Residential Solid Waste Customers that are in excess of the Tipping Fees paid by the Contractor for the disposal of Solid Waste, Bulk Waste, and Yard Waste collected from Residential Solid Waste Customers. If applicable, any such payments shall be made to the City no later than sixty (60) calendar days after the end of each Contract Year.

20. PAYMENTS TO THE CONTRACTOR

20.1. In General

The City and Customers shall have no obligation to pay the Contractor any monies unless such payment is explicitly required in this Agreement. The rates for Collection services in Exhibit 2 shall constitute the full and complete compensation to the Contractor for the services provided by the Contractor under this Agreement. In all cases, the City shall have sole

authority to determine whether and to the extent which the Contractor is entitled to payment for services it provided under this Agreement.

20.2. Prohibition on Payments from Customers to Contractor

Neither the Contractor nor its agents, subcontractors, employees or other representatives shall solicit or accept any monies from any Customer for the provision of any Service described in this Agreement, unless such payments are explicitly authorized in this Agreement and the payments are less than or equal to the amounts authorized. The Contractor shall return any monies paid by a Customer within five (5) Business Days for which such payment is not explicitly required in this Agreement or which is in excess of the rates as stated in Exhibit 2.

20.3. Payments from City for Residential Collection Services

Subject to the conditions and exceptions contained herein, the City shall pay the Contractor the revenue collected by the City for the Residential Collection Services that are provided by the Contractor in compliance with this Agreement.

The City's payments to the Contractor for Residential Collection Services shall be made on a monthly basis, in arrears, for the Collection services provided by the Contractor during the previous month. Unless otherwise stated, the City's payments shall be issued to the Contractor within thirty (30) calendar days after the end of the month when the Contractor's Collection services were provided.

If the City pays the Contractor in error, for whatever reason, the Contractor shall promptly notify the Contract Administrator and the City shall make appropriate adjustments to the Contractor's payments to off-set past underpayments or overpayments resulting from any error. However, the City shall not be obligated to make any adjustment to correct for underpayments that occurred more than six (6) months before the City received the Contractor's notice of the error.

The City shall not be obligated to pay the Contractor for any of the Collection services provided by the Contractor to its Customers, except as provided in this Section.

The amount of the City's payments, based on revenue collected, shall be calculated as follows:

20.3.1. Residential Curbside Solid Waste, Bulk Waste, and Yard Waste Collection and Disposal

- (a) Multiply the total number of Residential Solid Waste Customers that are Individually Metered for water and sewer service by the sum of the Collection portions of the Contractor's Rates for Residential Curbside Solid Waste, Bulk Waste, and Yard Waste Collections.
- (b) The product of the total number of Residential Solid Waste Customers that are Individually Metered for water and sewer service by the sum of the disposal portions of the Contractor's Rates for Residential Curbside Solid Waste, Bulk Waste, and Yard Waste Collections.

- (c) Deduct from the sum of (a) and (b) above, one twelfth of the annual Franchise Fee due to the City and any other sums due and owed to the City from the Contractor, including administrative charges.

20.3.2. Residential Recycling Collection and Recycling Rewards Program

- (a) Multiply the total number of Dwelling Units that are Residential Recycling Customers by the Contractor's per Dwelling Unit rate for Residential Recycling Collection.
- (b) Add the product of the monthly fee for the Contractor's Recycling Rewards Program and the total number of Dwelling Units that are Residential Recycling Customers, if such program was opted pursuant to Section 15.3.

20.3.3. Contractor Incentive Program

For any month that the Contractor is found to be actively engaged, pursuant to Section 16.3, payment to the Contractor shall be made pursuant to Section 16.4.

20.4. Payments from Residential Solid Waste Customers for Residential Collection Services and Disposal

Pursuant to Section 18.1.2, Residential Solid Waste Customers that are not Individually Metered shall pay the Contractor directly for Residential Solid Waste, Bulk Waste, and Yard Waste Collection services, along with any associated disposal fees for these services, provided by the Contractor in compliance with this Agreement.

20.5. Payment for Multifamily Collection Services

Multifamily Solid Waste Customers and Multifamily Recycling Customers shall pay the Contractor directly for Multifamily Solid Waste Collection (which is inclusive of Multifamily Bulk Waste Collection), Multifamily Recyclable Materials Collection, Multifamily Recycling Rewards Program (if opted), and Solid Waste disposal provided by the Contractor in compliance with this Agreement.

20.6. Payment for Commercial Collection Service

Commercial Customers shall pay the Contractor directly for Commercial Solid Waste Collection services and disposal provided by the Contractor in compliance with this Agreement.

20.7. Payment for Supplemental Collection Service

Customers which request and receive Supplemental Collection service per the terms of this Agreement shall pay the Contractor directly for any such services rendered (including disposal).

20.8. Payments for Garbage Carts and Recycling Carts

Residential Solid Waste Customers and Residential Recycling Customers shall pay the Contractor directly for any fees that the Contractor charges, and is permitted to charge, for replacement carts, additional carts, or delivery fees charged pursuant to Sections 14.2.2(d) and 14.4.1. Except for the fees authorized in Sections 14.2.2(d) and 14.4.1, the Contractor shall not charge or collect any separate fee for purchasing, assembling, or delivering Garbage Carts or Recycling Carts to any Customer.

## 21. TIPPING FEES

### 21.1. Residential Waste

#### 21.1.1. Payment

The Contractor shall be directly billed by the Designated Facilities for the Tipping Fees for all Solid Waste, Bulk Waste, and Yard Waste collected from Residential Solid Waste Customers and delivered to the appropriate Designated Facility pursuant to the terms in this Agreement. The Contractor shall issue payment directly to the Designated Facilities for the Tipping Fees charged for the disposal of these materials. However, per the terms of the current agreement for Recyclable Materials processing (see Exhibit 5) there shall be no payment made to the Designated Facility for Recyclable Materials.

#### 21.1.2. Disposal Fee Refund

The Tipping Fees paid to the Contractor for Solid Waste, Bulk Waste, and Yard Waste for waste generated by Residential Solid Waste Customers are to be considered unearned revenue. As such, at the end of each Contract Year the Contractor shall refund the City any funds paid to the Contractor that are in excess of the Tipping Fees paid by the Contractor for Solid Waste, Bulk Waste, and Yard Waste collected from Residential Solid Waste Customers. However, the Contractor shall not be entitled to any additional payment from the City, or its residents, if the Tipping Fees paid by the Contractor exceed the Contractor's receipts for disposal of Solid Waste, Bulk Waste, and Yard Waste collected from Residential Solid Waste Customers. The refund(s), if any, shall be calculated as follows:

The refund for all Waste Streams shall be calculated by subtracting the Tipping Fees paid by the Contractor for each Waste Stream collected from Residential Solid Waste Customers from the disposal fees received by the Contractor for the disposal of those Waste Streams. For example, if in the first Contract Year the Contractor received \$750,000 for the disposal of Solid Waste from Residential Solid Waste Customers but only paid \$650,000 in Tipping Fees for Solid Waste collected from Residential Solid Waste Customers, the Contractor would refund the difference of \$100,000 to the City. The same calculation shall also be made for Bulk Waste and Yard Waste.

#### 21.2. Non-Residential Waste

The Contractor shall be billed directly by the appropriate Designated Facility and shall be responsible for paying all Tipping Fees for all Waste Streams collected from Multifamily Solid Waste Customers, Commercial Customers, and Supplemental Bulk Waste Collections.

## 22. ADMINISTRATIVE CHARGES

### 22.1. General

The City and Contractor acknowledge and agree that while it is difficult or impossible to accurately determine the damages that would or might be incurred by the City due to the failure or circumstances described in this section, which the Contractor is liable for, the administrative charges set forth in this section are reasonable and appropriate. The Contract Administrator shall decide any and all questions which may arise concerning the quality and

acceptability of the work and services provided by the Contractor and the interpretation of the provisions of the Agreement. The Contractor may appeal any decisions or findings of the Contract Administrator to the City Manager, whose conclusions shall be final.

22.2. Administrative Charges

The Contractor shall be responsible for administrative charges which the City shall deduct from payments due to the Contractor from the City. The City may assess the below administrative charges:

- 22.2.1. \$25 for each Legitimate Missed Collection above two (2) Legitimate Missed Collections per calendar day. The Contractor shall not be charged for any Legitimate Missed Collections that are collected the same Business Day.
- 22.2.2. \$50 per incident for minor failures to perform services in accordance with this Agreement including, but not limited to, failure to return Containers to the proper location, failure to close Container enclosures, placing Containers so that they impede the normal flow of traffic, not closing Container lids, and failure to place a Non-Collection Notice on Containers or materials that do not meet the requirements of Proper Placement.
- 22.2.3. \$100 per incidence, per Business Day that the Contractor fails to respond to a Legitimate Complaint within the timeframe allotted per Section 12.2.
- 22.2.4. \$150 per occurrence, in addition to appropriate repairs, for failure to adequately maintain or repair equipment or repair damaged property including, but not limited to, vehicle leaks, trucks leaving skid marks, failure to repair property damage, or other failures.
- 22.2.5. \$500 per incidence for major failures to perform services in accordance with this Agreement including, but not limited to, failure to complete routes as scheduled (at least 25 Dwelling Units on a route not serviced) without prior approval; commingling of materials; delivery of materials to a facility other than a Designated Facility without prior approval; failure to provide complete reports, plans, or other documents as required per the terms of this Agreement; and failure to meet any requirements of the Contractor prior to the commencement of this Agreement.

In addition to the above charges:

- 22.2.6. A \$500 administrative charge may be levied where ten (10) or more Legitimate Complaints are received in any seven (7) day period.
- 22.2.7. A \$500 administrative charge may be levied for three (3) or more Legitimate Complaints received from the same address in any ninety (90) day period.
- 22.2.8. A \$1,000 administrative charge may be levied for three (3) or more Legitimate Complaints received from the same address in any thirty (30) day period.
- 22.2.9. A \$1,000 administrative charge may be levied for any fifty-two (52) week period in which more than four hundred (400) Legitimate Complaints are received.
- 22.2.10. The Contractor shall pay to the City an amount equal to any Tipping Fees the City incurs due to the Contractor delivering materials to a non-Designated Facility and all revenue received for the sale of Recyclable Materials delivered to a facility other than the

Designated Recycling Facility. Additionally, should the Contractor receive less revenue for the Recyclable Materials than had the materials been delivered to the Designated Recycling Facility; the Contractor's payment for Recyclable Materials revenue to the City shall be based on what the City would have received from the Designated Facility for Recyclable Materials.

## 23. RECYCLABLE MATERIAL REVENUE

### 23.1. Recyclable Material Revenue for City

The City shall receive all revenues derived from the sale of the Source Separated Recyclable Materials that are collected by the Contractor from Residential Recycling Customers, Multifamily Recycling Customers, City properties, the Recyclable Materials Drop-off, and City sponsored or co-sponsored events. If the Contractor sells any such materials, Contractor shall submit the sales proceeds to the City within thirty (30) days. Additionally, if the revenue the Contractor received for the sale of Recyclable Materials is less than what the City would have received if the Contractor would have delivered the Recyclable Materials to the Designated Facility, the Contractor shall pay the City the revenue it would have received from the Designated Facility plus any applicable administrative fee(s) per Section 22. The Contractor may keep any revenues derived from the sale of Source Separated Recyclable Materials that the Contractor collects from Commercial Customers however; pursuant to Section 10.3.2, should the Contractor mix Recyclable Materials collected from Commercial Customers with Recyclable Materials collected from Residential Recycling Customers, Multifamily Recycling Customers, or the City, the City shall receive all revenues derived from the sale of any such mixed loads.

### 23.2. Contractor Incentive Program

Should the Contractor meet the requirements of the Contractor Incentive Program set forth in Section 16; the City shall pay the Contractor fifty percent (50%) of all revenues received by the City from the sale of Recyclable Materials.

## 24. CONTRACTOR'S VEHICLES AND EQUIPMENT

### 24.1. General Requirement

The Contractor shall purchase or lease, maintain, and repair all of the vehicles and equipment necessary to provide all services as required in this Agreement. All vehicles and equipment shall be purchased or leased from a nationally known and recognized manufacturer of such equipment. To ensure that the vehicles the Contractor will be using at the commencement of this Agreement are in a condition that is satisfactory to the City, the Contractor will present all collection vehicles to the Contract Administrator at least two weeks, but no earlier than thirty (30) days, prior to the commencement of this Agreement.

### 24.2. Contractor's Vehicles and Equipment

#### 24.2.1. General Requirements

The Contractor's vehicles and equipment shall be compatible with, and appropriate for, the areas where such vehicles and equipment are utilized. All of the Contractor's Collection vehicles shall have waterproof seals and shall be watertight to a depth



sufficient to prevent the discharge or leaking of liquids during Collection operations. Contractor's Vehicles shall fully enclose the Contractor's Load utilizing a fully enclosed metal top, a tarpaulin, or a mesh net cover to prevent any waste material being transported from escaping the vehicle.

24.2.2. Age of Fleet

The average age of Contractor's Primary Fleet used to provide Collection services per the terms of this Agreement shall be no older than seven (7) years with no vehicle being older than ten (10) years. The average age shall be calculated by dividing the sum of the ages of all of the Contractor's Primary Fleet vehicles by the number of vehicles in the Contractor's Primary Fleet. Reserve vehicles may be no older than twelve (12) years.

24.2.3. Maintenance and Cleaning

The Contractor shall keep all Collection vehicles, Mechanical Containers, and equipment cleaned and painted at all times. A schedule shall be made for cleaning, painting, and maintaining each Collection vehicle in the Primary Fleet and all Mechanical Containers used to fulfill their responsibilities per the terms of this Agreement. At minimum, the Contractor's schedule shall follow the manufacturer's maintenance schedule. Oil and hydraulic systems, and waterproof seals and enclosures shall be kept in good repair at all times to prevent leaks and spills. The Contractor shall monitor, maintain, and repair any leaks or spills (fuel, hydraulic fluid, leachate, etc.) from Collection vehicles and equipment. The Contractor shall create and maintain records of all maintenance and repair work conducted on all of the Contractor's vehicles in the Primary Fleet. All such records will be provided to the City, upon request, within forty-eight (48) hours of any requests.

24.2.4. Spills and Leaks

The Contractor shall immediately respond to all spills or leaks of fluids, of any kind, originating from the Contractor's Collection vehicles. The Contractor shall immediately notify the Contract Administrator, and any other agency as required by Applicable Law, of all spills or leaks from its Collection vehicles. For spills or leaks of Hazardous Materials, the Contractor shall immediately commence the proper cleanup of any such spills or leaks. Cleanup of all spills or leaks of fluids that are not considered Hazardous Materials shall commence no later than the next Business Day after the Contractor is notified of any such spills or leaks. The Contractor shall be responsible for the cleanup of any spills reported by Customers as having originated from the Contractor's Collection vehicles.

24.2.5. Fuel Used by Collection Vehicles

By the end of the third Contract Year, the Contractor agrees that they shall convert or replace its Collection vehicles so that all of the vehicles in the Contractor's Primary Fleet consist of vehicles fueled by compressed natural gas (CNG) or other alternative fuel as approved by the Contract Administrator.

24.2.6. Identification

All of the Contractor's vehicles, equipment, and Mechanical Containers shall be clearly labeled with the Contractor's name and phone number. All of the Contractor's

Mechanical Containers shall also be labeled to show the Container's capacity, the type of Waste Stream being collected in that Container and an identification number for the Container. Each of the Contractor's Collection vehicles shall also display the type of material that vehicle is collecting, an identification number for that vehicle, and any additional identification as required by any of the Designated Facilities (Section 26) or Applicable Law. All required identification and labeling as required in this section shall be displayed at all times.

24.2.7. GPS, RFID, and Ancillary Equipment in Contractor's Vehicles

(a) Safety and Cleaning Equipment

All of the Contractor's Collection vehicles shall, at minimum, be equipped with, at all times, the following: all safety equipment required by Applicable Laws, a fire extinguisher, a shovel and broom, a spill response kit, and an audible back-up warning device. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, fuel, or other liquids from the Contractor's Collection vehicles.

(b) Communication Devices

All vehicles shall be equipped with a cell phone, a two-way radio, or other appropriate communication device for communication between the vehicle operator and the Contractor's supervisory personnel.

(c) GPS

If the Contractor's Collection vehicles are equipped with Global Positioning Systems (GPS), the Contractor shall provide the GPS logs and records to the Contract Administrator upon request.

(d) RFID

24.2.7.d.1. Recycling Collection

The Contractor's vehicles shall be equipped with RFID systems that allow the Contractor to monitor the locations and usage of the Recycling Carts utilized for the Collection of Recyclable Materials per the terms of this Agreement. The data obtained using the RFID systems shall be compiled and maintained in an electronic format. The Contractor shall provide a software system that allows the City to access and monitor the RFID database and generate reports from the City's office. The City understands that reports generated from the data obtained with the RFID system will be limited by the reliability of the current RFID technology and agrees that the Contract will not be penalized for any such technological limitations of current RFID technology. The Contractor may present to the City an alternate method for obtaining the same information as would be provided by the RFID system and the City, in its sole discretion, may allow the Contractor to utilize such alternate method in lieu of the RFID system. Contractor shall be obligated to maintain the RFID system and/or any alternate system approved by the City.

24.2.7.d.2. Solid Waste Collection

If the Contractor opts to utilize RFID tracking of the Garbage Carts provided by the Contractor pursuant to the terms of this Agreement, the Contractor shall maintain data obtained using the RFID systems and provide the City with access to that data in the same manner as for Recycling Collection as specified in Section 24.2.7.d.1.

24.2.8. Local Storage and Repair of Contractor's Vehicles and Equipment

The Contractor shall provide a storage yard, garage, and maintenance facility for the year-round maintenance operations for the vehicles and equipment used pursuant to this Agreement. This facility shall be located within Broward County or Palm Beach County however; if the facility is located in Palm Beach County, it shall be no greater than twenty (20) miles, in a straight line, from the City of Margate City Hall (5790 Margate Boulevard, Margate, Florida). The Contractor shall not use City property to store, wash, repair, or maintain any vehicles or equipment.

24.2.9. Compliance with Applicable Laws

Contractor and its employees shall, at all times, operate and maintain all Collection vehicles and equipment in compliance with all Applicable Laws. This includes, but is not limited to, maintaining all necessary licenses and registrations, paying all fees and taxes on all vehicles and equipment as required by Applicable Law, and operating all vehicles in compliance with all traffic laws.

24.3. Reserve Vehicles and Equipment

The Contractor shall at all times have sufficient Reserve Vehicles and equipment available to complete daily Collection routes according to the established schedules. Reserve Vehicles and equipment shall be used when a vehicle in the Contractor's Primary Fleet is out of service or delays will prevent the Primary Fleet from completing routes within the permissible hours of operation on the Scheduled Collection Day. Reserve Vehicles shall be able to be put into service within two (2) hours of any breakdown or delay experienced by the Primary Fleet. Reserve Vehicles and equipment shall substantially correspond to the size, capacity, and capabilities of the vehicles and equipment being replaced.

24.4. Right to Inspect

The Contract Administrator may inspect any of the Contractor's vehicles, equipment, loads, licenses, and registrations at any reasonable time. At the Contract Administrator's request, the City has the right to inspect each Collection vehicle being used to provide the services required of the Contractor per the terms of this Agreement, each day, prior to its use in the City. The Contract Administrator has the authority to require the Contractor to immediately remove from service any Collection vehicle or equipment that is leaking or spilling fluids, Solid Waste, Bulk Waste, Yard Waste, Recyclable Materials, or any other material. The Contract Administrator may also, at any time, request that a Primary Fleet vehicle or Mechanical Container be repaired, maintained, cleaned, deodorized, or repainted and the Contractor shall comply with such requests within three (3) Business Days or remove the vehicle or Mechanical Container from service until such time when the requested work can be completed. The

Contractor shall also consent to inspection of Loads by the City or the Broward County Solid Waste District.

## 25. CONTRACTOR'S PERSONNEL

### 25.1. General

The Contractor shall employ sufficient, competent, and qualified personnel to satisfactorily perform all the services required under this Agreement. All personnel shall, at all times, be under the sole employment and direction of the Contractor and not an employee or agent of the City. The Contractor shall be responsible to the City for all acts and omissions of its employees. With reasonable cause, the Contract Administrator reserves the right to require the Contractor remove an employee from service to the City. Under no circumstances shall the Contractor utilize temporary labor to perform their duties per the terms of this Agreement, unless specifically authorized by the Contract Administrator in writing. The Contractor shall, at all times, comply with all Applicable Laws concerning the protection and rights of employees. All of the Contractor's employees shall, at all times; comply with all Applicable Laws, including being properly licensed for the work they are performing; maintain a courteous and respectful attitude toward the public, City personnel, and any other individual with whom they come into contact with; abstain from soliciting, accepting, or encouraging tips, gratuities, gifts, or anything of value or accept any payments whatsoever on behalf of the City while performing duties under this Agreement; and abstain from scavenging.

### 25.2. Training and Equipment

All of the Contractor's employees involved in the performance of this Agreement, including all office and Collection personnel, shall be provided with adequate training before and during their employment with the Contractor. The training shall familiarize employees with their required duties, standards of performance, their specific responsibilities, and the operation of all equipment to be used. All employees shall be trained to perform their duties to maximize the Collection of Recyclable Materials, minimize contamination, eliminate delays and missed pickups, and promote recycling/recovery at all times. All supervisory and Collection personnel shall be provided regularly scheduled, on-going comprehensive safety training. Contractor shall maintain training manuals, schedules, and logs at their local office. Collection and supervisory personnel shall receive operation and safety trainings at minimum once per month. All Collection and supervisory personnel involved in the performance of this Agreement shall be provided with, and wear at all times, a uniform, a safety vest, shirt, or jacket, and identification that makes the employee readily visible by motorists and clearly identifies them as the Contractor. All safety training and equipment shall, at minimum, meet all Applicable Law.

### 25.3. Route Supervisor

The Contractor shall have a minimum of one (1) permanent full-time Route Supervisor dedicated to the City. The Contractor shall provide the City with the Route Supervisor's name, phone number, and email address. The Route Supervisor shall be available to respond to the City Monday through Friday from 7:00 AM to 7:00 PM and shall be provided equipment to respond by phone and email while in the field. Contractor shall provide relief personnel

coverage by qualified personnel when the Route Supervisor is off. Route Supervisor shall: have strong customer service skills and be able to effectively resolve difficult situations/problems; utilize a company vehicle to respond to and meet with Customers; be responsible for responding to Customer complaints in the timeframe allotted; be responsible for ensuring that Collection personnel are performing their responsibilities per this Agreement; conduct route audits to verify information regarding the number and size of Containers per Customer; and, at the request of the City, attend meetings, both internal and public, to discuss Collection services.

25.4. District Manager

The Contractor shall assign a qualified employee to serve as the District Manager. The District Manager shall be the Contractor's primary point of contact with the City for all technical and administrative matters relating to this Agreement. The District Manager shall be responsible for overseeing and implementing the Contractor's performance under this Agreement. The District Manager shall have the authority to make decisions and act on behalf of the Contractor and shall have direct access to the Contractor's management to resolve problems beyond the District Manager's authority. The City shall have twenty-four (24) hour access to the District Manager by both phone and email.

26. DESIGNATED FACILITIES

26.1. General

The Contractor shall deliver all Waste Streams collected pursuant to the terms of this Agreement to the Designated Facility as directed by the City. The City reserves the right to select new Designated Facilities for any or all of the Waste Streams collected pursuant to this Agreement. Should the City select a new Designated Facility, the Contractor shall not receive any additional compensation for their services except as described in Section 17.3.

26.2. Designated Facilities

26.2.1. Solid Waste, Bulk Waste, and Yard Waste

The current Designated Facilities for all Solid Waste, Bulk Waste, and Yard Waste shall be either the Wheelabrator North Resource Recovery Facility located at 2600 NW 48 Street, Pompano Beach, Florida or the Wheelabrator South Resource Recovery Facility located at 4400 South State Road 7, Fort Lauderdale, Florida. The facilities are open for the receipt of waste from 6 a.m. to 6 p.m., Monday through Friday, and from 6 a.m. to 4 p.m. Saturday, except Holidays. Per the terms of the City's agreement for the use of the Designated Facility, the Contractor shall be responsible for Unacceptable Waste brought to either facility; indemnify the Designated Facility and add the Designated Facility as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of the Contractor; execute a license agreement with the Designated Facility that sets forth the payment procedure; and provide a performance bond in favor of the Designated Facility in an amount that covers ninety (90) days of Tipping Fee payment for the disposal of Solid Waste collected from Commercial Customers and Multifamily Customers. See Exhibits 3 and 4 for the City's current disposal agreement.

### 26.2.2. Recyclable Materials

The current Designated Facility for all Source Separated Recyclable Materials collected, pursuant to this Agreement, from Residential Recycling Customers, Multifamily Recycling Customers, City properties, and City sponsored events shall be Sun Bergeron, JV's Sun 11 facility located at 1750 SW 43 Terrace, Deerfield Beach, Florida. The facilities are open for the receipt of Recyclable Materials from 6 a.m. to 6 p.m., Monday through Friday, and from 6 a.m. to 4 p.m. Saturday, except Holidays. See Exhibit 5 for the City's current recyclable materials processing agreement.

## 27. OWNERSHIP OF WASTE MATERIALS

All Waste Streams shall belong to the Person generating such waste until that Waste Stream is collected by the Contractor. When the Contractor collects a Waste Stream on behalf of the City, title to that waste shall pass to the City. When the Contractor collects Source Separated Recyclable Materials from Commercial Customers, title to those materials shall pass to the Contractor. Upon delivery and acceptance of a Waste Stream to the appropriate Designated Facility or licensed and permitted material recovery facility, the title of that Waste Stream shall pass to the owner of the facility. Nonetheless, the Contractor shall be solely responsible and liable for the proper handling and lawful management of all waste collected pursuant to this Agreement until it is delivered to and accepted by the appropriate facility.

## 28. RECORD KEEPING AND REPORTING

### 28.1. General

The Contractor shall be solely responsible for keeping all of the records and documents required per the terms of this Agreement. The Contractor's records shall be accurate and up-to-date at all times and shall be kept at its local office, or other location within Broward County, for a period of at least five (5) years following the termination of this Agreement. The Contractor shall keep all of its records for the City separate from its records for its other operations. All records and reports to the City shall be in a digital form such that they are compatible with the City's software (unless otherwise requested) and in a format approved by the Contract Administrator. If requested by the Contract Administrator, any and/or all records shall be provided within five (5) Business Days of being requested. All reports provided to the City shall be signed by a member of the Contractor's management team attesting that the information provided in the report has been verified to be accurate in all respects.

### 28.2. Records

#### 28.2.1. Retention of Records and Right to Access:

In accordance with Florida Statute, 119.0701 – Contracts; public records, the Contractor shall keep, maintain and make available all records, regardless of format, including but not limited to finance records, statistical records, correspondence, and supporting documents pertinent to this Agreement for a period determined by the nature of the document, pursuant to state and federal records retention and disposition requirements, and after termination of this Agreement; provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost

that does not exceed the cost provided in this chapter or as otherwise provided by law; ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Contractor upon termination of the Agreement and destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements; all records stored electronically must be provided to the City in a format that is compatible with information technology of the City. If the Contractor does not comply with a public records request, the City shall enforce the Contractor provisions in accordance with this Agreement.

28.2.2. Collection Services

The Contractor shall maintain records concerning all the Collection services provided by the Contractor in the Service Area. For each Customer the Contractor shall document, at minimum: the type of service(s) provided; for Multifamily Solid Waste and Commercial Customers, the date service was initiated, terminated, and/or reinstated; the number and size of Customer's Container(s); the serial or identifying number and, if applicable, the RFID number of each Container; the frequency of Collection (for Mechanical Containers and Recycling Carts from Multifamily Recycling Customers if collected more frequently than once per week); any changes regarding the number and size of Containers including the reason for the change; the date(s), if any, which Supplemental Bulk Collection was provided; overflowing Containers; special pickup requests; Non-Collection Notices issued; and other services provided. Additionally, the Contractor shall maintain records indicating Residential Recycling Customers' set-out rate for Recycling Carts utilizing the RFID data (as accurately as the technology permits) or other approved alternate method in accordance with Section 24.2.7.d.1.

28.2.3. Tonnages

The Contractor shall maintain records concerning all materials collected pursuant to this Agreement. Specifically, for each delivery the Contractor shall document: the date and time of the delivery; the type of material (Solid Waste, Recyclable Materials, Bulk Waste, Yard Waste, etc.); the source of the material (Residential, Multifamily, Commercial, or City); where the material was delivered; and the vehicle number that made the delivery. All such items shall be verifiable by scale house tickets and receipts which shall be entered into a summary table. If any material collected pursuant to this Agreement is delivered to a facility other than a Designated Facility, the Contractor shall record, in addition to the requirements of this section, the reason the material was not delivered to a Designated Facility.

28.2.4. Complaints and Customer Contact

The Contractor shall maintain records of all contact with Customers. At minimum these records shall include: the date and time of the contact; the Customer's street address; a description of why the Customer contacted the Contractor; if the contact was a complaint, whether the complaint was a Legitimate Complaint and , if not, why; and a description of when and how any complaints were resolved.

28.2.5. Household Hazardous Waste Events

The Contractor shall maintain records for the Household Hazardous Waste Collection events which shall contain, at minimum, the following information: the number of residents attending the event, broken down by the type of material being disposed; the total weight of material disposed; and the total weight of each type of waste disposed. The Contractor shall provide the City a copy of all manifests generated from the event along with the destination of all waste collected at the event.

28.2.6. Other

The Contractor shall also maintain documents, records, and reports that the Contract Administrator may reasonably require to verify compliance with this Agreement or to meet the City's reporting requirements with the State of Florida, Broward County, or other governmental entity.

28.3. Reporting

28.3.1. Monthly Reports

The Contractor shall provide the Contract Administrator with a monthly report by the 15<sup>th</sup> day of the following month (i.e. the January report is due no later than February 15) that summarizes the records the Contractor is required to create and maintain pursuant to this Agreement. The form and content of the monthly report shall be approved by the Contract Administrator.

28.3.2. Annual Report

The Contractor shall provide the Contract Administrator with an annual report no later than thirty (30) calendar days after the end of each Contract Year. At minimum, the annual report shall include the following: annualized information for all items required in the monthly reports; an updated list of all vehicles and equipment used to provide Collection services pursuant to this Agreement; an updated list of all Garbage Carts and Recycling Carts in use by Residential Customers; an analysis and evaluation of the number and types of Legitimate Complaints received by the Contractor; a corrective action plan for any chronic problems, if any; an updated Collection Plan; a summary of all of the year's accidents and Legitimate Complaints involving property damage or personal injury; how, if at all, the Contractor plans to meet the requirements of Section 16.3 to receive the Contractor Incentive; and any changes (equipment, procedures, staffing, etc.) that occurred in the previous year and any that are anticipated to occur in the coming year.

28.3.3. Accident Reports

The Contractor shall notify the Contract Administrator of any accidents involving the Contractor's staff, vehicles, or equipment while performing services per the terms of this Agreement that results in property damage or personal injury. Initial notification shall be provided within six (6) hours of the accident and a written report shall be provided by the end of the next Business Day. The written report shall include, at minimum, the date and time of the event, a description of the event, an estimate of any property damage, any injuries, and a description of how the event and any associated damages and injuries were handled or will be handled. If there is not a resolution of the



event by the time the written report is provided, the Contractor shall provide a follow-up written report within two (2) Business Days after the conclusion.

28.4. City's Right to Inspect and Audit Records

The Contractor shall cooperate with the City and provide any information, in addition to that which is explicitly required by this Agreement, that the Contract Administrator or the Contractor deems relevant for the City to ascertain whether the Contractor is properly performing their responsibilities. The City shall have the right to inspect, copy, and audit, at the City's expense, all of the Contractor's records and recordings concerning the Contractor's services under this Agreement. The Contractor shall make their records and recordings available for inspection in the City during normal business hours within five (5) Business Days after the City requests the records.

29. TERMINATION

This Agreement may be terminated by the City at any time for the Contractor's failure to comply with the conditions, terms, specifications, and requirements of the bid, as determined by the City, but only after the Contractor has been provided: written notice setting forth the reasons for termination, with a reasonable opportunity to correct the alleged problems, and an opportunity to be heard at a hearing before the City Commission. In the event of termination, the City shall call the Contractor's performance bond to pay for any charges incurred in excess of that charged to the City by the firm engaged for the balance of the Agreement period.

30. EVENTS OF DEFAULT

30.1. Events of Default

The following events shall, without limitation, be deemed events of default for the purposes of this Section:

- 30.1.1. Failure of the Contractor to pay any amount payable to the City under this Agreement within fourteen (14) calendar days after such amounts become finally due and payable; or
- 30.1.2. Contractor shall voluntarily cease performance of Collection for a period of five (5) consecutive calendar days, unless caused by event of Force Majeure; or
- 30.1.3. Any representation or warranty made by the Contractor to the City at any time proved to have been incorrect or shall no longer continue to be true, except as expressly provided or permitted otherwise to the contrary in this Agreement; or
- 30.1.4. Contractor shall be adjudicated as bankrupt or insolvent, or a trustee, receiver, examiner, liquidator, or similar official be appointed for Contractor or any part of its properties in any involuntary proceeding or any court shall take jurisdiction of any part of the property of Contractor in any involuntary proceeding or the reorganization, dissolution, liquidation, winding up, arrangement, adjustment or composition of Contractor; or Contractor shall fail to pay or bond or otherwise discharge any one or more judgments or attachments which are unstayed on appeal; or
- 30.1.5. Contractor shall:

- (a) Institute any proceeding seeking to adjudicate Contractor a bankruptcy or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of Contractor's debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it;
- (b) Make an assignment for the benefit of credits;
- (c) Admit in writing its inability or failure to pay its debts generally as they become due;
- (d) Apply for, seek, consent to, or acquiesce in, the appointment of a receiver, trustee, examiner, liquidator or similar official for it or any substantial part of its property; or

30.1.6. The submission of any intentionally false or misleading report, document, certificate, or instrument by Contractor to the City; or

30.1.7. If Contractor shall fail to submit a performance bond or a renewal or substitute performance bond as required pursuant to this Agreement.

30.2. Termination for Default

In the event there should occur any event of default as defined in this Section which has not been remedied within thirty (30) days after receipt of written notice from City specifying such breach or default (or such longer period as is reasonably necessary to cure any such breach or default which is not capable of being cured within thirty (30) days, provided that Contractor has undertaken the cure within such thirty (30) days and proceeds diligently to cure in an expeditious manner), City, may if such default is continuing, terminate this Agreement upon ten (10) days written notice to Contractor. In such case, Contractor shall not be entitled to receive further payment for services rendered from the effective date of the notice of termination. Additionally, the City may call the performance bond and enter into a separate contract for the completion of this Agreement or use other methods as the City determines appropriate to complete the Agreement. Upon receipt of notice of termination, Contractor shall promptly discontinue all affected work unless the notice of termination directs otherwise, deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries, such other information as may have been required under the terms of this Agreement whether completed or in process. All damages, costs, and charges incurred by City, together with the cost of completing the terms and provisions of the Agreement, shall be deducted from any monies due or which may become due to Contractor. In case of damages, and expenses so incurred by City shall exceed the unpaid balance, then Contractor shall be liable and shall pay to City the amount of such excess.

For termination pursuant to Section 30.1.2, the above paragraph shall not be applicable.

31. GENERAL TERMS AND CONDITIONS

31.1. Indemnity

The Contractor will defend, indemnify, save harmless, and exempt the City, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, costs, expenses and attorney's fees resulting from the injury to persons or damage to property arising out of work done in the performance of the Agreement caused by the negligence, willful misconduct, violation of law/regulation or breach of the terms of this Agreement.

Further, the Contractor shall defend, indemnify, save harmless, and exempt the City, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, costs, expenses and attorney's fees (up to and including the highest court of appeal) brought against the City by a third person or entity, or government, alleging the illegality of this and prior agreements with the parties, whether based upon violation of constitution, statute, rule or regulation and the common law.

31.2. Force Majeure

If either the City or the Contractor is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, but not limited to, an act of God, fires, hurricanes, floods, landslide, earthquake, volcanic eruption, extremely abnormal and excessively inclement weather, pandemics, quarantines, explosion (except those caused by the negligence of the Contractor, its agents, and assigns), war, civil disturbances, acts of terrorism, change in law, an injunction or legal proceeding brought against the City or Contractor, and any act, event, or condition which is determined by mutual agreement of the City and Contractor as being the same general type as the events herein identified, then the affected party shall be excused from performance hereunder during the period of such disability. However, labor disputes, labor shortages, changing economic conditions, and the economic hardship of the Contractor shall not be considered an event of force majeure. The party claiming force majeure shall promptly notify the other party when it learns of a force majeure condition, diligently proceed to correct the adverse effect(s), and notify the other party when the force majeure condition has terminated. The Contractor shall not be entitled to compensation from a Customer or the City for such period of time as the delay or non-performance shall continue, but the Contractor will be entitled to pro-rata compensation after the Contractor's work has been completed. The City shall not be liable for any loss suffered by the Contractor as a result of an event of force majeure.

31.3. Employee Safety

Employees of the Contractor shall not be required to expose themselves to unusual dangers in performing their duties.

31.4. Right to Require Performance

The failure of the City at any time to require performance by the Contractor of any provision of this Agreement shall in no way affect the right of the City thereafter to enforce same; or shall waiver of the City of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

31.5. Dispute Resolution

Notwithstanding, any other provisions provided in this Agreement, any dispute arising under this Agreement which is not disposed of by agreement shall be decided by the City Manager of the City of Margate, Florida, who shall produce his decision in writing and furnish a copy thereof to the Contractor. The decision of the City Manager of the City of Margate, Florida and those persons to whom he delegates authority to decide disputes, shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrarily, or grossly erroneous as to necessarily imply bad faith, or not supported by substantial evidence.

31.6. Operations During Dispute

In the event that any dispute arises between City and Contractor relating to this Agreement, performance, or compensation the Contractor shall continue to render service in full compliance with the terms and conditions of this Agreement as interpreted, in good faith, by the City, regardless of such dispute. The City reserves the right to terminate this Agreement at any time whenever the service provided by Contractor fails to meet reasonable standards of the trade, after City provides written notice to Contractor pursuant to Section 29. Upon termination, City may call the performance bond and apply the cash and surety bond for the cost of services in excess of that charged to City by the firm engaged for the balance of the Agreement period.

31.7. Law to Govern and Litigation Venue

This Agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties agree to waive jury trial for all disputes.

31.8. Waiver of Jury Trial

**The City and Contractor hereby knowingly, irrevocably, voluntarily, and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit, or counterclaim based upon the Agreement, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.**

31.9. Performance Bond

The Contractor shall furnish to the City an irrevocable, annually renewable, Performance Bond (Exhibit 10) for the faithful performance of this Agreement and all of the Contractor's obligations hereunder. The Performance Bond shall be issued by a surety company that is acceptable to the City. At a minimum, the surety company shall be rated "A" or better as to management and "FSC X" or better as to strength by Best's Insurance Guide or Surety, and shall be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds. The Surety shall have been in business and have a record of successful and continuous operation for at least five years. The Performance Bond shall: (a) contain any provisions required by Applicable Law; (b) guarantee the performance of the Agreement;

and (c) not be canceled or altered without at least thirty (30) calendar days prior notice to the City. The Contractor shall furnish the Performance Bond to the City at least five (5) calendar days before initiating Collection Services. The Performance Bond shall be maintained in full force and effect at all times during the term of this Agreement.

The Performance Bond shall be in the amount of one million dollars (\$1,000,000). Maintenance of the Performance Bond and the performance by the Contractor of all of the obligations under this section shall not relieve the Contractor of liability under the default and termination provisions set forth in this Agreement or from any other liability resulting from any breach of this Agreement. The Performance Bond may be "called" and used if there is any default or breach of this Agreement by the Contractor. Calling or using the Performance Bond shall not restrict or preclude the use of any additional or other remedies available to the City against the Contractor for breach, default or damages.

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

31.10. Compliance with Laws

The Contractor shall, at all times, conduct all its operations under this Agreement in compliance with all Applicable Laws.

31.11. Non-Discrimination

The Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion, or national origin.

31.12. Illegal Provisions

If any provision of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

31.13. Permits, Licenses, Taxes, and Fees

The Contractor shall obtain, at its own expense, all permits and licenses required by Applicable Law and maintain same in full force and effect at all times during the life of this Agreement. The Contractor shall be solely responsible for all taxes and fees associated with the provision of services pursuant to this Agreement.

31.14. Assignment and Sub-Letting

The Contractor shall not assign, transfer, or subject the Agreement or its rights, title, interests, or obligations therein without the Contract Administrator's prior written approval. In the event of any assignment, the assignee shall assume the rights and obligations of the Contractor. Notwithstanding, the Contractor shall ultimately be responsible and liable for the performance of this Agreement. Violation of this paragraph shall constitute a breach of contract by the Contractor and the City may, at its discretion, cancel the Agreement wherein all rights, title, interest, and obligations of the Contractor shall thereupon cease and terminate.

31.15. Payments Withheld From Contractor

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

- (a) Unsatisfactory work not caused by conditions beyond the Contractor's control, which has not been corrected;
- (b) The Contractor's failure to carry out lawful instructions or orders from the Contract Administrator, when required by this Agreement;
- (c) Failure of the Contractor to make payments to any subcontractor, which results in a claim against the City;
- (d) Unsafe working conditions allowed to persist by the Contractor;
- (e) Failure of the Contractor to provide routes, schedules, data, documents, or reports requested by the City in compliance with this Agreement; or

If the foregoing problems are corrected, payment shall be made to the Contractor for the amounts withheld, but the City shall not be liable to the Contractor for interest on any delayed payment. The Contract Administrator shall not exercise the City's right to withhold payments under this section unless the Contract Administrator concludes that such action is reasonable and necessary in light of the Contractor's problems or failure of performance.

31.16. Cost Savings

In the event that Contractor and/or City identify method(s) in which a cost savings to the City is available, Contractor and City agree to modify this Agreement to provide for such, provided that any changes do not create an undue hardship on Contractor and are mutually agreed upon by City and Contractor.

31.17. Independent Contractor

This Agreement does not create an employee/employer relationship between the City and the Contractor. It is the intent of the parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with Applicable Law relating to the use of Contractor's funds provided for herein. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

31.18. Signatory Authority

Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

31.19. No Construction Against Drafting Party

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the

drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation, or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

31.20. Merger; Amendment

This Agreement and the Contractor's response to RFP 2015-010 constitute the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. In lieu of providing two (2) Big Belly Solar Compactors and Sustainability Consulting Services as proposed in the Contractor's response to RFP 2015-010, the Contractor will pay the City their equivalent cash value of Twenty One Thousand Dollars (\$21,000) upon execution of the contract. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

31.21. Interpretation of Agreement

Except as provided otherwise in this Agreement and to the extent permitted by law, the City Manager as defined herein shall be responsible for interpreting this Agreement to resolve disputes that may arise hereunder. The parties agree that any decision rendered by the City Manager in connection with such matters shall be final and binding upon the Contractor and the City; and the Customer where the Customer is a party to the dispute.

32. INSURANCE

32.1. General

The Contractor and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in full force, at their own expense, during the life of this Agreement all insurance as required by the City and by Applicable Law. The Contractor shall provide the City with all insurances required under this section prior to beginning any work under this Agreement and shall keep all insurances filed with the City current at all times.

Should any of the required insurances lapse during the life of this Agreement; requests for payment originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse in insurance.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal, or reduction in coverage limits to the City. The Contractor shall name as additional insured for all liability policies, except worker's compensation, the City of Margate and its officers, agents, employees, and commission members. All liability policies shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy.

32.2. Coverages

- 32.2.1. Worker's Compensation – Statutory coverage with a minimum of \$1,000,000 per occurrence for Employer's Liability.
- 32.2.2. Commercial General Liability – \$1,000,000 per occurrence combined single limit bodily injury and property damage including coverage for contractual liability, personal injury, broad form property damage, products, and completed operations.
- 32.2.3. Umbrella Liability Coverage – \$5,000,000 per occurrence.
- 32.2.4. Automobile Liability – \$1,000,000 per occurrence combined single limit bodily injury and property damage including liability for owned, non-owned, and hired automobiles.
- 32.2.5. Pollution Liability – \$1,000,000 per occurrence and \$1,000,000 in the aggregate including all sudden and non-sudden events.

32.3. Subcontractors' Insurance

The Contractor shall ensure that all subcontractors take out and maintain during the life of their subcontract the same insurance coverage required of the Contractor. Each subcontractor shall furnish to the Contractor two copies of the certificates of insurance and the Contractor shall provide a copy of all certificates to the City.

32.4. Insurance Company and Agent

All of the insurance provided by the Contractor pursuant to this Agreement shall be issued by an insurance company or companies authorized and licensed to do business in the State of Florida with a minimum rating of B<sup>+</sup> in accordance with the latest edition of A.M. Best's Insurance Guide with a Financial Category Size of VI or greater.

33. NOTICES

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person or sent by United States Certified Mail to:

**CITY**

City Manager  
City of Margate  
5790 Margate Boulevard  
Margate, Florida 33063

Copy to:

City Attorney  
City of Margate  
5790 Margate Boulevard  
Margate, Florida 33063



**CONTRACTOR**

Timothy B. Hawkins, President  
Waste Management Inc. of Florida  
2700 Wiles Road  
Pompano Beach, FL 33073

Copy to:

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

34. **MISCELLANEOUS**

34.1. **Succession of Agreement**

This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

34.2. **Survival**

Any rights either party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.

34.3. **No Penalties**

No provision of this Agreement is to be interpreted as a penalty upon any party to this Agreement. The parties hereby agree that the rights of City in the event Contractor takes or fails to take certain actions pursuant to this Agreement, are reasonable, and that the parties desire such certainty with regard to such matters.

34.4. **Further Assurance**

Contractor and City agree to execute, acknowledge, and deliver and cause to be done, executed, acknowledged, and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

34.5. **Time of the Essence**

For purposes herein, the parties agree that time shall be of the essence of this Agreement and that representations and warranties made are all material and of the essence of this Agreement.

34.6. **Captions and Section Headings**

Captions and Sections headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

34.7. **No Waiver**

No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

34.8. Appendices

All appendices attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by reference. Original documents of appendices inserted in this form or attached hereto shall control all copies in conflict therewith.

34.9. Attorney Fees

In the event of arbitration or litigation between the parties regarding this Agreement, each party shall be responsible for their own attorney's fees and costs.

34.10. Authorization

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the Person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

34.11. Taxes

Contractor shall pay all applicable sales, consumer use, and other similar taxes required by law. The City is exempt from all Federal, State, and Local taxes. An exemption certificate will be provided where applicable upon request.

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**CITY OF MARGATE**

\_\_\_\_\_

Joanne Simone, Mayor

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

\_\_\_\_\_

Douglas E. Smith, City Manager

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_

Joseph J. Kavanagh, CMC, City Clerk

Eugene M. Steinfeld, City Attorney

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

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

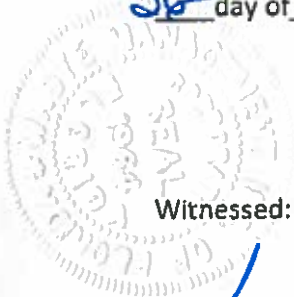
Waste Management (Contractor)

WASTE MANAGEMENT INC. OF FLORIDA



First Last, Title **TIMOTHY B. HAWKINS, PRESIDENT**

26<sup>th</sup> day of October, 2015



Witnessed:

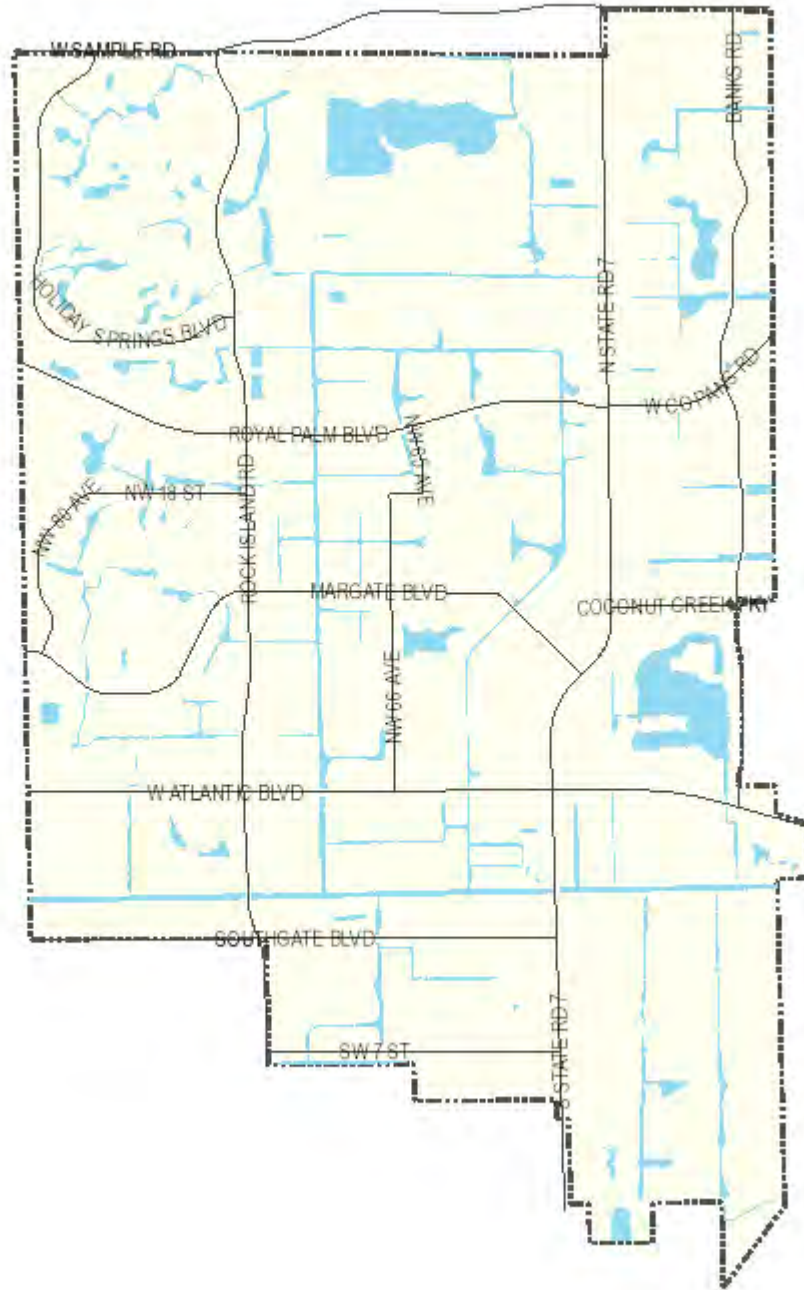


First Last

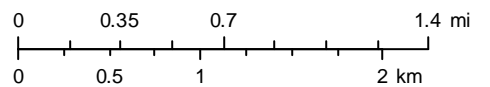
26<sup>th</sup> day of October, 2015

**EXHIBIT 1**

**GENERAL MAP OF SERVICE AREA**



1:41,468



**EXHIBIT 2**

**RATES FOR COLLECTION SERVICES**

Request for Proposal for  
Garbage and Recycling Collection Services  
RFP No. 2015-010

CITY OF MARGATE

**CHAPTER 18: COST FOR PROPOSER'S SERVICES**

**Form 21  
Cost Forms  
(continued)**

The following Cost Form table (Table 1) is for the Rates applicable to the Collection of Solid Waste from Residential Curbside Solid Waste Customers. The rates included in Table 1 are inclusive of all fees and costs for the Proposer to collect and dispose of said Waste Streams.

<b>TABLE 1 – RATES FOR RESIDENTIAL CURBSIDE COLLECTION OF SOLID WASTE</b>				
	<u>Without Owner-Occupied Multifamily Included</u>		<u>With Owner-Occupied Multifamily Included</u>	
<i>Solid Waste Collection (Carts –3.i.a.)</i>				
Fees for Garbage Cart Capacity up to 130 Gallons				
Collection	\$ 7.04	/Unit/Month	\$ 7.04	/Unit/Month
Disposal	\$ 3.51	/Unit/Month	\$ 3.51	/Unit/Month
Additional Fees for Garbage Cart Capacity in Excess of 130 Gallons				
Collection	\$ 0.00	/Unit/Month	\$ 0.00	/Unit/Month
Disposal	\$ 0.00	/Unit/Month	\$ 0.00	/Unit/Month
<i>Solid Waste Collection (PAYT –3.i.b.)</i>				
35-Gallon Carts				
Collection	\$ 7.04	/Cart/Month	\$ 7.04	/Cart/Month
Disposal	\$ 3.51	/Cart/Month	\$ 3.51	/Cart/Month
65-Gallon Carts				
Collection	\$ 7.04	/Cart/Month	\$ 7.04	/Cart/Month
Disposal	\$ 3.86	/Cart/Month	\$ 3.86	/Cart/Month
95-Gallon Carts				
Collection	\$ 7.04	/Cart/Month	\$ 7.04	/Cart/Month
Disposal	\$ 4.21	/Cart/Month	\$ 4.21	/Cart/Month
<i>Solid Waste Collection (Manual – 3.i.c.)</i>				
Collection	\$10.64	/Unit/Month	\$ 10.64	/Unit/Month
Disposal	\$ 3.51	/Unit/Month	\$ 3.51	/Unit/Month

**Form 21  
Cost Forms  
(continued)**

The following Cost Form table (Table 2) is for the Rates applicable to the Collection of Bulk Waste, Yard Waste, and Commingled Waste from Residential Curbside Solid Waste Customers. The Rates included in Table 2 are inclusive of all fees and costs for the Proposer to collect and dispose of said Waste Streams.

<b>TABLE 2 – RATES FOR RESIDENTIAL CURBSIDE COLLECTION OF BULK WASTE, YARD WASTE, AND COMMINGLED WASTE</b>				
	<u>Without Owner-Occupied Multifamily Included</u>		<u>With Owner-Occupied Multifamily Included</u>	
<i>Commingled Waste Weekly Collection (3.iii.a.)</i>				
Collection	\$ 5.05	/Unit/Month	\$ 5.05	/Unit/Month
Disposal	\$ 1.09	/Unit/Month	\$ 1.09	/Unit/Month
<i>Separate Weekly Yard Waste Collection and Separate Weekly Bulk Waste Collection (3.iii.b.)</i>				
Collection	\$ 7.20	/Unit/Month	\$ 7.20	/Unit/Month
Disposal	\$ .96	/Unit/Month	\$ .96	/Unit/Month
<i>Separate Weekly Yard Waste Collection and Separate Monthly Bulk Waste Collection (3.iii.c.)</i>				
Collection	\$ 4.95	/Unit/Month	\$ 4.95	/Unit/Month
Disposal	\$ .96	/Unit/Month	\$ .96	/Unit/Month

The following Cost Form table (Table 3) is for the Rates applicable to the Collection of Recyclable Materials from Residential Recycling Customers and Multifamily Recycling Customers. The Rates included in Table 3 are inclusive of all fees and costs for the Proposer to collect Recyclable Materials and the cost for the optional recycling rewards program.

<b>TABLE 3 – RATES FOR RECYCLABLE MATERIALS COLLECTION</b>				
	<u>Without Owner-Occupied Multifamily Included</u>		<u>With Owner-Occupied Multifamily Included</u>	
<i>Recycling Collection</i>				
Curbside Residential	\$ 2.95	/Unit/Month	\$ 2.95	/Unit/Month
Multifamily (Carts)	\$ 1.19	/Unit/Month	\$ 1.19	/Unit/Month
Multifamily (Dumpster)	\$ 8.00	/yd./Collection	\$ 8.00	/yd./Collection
<i>Recycling Rewards Program</i>				
Curbside Residential	\$ .46	/Unit/Month	\$ .46	/Unit/Month
Multifamily	\$ .46	/Unit/Month	\$ .46	/Unit/Month

**Form 21  
Cost Forms  
(continued)**

The following Cost Form table (Table 4) is for the Rates applicable to the Collection of Solid Waste and Bulk Waste from Multifamily Solid Waste Customers. The Rates included in Table 4 are inclusive of all fees and costs for the Proposer to collect and dispose of said Waste Streams.

<b>TABLE 4 – RATES FOR MULTIFAMILY SOLID WASTE COLLECTION (INCLUDES MONTHLY BULK)</b>				
	<u>Without Owner-Occupied Multifamily Included</u>		<u>With Owner-Occupied Multifamily Included</u>	
<i>Carts *</i>				
Collection	\$ 65.00	/Cart/Month	\$ 65.00	/Cart/Month
Disposal	\$ 8.21	/Cart/Month	\$ 8.21	/Cart/Month
<i>Dumpsters (Non-Compacted)</i>				
Collection	\$ 13.76	/yd./Collection	\$ 13.04	/yd./Collection
Disposal	\$ 1.89	/yd./Collection	\$ 1.89	/yd./Collection
<i>Dumpsters (Compacted)</i>				
Collection	\$ 17.20	/yd./Collection	\$ 16.30	/yd./Collection
Disposal	\$ 5.68	/yd./Collection	\$ 5.68	/yd./Collection
<i>Rolloffs</i>				
Delivery	\$0.00		\$0.00	
Collection	\$ 195.00	/Pull	\$ 195.00	/Pull
Disposal	Based On Weight		Based On Weight	

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\* Pricing is for 2 time per week service.



**Form 21  
Cost Forms  
(continued)**

The following Cost Form table (Table 5) is for the Rates applicable to the Collection of Solid Waste from Commercial Customers. The Rates included in Table 5 are inclusive of all fees and costs for the Proposer to collect and dispose of said Waste Streams.

<b>TABLE 5 – RATES FOR COMMERCIAL SOLID WASTE COLLECTION</b>				
	<u>Without Owner-Occupied Multifamily Included</u>		<u>With Owner-Occupied Multifamily Included</u>	
<i>Carts *</i>				
Collection	\$65.00	/Cart/Month	\$65.00	/Cart/Month
Disposal	\$ 9.58	/Cart/Month	\$ 9.58	/Cart/Month
<i>Dumpsters (Non-Compacted)</i>				
Collection	\$13.76	/yd./Collection	\$13.04	/yd./Collection
Disposal	\$ 2.21	/yd./Collection	\$ 2.21	/yd./Collection
<i>Dumpsters (Compacted)</i>				
Collection	\$17.20	/yd./Collection	\$16.30	/yd./Collection
Disposal	\$ 6.63	/yd./Collection	\$ 6.63	/yd./Collection
<i>Rolloffs</i>				
Delivery	\$ 0.00		\$ 0.00	
Collection	\$ 195.00	/Pull	\$195.00	/Pull
Disposal	Based On Weight		Based On Weight	

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\* Pricing is for 2 time per week service.

**Form 21  
Cost Forms  
(continued)**

The following cost proposal table (Table 6) is for the rates applicable to the additional services identified in the table. The rates included in Table 6 are inclusive of all fees and costs for the Proposer to provide the specified services including disposal (if applicable).

<b>TABLE 6 – RATES FOR ADDITIONAL SERVICES</b>				
	<u>Without Owner-Occupied Multifamily Included</u>		<u>With Owner-Occupied Multifamily Included</u>	
<i>Replacement or Additional Residential Garbage and Recycling Carts (One-time Fee)</i>				
35-Gallon Cart	\$55.00	/Cart	\$55.00	/Cart
65-Gallon Cart	\$62.00	/Cart	\$62.00	/Cart
95-Gallon Cart	\$65.00	/Cart	\$65.00	/Cart
Delivery Fee (if applicable)	\$ 0.00	/Delivery	\$ 0.00	/Delivery
<i>Supplemental Bulk Collections</i>				
Collection	\$20.00	/yd.	\$20.00	/yd.
Disposal	\$ 0.00	/yd.	\$ 0.00	/yd.
<i>Supplemental Solid Waste Collection</i>				
Collection	\$20.00	/yd.	\$20.00	/yd.
Disposal	\$ 0.00	/yd.	\$ 0.00	/yd.
<i>Wastewater Treatment Plant Containers for Wastewater Material</i>				
Disposal	\$13.26	/yd.	\$13.26	/yd.

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**Form 21  
Cost Forms  
(continued)**

The following cost proposal table (Table 7) is the generation factors that were used to calculate the disposal costs in Tables 1-2 and 4-6. The Proposer's generation factors shall be used throughout the term of the Agreement (including any renewals) unless otherwise agreed upon with the City. Proposers shall use the generation factors provided here along with the following current per ton disposal/processing rates to determine the disposal component of their Rates: Solid Waste - \$42.11, Yard Waste - \$27.41, and Bulk Waste - \$33.50.

<b>TABLE 7 – GENERATION FACTORS</b>		
	<u>Without Owner-Occupied Multifamily Included</u>	<u>With Owner-Occupied Multifamily Included</u>
<i>Residential Curbside Collection Services</i>		
Cart Based Solid Waste Collection - 3.i.a. (Tons per Unit per Year)	1.00	1.00
Cart Based Solid Waste Collection - 3.i.a. – Excess Cart Capacity (Tons per Unit per Year)	0.00	0.00
PAYT Cart Based Solid Waste Collection - 3.i.b. (Tons per Cart per Year)		
35-Gallon Cart	1.00	1.00
65-Gallon Cart	1.10	1.10
95-Gallon Cart	1.20	1.20
Weekly Commingled Collection (Tons per Household per Year)	.39	.39
Separate Weekly Yard Waste Collection (Tons per Household per Year)	.27	.27
Separate Weekly Bulk Collection (Tons per Household per Year)	.12	.12
Separate Monthly Bulk Waste Collection (Tons per Household per Year)	.12	.12
<i>Multifamily Collection Services</i>		
Carts (Tons per Cart per Year)	2.34	2.34
Dumpsters - Loose (Pounds per Yard per Collection)	90	90
Dumpsters – Compacted (Pounds per Yard per Collection)	270	270
<i>Commercial Collection Services</i>		
Carts (Tons per Cart per Year)	2.73	2.73
Dumpsters – Loose (Pounds per Yard per Collection)	105	105
Dumpsters - Compacted (Pounds per Yard per Collection)	315	315

**EXHIBIT 3**

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARGATE AND BROWARD COUNTY FOR SOLID WASTE  
DISPOSAL SUPPORT SERVICES**

AN  
INTERLOCAL AGREEMENT  
BETWEEN  
BROWARD COUNTY  
AND  
PARTICIPATING COMMUNITIES  
FOR  
SOLID WASTE DISPOSAL SUPPORT SERVICES

## **AGREEMENT**

This Interlocal Agreement ("Agreement") dated for convenience September 1, 2012 between BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY":

AND

The municipalities whose names appear in Exhibit "A" attached hereto and made a part hereof, their successors and assigns, hereinafter referred to as "PARTICIPATING COMMUNITY or COMMUNITIES". It is expected that Broward municipalities may elect to execute this Agreement and become a PARTICIPATING COMMUNITY at different times and throughout the term of this Agreement. At such time as a municipality executes this Agreement or subsequently terminates this Agreement, County is authorized to add or delete the municipality as a PARTICIPATING COMMUNITY to Exhibit A. Upon adding or deleting a PARTICIPATING COMMUNITY to Exhibit A, written notice containing the amended Exhibit A shall be sent to all parties to this Agreement.

## **ARTICLE 1** **BACKGROUND**

- 1.1 In order to establish the background, context and frame of reference for this Agreement and to provide a general background regarding the objectives and intentions of the COUNTY and the PARTICIPATING COMMUNITIES, the following statements, representations and explanations are predicates for the undertaking and commitments included within the provisions which follow and shall be construed as essential elements of the mutual considerations upon which this Agreement is based.
- 1.2 The County and the Contract Communities (as such term is defined in the Prior Interlocal Agreement) have previously entered into a Prior Interlocal Agreement dated November 25, 1986, as amended, ("Prior Interlocal Agreement") which authorizes and requires the County to provide for the disposal of solid waste delivered by or on behalf of the Contract Communities through July 2, 2013.

- 1.3 In order to provide for the continuous disposal of all Contract Community solid waste throughout the term of the Prior Interlocal Agreement, the County has entered into an agreement with Wheelabrator South Broward Inc. and Wheelabrator North Broward Inc. dated June 28, 2011 pursuant to which the County will deliver or cause to be delivered, solid waste generated within the Contract Communities, and the above companies will accept responsibility and dispose of such solid waste at its facilities until July 2, 2013.
- 1.4 In order to continue to make available to all Broward municipalities a regional, economic and environmentally sound method of solid waste disposal after July 2, 2013, the Broward County Board of County Commissioners approved on June 26, 2012: (i) an agreement between County and Sun-Bergeron Solid Waste, J.V. ("Sun-Bergeron" or "Contractor") dated June 26, 2012 for solid waste disposal services, and (ii) an agreement between County and Wheelabrator Environmental Systems Inc., a Delaware corporation ("Wheelabrator" or "Contractor") dated June 26, 2012 for solid waste disposal services (collectively referred to as the Solid Waste Agreement(s)). The terms of the Solid Waste Agreements require, among other things, Sun-Bergeron and Wheelabrator, for a five year initial term, to accept PARTICIPATING COMMUNITIES' waste and commence disposal operations on July 3, 2013.
- 1.5 In addition to approving the Solid Waste Agreements on June 26, 2012, the Broward County Board of County Commissioners further approved a "Side Letter" dated June 19, 2012 from Wheelabrator Technologies Inc. to Broward County whereby the County and company agreed to waive, for a limited period of time, the County's right to preferential pricing based on certain third party agreements, in exchange for the company making payments to County for its exclusive use and benefit. The County agrees to contribute the company payments to its solid waste programs, administration and operations.
- 1.6 It is the intent of this Agreement to offer to all Broward municipalities the option to execute this Interlocal Agreement and elect to become a PARTICIPATING COMMUNITY subject to the terms of this Agreement and the applicable Solid Waste Agreement(s). By electing to become a PARTICIPATING COMMUNITY a municipality has the discretion to select either or both Contractor(s) as its solid waste disposal company and select among the multiple price and waste options contained in the applicable Solid Waste Agreement(s). Participating Communities have the further right, pursuant to this Agreement, to additional optional County services as provided for herein.
- 1.7 It is further recognized by PARTICIPATING COMMUNITIES and COUNTY that the COUNTY is entering into this Agreement both representing the unincorporated County, a waste generation area with solid waste requiring disposal, and as the party that has the ultimate responsibility for disposal of solid waste within Broward County pursuant to Section 403.706(b)(1), Florida Statutes.

- 1.8 This Agreement is an interlocal agreement entered into pursuant to Section 163.01, Florida Statutes, and the Florida Interlocal Cooperation Act of 1969, as amended.

Prior to the effectiveness of any provision of this Agreement and subsequent Amendments hereto, this Agreement and any such subsequent amendments shall be filed with the Broward County Clerk of the Circuit Court as provided by Section 163.01(11), Florida Statutes.

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

## **ARTICLE 2** **DEFINITIONS**

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

- 2.1 Administrator. The term "Administrator" or "County Administrator" shall mean the County Administrator of the Broward County government by the Charter of Broward County, Florida.
- 2.2 Agreement. The term "Agreement" shall mean this Interlocal Agreement (ILA) between the County and Contract Communities.
- 2.3 Board of County Commissioners. The term "Board of County Commissioners" or "County Commissioners" or "County Commission" shall mean the Board of County Commissioners of Broward County, Florida.
- 2.4 Participating Communities. The term "PARTICIPATING COMMUNITY" OR "PARTICIPATING COMMUNITIES" shall mean the municipal corporation or corporations existing under the laws of the State of Florida, located within the COUNTY and whose names appear in Exhibit A to this Agreement.
- 2.5 County. The term "COUNTY" shall mean, depending upon the context, either (a) the geographical area contained within unincorporated Broward County, Florida, a political subdivision of the State of Florida, or (b) the government of Broward County, acting through the County Commission or its designee.
- 2.6 Fiscal Year. The term "fiscal year" shall mean October 1 to September 30 of the following year.
- 2.7 Haulers. The term "haulers" shall mean those persons, firms, corporations or governmental agencies which collect solid waste (either under oral or written contract, license, permit or otherwise) within the geographic boundaries of the

PARTICIPATING COMMUNITY(IES) or the unincorporated County, or provide for the transportation and delivery of solid waste.

- 2.8 Residential Waste. The term "Residential Waste" shall have the same meaning as defined in the applicable Solid Waste Agreement.
- 2.9 Commercial Waste. The term "Commercial Waste" shall have the same meaning as defined in the applicable Solid Waste Agreement.
- 2.10 Unincorporated County. The term "unincorporated County" shall mean the geographical areas of the COUNTY which are not within the boundaries of any municipal corporation. Unincorporated COUNTY shall be treated in all respects under the terms and conditions of this Agreement as a PARTICIPATING COMMUNITY.
- 2.11 Designated Facility. With respect to the Wheelabrator Solid Waste Agreement, the term "Designated Facility" shall mean either "Disposal Facility" as that term is defined in the Wheelabrator Solid Waste Agreement, or "Alternate Disposal Facility" as that term is defined in the Wheelabrator Solid Waste Agreement when the conditions of Section 5.2 have been implemented. With respect to the Sun-Bergeron Solid Waste Agreement, the term "Designated Facility" shall mean "Waste Processing Facility" as that term is defined in that Sun-Bergeron Solid Waste Agreement; however for Additional Waste, the term "Designated Facility" shall refer to the "Material Recovery Facilities", as set forth in Exhibit B of the Sun-Bergeron Solid Waste Agreement.
- 2.12 Disposal Services Fee. The term "Disposal Services Fee" shall have the meaning as defined in the applicable Solid Waste Agreement.
- 2.13 Capitalized terms not otherwise defined in this Agreement shall have the same meaning as defined in the applicable Solid Waste Agreement.

### ARTICLE 3 COMMITMENT OF WASTE STREAM

- 3.1 PARTICIPATING COMMUNITY shall select a Solid Waste Agreement Contractor (Wheelabrator or Sun-Bergeron or both) by which it agrees to be bound and the applicable price option and waste option pursuant to said Solid Waste Agreement(s), and furnish County and the applicable Contractor written notice of its elections, concurrent with the execution of this Agreement in such form and with such information as is contained in Exhibit B, attached hereto and made a part hereof. PARTICIPATING COMMUNITY shall have a continuing obligation to immediately provide to County, in writing, any amendments it may enter into with the applicable company to the selection of its price or waste options.



- 3.2 During the duration of this Agreement as defined in Article 11 hereof, the PARTICIPATING COMMUNITIES and the COUNTY for the unincorporated area shall cause all of the Residential Waste, Commercial Waste and any other designated waste pursuant to Section 3.1, within each of their respective boundaries to be collected, transported, delivered and deposited at the appropriate receiving facilities of Contractor, as the case may be, in accordance with the terms of the applicable Solid Waste Agreement, except for waste or recycling material which is transported outside the State of Florida.
- 3.3 Each PARTICIPATING COMMUNITY agrees to include in any contracts or contract amendments with haulers executed after the effective date of the Solid Waste Agreement, a provision that all Residential Waste, Commercial Waste and any other designated waste shall be delivered to the appropriate receiving facilities of either Wheelabrator or Sun-Bergeron, as the case may be, in accordance with the terms of the applicable Solid Waste Agreement, with an exception for any waste generated in the County which is shown to be destined for recycling or disposal outside the State of Florida.
- 3.4 PARTICIPATING COMMUNITY selects to participate in the following optional County services (mark box(es) below as appropriate):
- Centralized Billing Services, as described in Article 6.
  - Flow Control Enforcement Services, as described in Article 7.

**ARTICLE 4**  
**PARTICIPATING COMMUNITY'S OBLIGATIONS**

- 4.1 Each PARTICIPATING COMMUNITY agrees to include in any hauler agreement for the collection of Residential Waste, including any renewal of an existing hauler agreement, entered into by a PARTICIPATING COMMUNITY and a licensed residential waste hauler after the effective date of the Solid Waste Agreement, the following: (a) the definition of Residential Waste as set forth in the Solid Waste Agreement; (b) the Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste as defined in the applicable Solid Waste Agreement, which is brought to a Designated Facility; (c) the Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering waste on behalf of the PARTICIPATING COMMUNITY; (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Residential Waste to the Designated Facilities, and (e) hours

of operation for the Designated Facilities during which the Licensed Residential Waste Hauler shall be authorized to deliver waste to the Designated Facilities.

- 4.2 The PARTICIPATING COMMUNITY and the Licensed Commercial Waste Haulers shall execute a license agreement that sets forth the payment procedure in the Solid Waste Agreement for Commercial Waste Disposal Services, and which requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to the Designated Facilities.
- 4.3 If the PARTICIPATING COMMUNITY does not select centralized billing services pursuant to Article 6, it shall require the Licensed Commercial Waste Hauler(s) to provide a performance bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for the PARTICIPATING COMMUNITY, calculated pursuant to terms of the Solid Waste Agreement and based on the 60 day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding the execution of the license agreement between the PARTICIPATING COMMUNITY and the Licensed Commercial Waste Hauler(s) entered into after the Effective Date of the Solid Waste Agreement. The sufficiency of the value of the performance bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations. A Licensed Commercial Waste Hauler providing services for multiple Municipalities which do not select centralized billing services may provide one aggregate bond meeting the requirements set forth herein.
- 4.4 If a PARTICIPATING COMMUNITY does not select centralized billing services pursuant to Article 6, it shall pay the Contractor within thirty (30) days of receipt of a monthly invoice issued by Contractor for Residential Waste Disposal Services. If the PARTICIPATING COMMUNITY disagrees with the amount stated in the invoice, the PARTICIPATING COMMUNITY shall notify the Contractor of such dispute. The PARTICIPATING COMMUNITY shall make payment to Contractor of undisputed invoiced amounts within thirty days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute (for amounts greater than \$25,000) by mediation by a mutually acceptable mediator. In the event the parties are not able to resolve the dispute through mediation within forty-five (45) days, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to the Contractor, or relieve Contractor of its obligations under this Agreement.

- 4.5 If the PARTICIPATING COMMUNITY selects centralized billing services pursuant to Article 6, the PARTICIPATING COMMUNITY agrees to include in any contracts or contract amendments with haulers for residential waste a provision that the hauler shall comply with the following: (1) [insurance and credit requirements as may be required by County]; (2) Pay County the full amount of each invoice within thirty days of receipt; (3) Agree to pay interest at the rate consistent with the Florida Prompt Payment Act, Sections 218.70-218.80, Florida Statutes for late payments; (4) Failure to timely pay is an event of default which if not timely cured within 15 days is an event of termination; (5) In the event the hauler disputes an invoice from County, the hauler shall first pay the full amount of the disputes charges when due, and shall, within thirty (30) days from the date of the receipt of the disputed invoice, give written notice of the dispute to County. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The parties agree to work in good faith to settle the dispute. In the event the parties cannot settle the dispute within sixty (60) days from the date of the receipt of the disputed invoice, the hauler may pursue any remedy available at law except withholding payment.
- 4.6 If a Participating Community collects its Residential Waste and hauls the Residential Waste to the Contractor, the PARTICIPATING COMMUNITY shall be responsible for all costs, including removal, transportation and disposal of the Unacceptable Waste brought to a Designated Facility.

**ARTICLE 5**  
**OUT OF STATE DISPOSAL AND REPORTING REQUIREMENTS**

- 5.1 Any Solid Waste or recyclables generated in Broward County which are shown to be destined for transportation to any destination outside of the State of Florida based on a sworn affidavit of a hauler delivered to the County and PARTICIPATING COMMUNITY generating the waste and reciting facts which evidence the transportation and disposal of waste outside the State of Florida, are excluded from the flow control restrictions contained in Section 3.2 of this Agreement.
- 5.2 In addition to the affidavit required in Section 5.1, any hauler who elects to transport and dispose of any Broward County waste outside the State of Florida shall provide to the County and PARTICIPATING COMMUNITY generating the waste, a monthly report containing the information listed below so as to enable the County and affected PARTICIPATING COMMUNITY to accurately monitor the collection, flow and disposal of waste.

- 5.3 A monthly report shall be due no later than 30 days after the end of the preceding month, delivered to the Director of Solid Waste and Recycling Services as to the County, and to the Public Works Director or equivalent position as to any PARTICIPATING COMMUNITY, certified by the hauler, containing at a minimum the following information and documentation regarding any waste which is collected, transported and disposed of out of the State:
- 5.3.1 The tonnage, origin and type of waste which has been disposed of by the hauler outside the state;
  - 5.3.2 The date(s) on which the hauler collected the waste and the location or route of the collected waste;
  - 5.3.3 The location of the final disposal facility for the waste, including the location of any other facilities, such as transfer stations where waste is temporarily transported en-route to its final destination out of State;
  - 5.3.4 Copies of all receipts, weigh tickets, reports and other written material verifying the collection, transportation and disposal of waste outside the State by the hauler;
  - 5.3.5 Such other documentation and information on forms which may be prescribed by, and as the County or PARTICIPATING COMMUNITY generating the waste may reasonably require to confirm compliance with this section.

**ARTICLE 6**  
**OPTIONAL COUNTY CENTRALIZED BILLING SERVICES**

- 6.1 Each PARTICIPATING COMMUNITY shall have the right, at its sole option, to participate in a County centralized billing services program as more particularly described in this article. If PARTICIPATING COMMUNITY elects to participate in the County centralized billing services program by so indicating in Section 3.4 of this Agreement, said election shall remain in force unless PARTICIPATING COMMUNITY furnishes to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of any Fiscal Year, notifying County that it elects to discontinue its participation in this program. If PARTICIPATING COMMUNITY elects not to participate in the County centralized billing services by so indicating in Section 3.4 of this Agreement, PARTICIPATING COMMUNITY may request to participate in a future fiscal year, by furnishing to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of that fiscal year.
- 6.2 If PARTICIPATING COMMUNITY timely notifies County of its election for centralized billing services, County shall provide the following services:

- 6.2.1 Review invoices from and timely pay Contractors.
  - 6.2.2 Process billing statements to the haulers and PARTICIPATING COMMUNITIES, as applicable.
  - 6.2.3 Collect data from load tickets received from disposal and transfer facilities.
  - 6.2.4 Provide financial and tonnage reporting for each PARTICIPATING COMMUNITY.
  - 6.2.5 Collect required security deposits from haulers.
  - 6.2.6 Suspend haulers for non-payment.
  - 6.2.7 Institute appropriate collections for delinquent accounts.
  - 6.2.8 Research tonnage discrepancies as appropriate.
  - 6.2.9 Maintain copies of haulers' certificates of insurance.
  - 6.2.10 Issue truck decals and maintain vehicle information.
  - 6.2.11 Disburse Contractor rebates received by County as appropriate in accordance with the Solid Waste Agreements.
  - 6.2.12 Reconcile tonnages to the Contractor's monthly invoices.
- 6.3 All costs and expenses for the County's centralized billing services shall be paid for by PARTICIPATING COMMUNITY at an initial rate of \$0.15 (fifteen cents) per ton of waste generated from the PARTICIPATING COMMUNITY which is received by a Contractor at a Designated Facility. Beginning on October 1, 2014, and on each October 1 thereafter for the initial term of the Solid Waste Agreement, the rate shall be subject to adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%, by multiplying the existing rate by the Service Fee Adjustment Factor, as calculated according to the Solid Waste Agreements. The rate shall be subject to negotiation for any subsequent term.
- 6.4 The County reserves the right, in its sole discretion, to cease providing centralized billing services prior to the commencement of any Fiscal Year, with a minimum of six (6) months written notice to PARTICIPATING COMMUNITY; except for the period beginning on July 3, 2013 and ending September 30, 2013, for which said notice by County shall be given to the PARTICIPATING COMMUNITIES no later than January 1, 2013.
- 6.5 County shall invoice PARTICIPATING COMMUNITY for centralized billing services within thirty (30) days of the end of each month. PARTICIPATING COMMUNITY agrees that it shall be required to pay County within thirty (30) days of receipt of the invoice in order to remain entitled to continuing to receive the service.

**ARTICLE 7**  
**OPTIONAL COUNTY FLOW CONTROL ENFORCEMENT SERVICES**

- 7.1 Each PARTICIPATING COMMUNITY shall have the right, at its sole option, to participate in a County flow control enforcement program as more particularly described in this article. If PARTICIPATING COMMUNITY elects to participate in

the County flow control enforcement program by so indicating in Section 3.4 of this Agreement, said election shall remain in force unless PARTICIPATING COMMUNITY furnishes to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of any Fiscal Year, notifying County that it elects to discontinue its participation in this program. If PARTICIPATING COMMUNITY elects not to participate in the County flow control enforcement program by so indicating in Section 3.4 of this Agreement, PARTICIPATING COMMUNITY may request to participate in a future fiscal year, by furnishing to COUNTY a written letter, not less than one hundred eighty (180) days prior to the beginning of that fiscal year.

- 7.2 Each PARTICIPATING COMMUNITY electing to participate in flow control enforcement agrees to include a requirement that haulers consent to inspection of loads by the County in any agreements, licenses, permits, franchises or other arrangements with haulers entered into after this Agreement.
- 7.3 County agrees to provide the following services as part of its flow control enforcement:
  - 7.3.1 Monitor the delivery of waste to the designated Disposal Facilities.
  - 7.3.2 Assist PARTICIPATING COMMUNITY staff in identifying violations of applicable solid waste ordinances, including efforts to avoid payment of franchise fees.
  - 7.3.3 Assist the PARTICIPATING COMMUNITIES with identifying unauthorized haulers providing service within a PARTICIPATING COMMUNITY.
  - 7.3.4. Assist the PARTICIPATING COMMUNITIES WITH identifying commercial businesses with inadequate solid waste services.
  - 7.3.5 Such other services as County and PARTICIPATING COMMUNITES agree are necessary to monitor adherence to this Agreement.
- 7.4 The County reserves the right, in its sole discretion, to cease providing flow control enforcement services prior to the commencement of any Fiscal Year, with a minimum of six (6) months written notice to PARTICIPATING COMMUNITY; except for the period beginning on July 3, 2013 and ending September 30, 2013, for which said notice by County shall be given to the PARTICIPATING COMMUNITIES no later than January 1, 2013.
- 7.5 County shall invoice PARTICIPATING COMMUNITY for flow control enforcement services within thirty (30) days of the end of each month. PARTICIPATING COMMUNITY agrees that it shall be required to pay County within thirty (30) days of receipt of the invoice in order to remain entitled to continuing to receive the service.
- 7.6 All costs and expenses for the County's flow control enforcement services shall be paid for by PARTICIPATING COMMUNITY at an initial rate of \$0.37 (thirty seven cents) per ton of waste generated from the PARTICIPATING

COMMUNITY which is received by a Contractor at a Designated Facility. Beginning on October 1, 2014, and on each October 1 thereafter for the initial term of the Solid Waste Agreement, the rate shall be subject to adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%, by multiplying the existing rate by the Service Fee Adjustment Factor, as calculated according to the Solid Waste Agreements. The rate shall be subject to negotiation for any subsequent term.

**ARTICLE 8**  
**RELATIONSHIPS OF THE PARTIES**

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

**ARTICLE 9**  
**INDEMNIFICATION**

To the maximum extent permitted by law, County and each PARTICIPATING COMMUNITY shall indemnify, defend and hold harmless the other, their officers, employees and agents from and against any liability, claims, demands, actions, costs, expenses, losses or damages whatsoever, including the intentional or negligent acts of each arising out of the performance of the obligations under this Agreement of the County and each PARTICIPATING COMMUNITY, except the same shall not include punitive damages or prejudgment interest.

**ARTICLE 10**  
**DEFAULT AND TERMINATION**

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

**ARTICLE 11**  
**DURATION**

This Agreement shall be effective upon execution by County and a PARTICIPATING COMMUNITY. This Agreement shall remain in effect concurrently with the term of the Solid Waste Agreements and shall remain in effect so long as the County and any PARTICIPATING COMMUNITY are subject to the Solid Waste Agreement(s). If, for any reason, the Solid Waste Agreements are terminated, this Agreement shall be deemed terminated as of the date of termination of the Solid Waste Agreement(s).

**ARTICLE 12**  
**THIRD PARTY BENEFICIARY**

Wheelabrator and Sun-Bergeron shall be deemed to be third party beneficiaries to this Agreement entitled to assert any rights which otherwise would be available to the County relating to a PARTICIPATING COMMUNITY'S performance of its obligations pursuant to this Agreement.

**ARTICLE 13**  
**MISCELLANEOUS**

- 13.1 **ASSIGNMENT.** This Agreement, or any interest herein, may not be assigned, transferred or otherwise encumbered, under any circumstances by any party without the prior written consent of the other parties to this Agreement.
- 13.2 **STATE AND FEDERAL LAWS.** The provisions of solid waste disposal services under this Agreement shall comply with all applicable state and federal laws. This Agreement shall be construed in accordance with the laws of the State of Florida.
- 13.3 **NOTICES.** All notices, consents and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and shall be delivered either by hand with proof of delivery or mailed by first class registered or certified mail, return receipt required, postage prepaid, and in any case shall be addressed as provided in Exhibit B, which is attached hereto and made a part hereof. Changes in the respective addresses of PARTICIPATING COMMUNITIES provided in Exhibit B and of County provided on the signature page may be made by either party by giving notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the day of dispatch; notices and consents given by any other means shall be deemed to have been given when received.



- 13.4 INCORPORATION OF AGREEMENTS. This document supersedes all prior negotiations, correspondence, conversations, agreements, or understandings, applicable to the matters contained therein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the PARTICIPATING COMMUNITY.
- 13.5 ADDITIONAL PARTICIPATING COMMUNITIES. Any time throughout the term(s) of this Agreement, any municipal corporation existing under the laws of the State and located in COUNTY which is not already a PARTICIPATING COMMUNITY may become a PARTICIPATING COMMUNITY by agreeing to all of the terms and conditions of this Agreement.
- 13.6 SEVERABILITY. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.
- 13.7 REPRESENTATIONS AND WARRANTIES. Each of the PARTICIPATING COMMUNITIES and County hereby represents and warrants as to itself as follows:
- (a) It is duly organized and validly existing under the constitution and laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder;
  - (b) This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by Article X, Section 13 of the Florida Constitution or bankruptcy, moratorium, reorganization or similar laws affecting the right of creditors generally);
- 13.8 JOINT PREPARATION  
Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be

construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

13.9 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, PARTICIPATING COMMUNITIES AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

13.10 MULTIPLE ORIGINALS

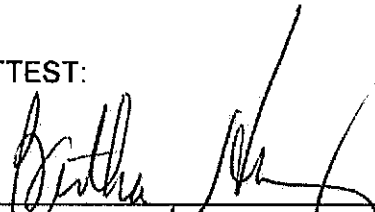
Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

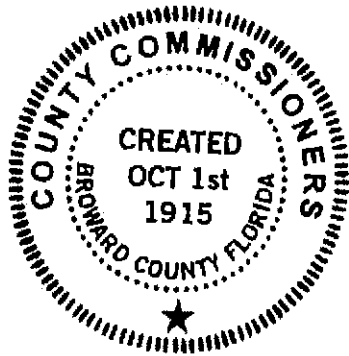
[THE REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 28<sup>th</sup> day of August, 2012, and each PARTICIPATING COMMUNITY, signing by and through officers duly authorized to execute same.

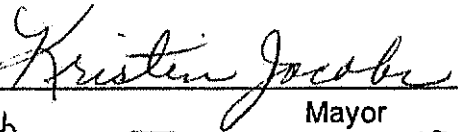
COUNTY

ATTEST:

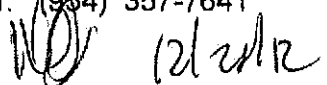
  
\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners



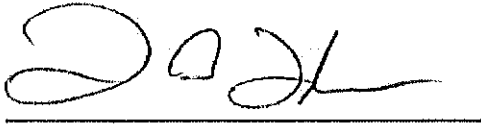
BROWARD COUNTY, by and through  
its Board of County Commissioners

By   
\_\_\_\_\_  
Mayor  
8<sup>th</sup> day of January, 2013

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


By   
\_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney

CITY OF MARGATE



Frank B. Talerico, Mayor

5 day of December, 2012



Jerry A. Blough, City Manager

5 day of December, 2012

ATTEST:



Leslie Wallace May, MMC, City Clerk

5 day of December, 2012

APPROVED AS TO FORM:



Eugene M. Steinfeld, City Attorney

5 day of December, 2012

**EXHIBIT A**  
**NAMES OF PARTICIPATING COMMUNITIES**

EXHIBIT B  
NOTICE OF MUNICIPAL SELECTIONS FOR SOLID WASTE DISPOSAL

Municipality: City of Margate

Residential Waste and Commercial Waste:

- Wheelabrator
  - Price Option A
  - Price Option B
  - Price Option C
- Sun-Bergeron
- Neither
- Both

Describe: \_\_\_\_\_  
\_\_\_\_\_

Yard Waste

- Wheelabrator
- Sun-Bergeron
- Neither

Bulk Trash

- Wheelabrator
- Sun-Bergeron
- Neither

Construction & Demolition Debris

- Wheelabrator
- Sun-Bergeron
- Neither

Address for giving notice: City Manager

City of Margate

5790 Margate Boulevard

Margate, FL 33063

Signature of Authorized Official 

Date 12/12/13

**EXHIBIT 4**

**AGREEMENT BETWEEN WHEELABRATOR ENVIRONMENTAL SERVICES INC. AND BROWARD COUNTY,  
FLORIDA FOR SOLID WASTE DISPOSAL SERVICES**

*Final5-31-12*

**AGREEMENT  
BETWEEN  
WHEELABRATOR TECHNOLOGIES INC.,  
AND  
BROWARD COUNTY, FLORIDA  
FOR  
SOLID WASTE DISPOSAL SERVICES**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between WHEELABRATOR TECHNOLOGIES INC., a Delaware Corporation, (hereinafter referred to as "Contractor"), and BROWARD COUNTY, FLORIDA, a political subdivision and body politic of the State of Florida (hereinafter referred to as the "County").

WHEREAS, Contractor and the County desire to enter into this Agreement (the "Agreement") to provide for the disposal of solid waste generated within unincorporated Broward County and the municipal boundaries of the Participating Communities (as defined below) and to set forth how such solid waste disposal services will be provided; and

WHEREAS, it is the intent of the parties that this Agreement may function as either (i) a form agreement for Broward municipalities to use as a basis for a solid waste contract with Contractor independent of County and independent of the proposed Interlocal Agreement, or alternatively (ii) this Agreement may serve as the basis for an Interlocal Agreement, whereby Participating Communities executing the Interlocal Agreement shall agree, among other things, to be bound by the terms of this Agreement; and

WHEREAS, the County is desirous of securing and maintaining a high level of professional, safe and environmentally sound solid waste disposal services in conjunction and harmony with its environmental protection and conservation polices and fiscal policies of sound, economical management; and

WHEREAS, the County has determined that it is beneficial and in the best interests of the public to enter into this Agreement. NOW, THEREFORE,

In consideration of the mutual covenants, promises, terms and conditions set forth herein, Contractor and the County do hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

For the purpose of this Agreement, the following definitions shall apply, unless otherwise specifically stated:

"Additional Waste" shall refer to any construction and demolition debris, tropical storm or hurricane related debris, yard-waste, recyclable materials, any large household appliances (commonly referred to as "white goods") including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters and the like, or other items of bulky waste, but in each case excluding any Unacceptable Waste.

"Alternate Disposal Facility" shall mean either: (i) the Monarch Hill Landfill, 2700 Wiles Road Pompano Beach, Florida 33073, (ii) Okeechobee Landfill Facility, 10800 N.E. 128<sup>th</sup> Avenue, Florida 33972, or (iii) such other disposal facility as may be approved by the County.

"Broward Waste" shall refer to Additional Waste, (as applicable) Commercial Waste and Residential Waste.

"Centrally Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and have elected to have the County perform centralized billing services and are indicated as such on Exhibit "C."

"Commercial Waste" shall refer to waste, refuse, garbage, trash and rubbish generated within unincorporated Broward County and the Participating Communities, excepting therefrom Residential Waste as defined herein and that is capable of being processed at the Disposal Facility, but shall not include Additional Waste, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"Directly Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and perform their own billing services and are indicated as such on Exhibit "C."

"Disposal Commencement Date" shall refer to the date upon which the Prior Interlocal Agreement has either terminated or expired.

"Disposal Facility(ies)" shall refer individually to either the North Disposal Facility or South Disposal Facility, and collectively to the North Disposal Facility and the South Disposal Facility together.

"Disposal Services" refers to everything required to be furnished and done by the Contractor pursuant to this Agreement. Disposal Services include, but are not limited to, the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services



whatsoever necessary for the receipt, processing, and disposal of Broward Waste, and any associated residual materials.

"Disposal Services Fee" shall mean the per-ton rate charged by the Contractor for providing the Disposal Services in accordance with this Agreement.

"Disposal Services Fee Adjustment Factor" shall refer to the adjustment that may be applied to the Disposal Services Charge on an annual basis, as calculated using the Bureau of Labor Statistics Index Series ID CWUR0300SA0, Consumer Price Index - Urban Wage Earners and Clerical Workers.

"Effective Date" shall refer to the date that this Agreement has been executed by both the County and the Contractor.

"Force Majeure" means any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder that is beyond the reasonable control, and not the result of willful or negligent action or omission or a lack of reasonable diligence, of the party relying thereon as justification for not performing. Such events or conditions may include, but shall not be limited to: an act of God, epidemic, hurricane, earthquake, fire, explosion, storm, flood or similar occurrence, an act of war, effects of nuclear radiation, blockade, insurrection, riot, labor unrest (other than with respect to employees of the party claiming relief), civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a Disposal Facility unless knowingly accepted by Contractor. In any event, Force Majeure shall not include the following:

- (a) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure;
- (b) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a Disposal Facility which is the result of any action or inaction or failure of compliance by Contractor or any affiliate;
- (c) any change in law (other than to the extent that Contractor's physical ability to process Broward Waste is eliminated due to a change in law);
- (d) loss or unavailability of personnel desired by Contractor to operate or maintain a Disposal Facility;
- (e) wear and tear or obsolescence of any parts or equipment utilized in or at a Disposal Facility; or
- (f) except as a result of an independent event of Force Majeure, the loss of or inability to obtain or retain any utility services, including water, sewerage, fuel oil, gasoline and electric power necessary for the operation of the Disposal Facility.

"Hazardous Waste" means any waste, substance, object or material deemed hazardous under (i) Section 403.703, Florida Statutes; (ii) RCRA, 42 U.S.C.A § 6901, *et seq.*; (iii) CERCLA, 42 U.S.C.A. § 9601, *et seq.*; (iv) Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*, and in each case, applicable regulations promulgated thereunder.

"Interlocal Agreement" shall mean the Interlocal Agreement to be entered into among County and Participating Communities which provides, at a minimum, a requirement for the County and Participating Communities to be bound by the terms of this Agreement and to perform such obligations as contemplated therein, provides Participating Communities the option to choose from the two approved vendors and vendors price proposals and the option to receive, at the Participating Communities expense, additional County services, including but not limited to, centralized billing services by County, flow control enforcement by County, and other County waste disposal related services.

"Licensed Waste Haulers" shall refer to Licensed Commercial Waste Haulers and Licensed Residential Waste Haulers.

"Licensed Commercial Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Commercial Waste and/or Additional Waste generated from non-residential property within unincorporated Broward County or the Participating Communities and that are directed to deliver the Commercial Waste to the Disposal Facilities pursuant to this Agreement or the Interlocal Agreement.

"Licensed Residential Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Residential Waste and/or Additional Waste within unincorporated Broward County or the Participating Communities and that are directed to deliver the Residential Waste to the Disposal Facilities pursuant to this Agreement or the Interlocal Agreement.

"North Disposal Facility" shall refer to the waste to energy facility located at 2600 Wiles Road, Pompano Beach, Florida, which is owned and operated by Contractor or its affiliates, where the Broward Waste may be delivered for final disposal as part of the Disposal Services.

"Participating Community(ies)" shall refer to the municipalities which are listed on Exhibit "C" and have signed the Interlocal Agreement. Participating Communities may also include the County, as to the unincorporated area of Broward County, in the event County elects to deliver its Broward Waste to Contractor as evidenced by indicating County as a Participating Community on Exhibit "C," in which event the County shall be deemed a Participating Community for the purposes of this Agreement.

"Person" means any individual or business entity, including, without limitation, any corporation, limited liability companies, partnership, business trust or partnership.

"Prior Interlocal Agreement" shall refer to the Agreement between the Broward Solid Waste Disposal District and the Contract Communities consisting of the participating political subdivisions within Broward County.

"Processed Waste" shall refer to Commercial Waste and Residential Waste that is processed at the Disposal Facilities.

"Recycling" shall refer to any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

"Residential Waste" shall refer to waste, refuse, garbage, trash and rubbish generated within the unincorporated County or the Participating Communities from "residential property" (as such term or equivalent term is defined by the County with respect to the unincorporated County and by each Participating Community with respect to waste generated within such Participating Community) and that is capable of being processed at the Disposal Facility, but shall not include Additional Waste, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"South Disposal Facility" shall refer to the waste to energy facility located at 4400 South State Road 7, Davie, Florida, which is owned and operated by Contractor or its affiliates, where the Broward Waste shall be delivered for final disposal as part of the Disposal Services.

"Unacceptable Waste" shall refer to: (a) Hazardous Waste, (b) lead acid batteries, (c) nuclear waste, (d) radioactive waste, (e) sewage sludge, (f) explosives, (g) asbestos containing materials, (h) beryllium-containing waste, (i) nickel cadmium batteries, (j) mercury containing devices, (k) untreated biomedical waste, (l) biological waste, (m) appliances containing chlorofluorocarbons (CFC's) or items of waste that a Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Disposal Facility or that are prohibited by state or federal law.

## **ARTICLE 2** **DISPOSAL SERVICES**

- 2.1 Contractor Services. Contractor shall provide solid waste Disposal Services to the Participating Communities and shall accept and weigh all Broward Waste delivered by the Participating Communities and the Licensed Waste Haulers for disposal at the appropriate Disposal Facility(ies) during the term of, and in accordance with, this Agreement.
- 2.2 Delivery of Broward Waste. Participating Communities shall deliver or caused to be delivered to the appropriate Disposal Facility all Commercial Waste and Residential Waste collected by the Participating Communities and the Licensed Waste Hauler(s). Any Licensed Waste Haulers may, but shall not be obligated to, deliver any Additional Waste to the Disposal Facility for disposal by Contractor or its affiliates. The Interlocal Agreement shall include an obligation by the Participating Communities to comply with the applicable provisions of this Section 2.2.

**2.2.1 Residential Waste Delivered by Participating Communities.** If a Participating Community collects the Residential Waste and hauls the Residential Waste to Contractor, the Participating Community shall be responsible for Unacceptable Waste brought to either Disposal Facility by the Participating Community.

**2.2.2 Residential Waste Delivered by Licensed Residential Waste Hauler.** Waste hauling contracts for the collection of Residential Waste, including any renewal of existing waste hauling contracts, entered into by a Participating Community and a Licensed Residential Waste Hauler after the Effective Date of this Agreement shall include the following: (a) the definition of Residential Waste set forth in this Agreement, (b) Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste brought to either Disposal Facility, (c) Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering waste on behalf of the Participating Community, (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Residential Waste to the Disposal Facilities or as otherwise provided pursuant to Section 5.2, and (e) hours of operation for the Disposal Facility during which the Licensed Residential Waste Hauler shall be authorized to deliver Broward Waste to the Disposal Facilities.

**2.2.3 Commercial Waste Delivered by Licensed Commercial Waste Haulers.** Each Participating Community shall require Licensed Commercial Waste Haulers to execute a license agreement with the Participating Community that sets forth the payment procedure in Section 4.6 for Commercial Waste Disposal Services, and requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to the Disposal Facilities as otherwise provided pursuant to Section 5.2. In addition, each Directly Billed Participating Community shall require the Licensed Commercial Waste Hauler(s) to provide a performance bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for such Directly Billed Participating Community, calculated pursuant to Article 4 and based on the 60 day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding the execution of the license agreement between Participating Community and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations. A licensed Commercial Waste Hauler providing services for multiple Directly Billed Participating Communities may provide one aggregate bond meeting the requirements set forth herein.

- 2.3 **Weighing Waste.** Contractor shall utilize and maintain motor truck scales at the Disposal Facility to weigh the Licensed Waste Haulers' vehicles delivering Broward Waste to the Disposal Facility. Contractor shall weigh the Licensed County Waste Haulers' vehicles upon entering and exiting the Disposal Facility site, with the weight difference resulting in the tons of Broward Waste actually delivered.
- 2.4 **Monthly Reports.** Contractor shall provide monthly reports to the County, within sixty (60) days after the end of the subject month, that include the number of tons of Broward Waste actually delivered to the Disposal Facilities for the subject month listing the delivering party's name (County or Licensed Waste Hauler(s)) and the number of transactions for each delivering party. Such reports shall be provided in a form reasonably acceptable to the County. Upon request, the Contractor will provide monthly reports to a Participating Community detailing deliveries of Broward Waste made by or on behalf of such Participating Community.

**ARTICLE 3**  
**TERM OF AGREEMENT**

*[To be conformed to selected Price Proposal]*

- 3.1 **Initial Term.** This Agreement shall take effect upon the Effective Date and, beginning upon the Disposal Commencement Date, shall continue for a five (5) year period of time ("Initial Term"), unless renewed or terminated earlier by the parties as set forth herein.
- 3.2 **Renewals.** This Agreement may be renewed for up to three (3) additional, successive five year terms (each renewal is a "Renewal Term") upon mutual written consent by the County and Contractor. The County shall provide notice of its intent to renew not less than eighteen (18) months prior to the expiration of the Initial Term or any Renewal Term (as the case may be). If the Contractor is willing to consent to the renewal, it shall respond in writing within not less than forty-five (45) days. Failure to respond within such period shall be deemed a rejection of the intent to renew. If County and Contractor fail to agree on the terms and conditions of renewal at least twelve (12) months prior to the expiration of the Initial Term or Renewal Term, this Agreement shall expire at the end of the Initial Term or Renewal Term, as applicable.
- 3.3 **Termination and Extension.** This Agreement may only be terminated as provided in Article 6 of this Agreement. In the event that this Agreement is terminated as a result of Contractor's default, or County's default not due to County's non-payment, County shall have the right to an extension of Disposal Services for up to twelve (12) months provided that the County specifies the desired length of the extension in the termination letter, or extension request letter, transmitted to Contractor. In the event County exercises its right to an extension, this Agreement shall be deemed automatically extended for the period specified in

the notice transmitted to Contractor. The remunerations to be paid to the Contractor during this extension period shall be based upon the Disposal Service Fees in effect at the time of such termination, which shall be escalated as provided herein as if the term extended through the extension period. County shall not be entitled to an extension of Disposal Services if Contractor terminates this Agreement due to County's default for failure to make payment to Contractor in accordance with this Agreement. Notwithstanding any language herein to the contrary, County and Contractor retain their rights during any such extension to seek damages for material breach or material default of this Agreement by either party.

- 3.4 [This paragraph is applicable if pricing option with unilateral 5 year renewal is selected] *Alternate disposal during renewal term.* If, during any [Renewal Term], the continued operation of the Disposal Facilities have become uneconomic due to increased capital or operating costs attributable to a change in local, state, or federal law or regulation, and, as a result, the Contractor has decided to cease operation of the Disposal Facilities, the County may elect, at its sole option, to terminate this Agreement at any time by providing at least one hundred eighty (180) days' notice. With the exception of liabilities accrued prior to the effective date of termination, the Contractor shall have no further liability to the County following the effective date of such termination. Should County not elect to terminate this Agreement Contractor shall thereafter be entitled to direct the County to deliver, and require that any Licensed Waste Haulers deliver, any Commercial Waste or Residential Waste to an Alternate Disposal Facility designated by Contractor. In such circumstances, (i) the Alternate Disposal Facility shall be considered to be the "Disposal Facility" for all purposes under this Agreement, and (ii) Contractor shall be responsible for any incremental tipping fees above the Disposal Services Fee, and for any actual reasonable documented incremental cost for transportation of the County's Commercial Waste and Residential Waste to the Alternate Disposal Facility

#### **ARTICLE 4** **SERVICE FEE**

- 4.1 Disposal Services Fee. After each operating month, the Contractor shall invoice the County for Centrally Billed Participating Communities and each Directly Billed Participating Community for Residential Waste Disposal Services and the County for Centrally Billed Participating Communities and the Licensed Commercial Waste Hauler(s) for each Directly Billed Participating Community for Commercial Waste Disposal Services based upon the per ton Disposal Service Fee, as set forth in attached Exhibit "A." Any Additional Waste delivered by a Participating Communities or any Licensed Residential Waste Hauler shall be included in the tonnage billed to the County (for the Centrally Billed Participating Communities), and the Directly Billed Participating Communities, and any Additional Waste delivered by a Licensed Commercial Waste Hauler shall be included in the tonnage billed to the Licensed Commercial Waste Hauler.

4.2 Disposal Services Fee Adjustments. Beginning on the first October 1 after the one (1) year anniversary of the Disposal Commencement Date of this Agreement, and on each October 1 thereafter, the Disposal Services Fee shall be subject to adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%, by multiplying the Disposal Services Fee by the Disposal Services Fee Adjustment Factor. The result of the calculation shall become the maximum Disposal Services Fee permitted to be charged by Contractor to County for the 12 months following the Disposal Services Fee adjustment. The 12 month change (using March of each year as the base month) in the Bureau of Labor Statistics Index Series ID CUUR0000SA0, Consumer Price Index – All Urban Consumers shall be used to calculate the Disposal Services Fee Adjustment Factor subject to and not to exceed the 5% cap and 1% floor for any year.

#### 4.3 Most Favored Pricing.

4.3.1 In the event that Contractor subsequently enters into an agreement for a term of more than twelve (12) months (including any unilateral renewal and option periods) for the disposal of solid waste generated anywhere within Broward, Miami-Dade or Palm Beach County (an "Eligible Agreement"), Contractor shall provide the County with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the County determines that the contract includes a net disposal fee that is less than the Disposal Services Fee set forth herein, the County may provide written notice to Contractor of County's determination, and, if the County does so, the Disposal Services Fee shall automatically be reduced for all Participating Communities to the net disposal fee set forth in the Eligible Agreement, such change to be effective retroactively as of the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower net disposal fee (subject to annual adjustments as provided in Section 4.2).

4.3.2 For the purposes of clarification, the "net disposal fee" offered under the Eligible Agreement will be the actual per-ton cost to the counterparty to the Eligible Agreement, and shall be determined net of any costs (e.g., pass-throughs etc.) paid by such counterparty or economic benefits (e.g., signing bonus, revenue sharing, other credits etc.) received by such counterparty.

4.4 Discriminatory Tax Adjustments. If the State of Florida, County or a municipality, in the event a Contractor facility located in the unincorporated area of Broward County is subsequently annexed into such municipality, enacts a tax or fee applicable only to the disposal of municipal solid waste, or specifically targeting the ownership or operation of one or both of the Disposal Facilities, then the Disposal Services Fee shall be increased by the pro-rata amount (based upon the amount of Broward Waste as a proportion of all waste delivered to the Disposal Facility) of such tax or fee actually paid by Contractor and attributable to the Disposal of the County's Waste pursuant to this Agreement.

#### 4.5 Payment Procedure.

4.5.1 Each month, Contractor shall calculate the amount of Disposal Service Fees owed to the Contractor by the Centrally Billed Participating Communities and Directly Billed Participating Community for Residential Waste and (if any) Additional Waste Disposal Services, based on the provisions of this Agreement, and shall submit an invoice in substantially the form attached hereto as Exhibit "E" to each Directly Billed Participating Community for payment. The invoice to the County shall be due within thirty (30) days of receipt.

4.5.2 On a bi-weekly basis, Contractor shall calculate the amount of Disposal Service Fees owed to the Contractor by the Licensed Commercial Waste Hauler(s) for Commercial Waste and (if any) Additional Waste Disposal Services, based on the provisions of this Agreement, and shall submit an invoice to the Licensed Commercial Waste Hauler(s) for payment. The invoice to the Licensed Commercial Waste Hauler(s) shall be due within fifteen (15) days of receipt.

4.5.3 *Residential Waste Disposal Services.* If the County or Directly Billed Participating Community (as applicable) disagrees with the amount stated in the invoice provided pursuant to Section 4.5.1, the County or Directly Billed Participating Community (as applicable) shall notify the Contractor of such dispute. The County or Directly Billed Participating Community (as applicable) shall make payment to Contractor of undisputed invoiced amounts within thirty days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute (for amounts greater than \$25,000) by mediation by a mutually acceptable mediator. In the event the parties are not able to resolve the dispute through mediation within forty-five (45) days, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of its obligations under this Agreement.

4.5.4 *Commercial Waste Disposal Services.* If the Licensed Commercial Waste Hauler(s) disagrees with the amount stated in the invoice provided pursuant to Section 4.5.2, the Licensed Commercial Waste Hauler(s) shall notify the Contractor of such dispute. The Licensed Commercial Waste Hauler(s) shall make payment to Contractor of undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties shall resolve the dispute in a manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or, except as set forth herein, relieve Contractor of its obligations to County under this Agreement. In the event the Licensed Commercial Waste



Hauler(s) fails to make payment to Contractor for Commercial Waste Disposal Services as required by this Agreement, Contractor shall notify the County of such non-payment and Contractor shall have the right to make a claim for payment under the performance bond (required by Section 2.2.3) for the properly invoiced outstanding amounts due for Commercial Waste Disposal Services pursuant to this Agreement. If the unpaid amount exceeds 80% of the performance bond provided by the Licensed Commercial Hauler pursuant to Section 2.2.3 and then available to Contractor, Contractor shall be entitled to reject any Commercial Waste delivered by such Licensed Commercial Waste Hauler until such time as all unpaid amounts have been received by Contractor and the Contractor is in possession of a performance bond meeting the requirements of Section 2.2.3.

#### 4.6 Revenue Share

4.6.1 - Pricing Option 2: In the event that the actual annual average electricity revenue dollar per megawatt hour sold during a contract year for the Contractor exceeds \$88.00/MwH, adjusted annually consistent with Section 4.2, then in such contract year, the Contractor will give a credit to the County (with respect to each Centrally Billed Participating Community) or each Directly Billed Participating Community equal to (a) 25% multiplied by (b) a fraction, the numerator which is the tons of Processed Waste delivered by the Participating Community and the denominator of which is the total tons of Processed Waste delivered to the Disposal Facilities by all Persons during such period multiplied by (c) the total megawatt hours sold by the Contractor during such period multiplied by (d) the difference between the actual annual average revenue dollar per megawatt hour sold during such Contract Year for the Contractor and \$88.00/MwH, adjusted annually consistent with Section 4.2. The revenue dollars above will be calculated net of fees related to power sales (i.e. transmission, distribution, marketing, etc.) The minimum credit due to Participating Community per this paragraph shall be \$0.75, adjusted annually consistent with Section 4.2, times the tons of Processed Waste delivered by such Participating Community.

In the event that the actual annual average revenue dollar per net ferrous metal ton recovered from the ash stream for the Contractor exceeds \$50.00/ton, adjusted annually consistent with Section 4.2, during a contract year, then in such Contract Year, the Contractor will give a credit to the County (with respect to each Centrally Billed Participating Community) or each Directly Billed Participating Community equal to (a) 25% multiplied by (b) a fraction, the numerator which is the tons of Processed Waste delivered by the Participating Community and the denominator of which is the total tons of Processed Waste delivered to the Disposal Facilities by all Persons during such period multiplied by (c) the total net ferrous metal tons recovered from the ash stream that are sold by the Contractor during such period multiplied by (d) the difference between the actual annual average revenue dollar per net ferrous metal ton for the Contractor and \$50.00/ton, adjusted annually consistent with Section 4.2. The revenue

dollars above will be calculated net of fees related to metals sales (i.e. transportation, marketing, etc.), The "net" ferrous metal ton refers to the intended exclusion of the ash entrained in the outbound metals which does not yield revenue. The minimum credit due to Participating Community per this paragraphs shall be \$0.50, adjusted annually consistent with Section 4.2, times the amount of Processed Waste tons delivered by such Participating Community.

The Annual Settlement calculations above will be completed annually within 90 days after the Contract Year and any credit due hereunder shall be paid to the County or any Directly Billed Participating Community within 30 days thereafter.

4.6.2 - Pricing Option 3: In the event that the actual annual average electricity and capacity revenue dollar per megawatt hour sold during a contract year for the Contractor exceeds \$25.00/MwH, adjusted annually consistent with Section 4.2, then in such contract year, the Contractor will give a credit to the County (with respect to each Centrally Billed Participating Community) or each Directly Billed Participating Community equal to (a) 25% multiplied by (b) a fraction, the numerator of which is the tons of Processed Waste delivered by the Participating Community and the denominator of which is the total tons of Processed Waste delivered to the Disposal Facilities by all Persons during such period multiplied by (c) the total megawatt hours sold by the Contractor during such period multiplied by (d) the difference between the actual annual average revenue dollar per megawatt hour sold during such contract year for the Contractor and \$25.00/MwH, adjusted annually consistent with Section 4.2. The revenue dollars above will be calculated net of fees related to power sales (i.e. transmission, distribution, marketing, etc.) This calculation will be completed annually within ninety (90) days after the contract year and any credit due hereunder shall be paid to the County or any Directly Billed Participating Community.

## **ARTICLE 5** **OPERATION OF DISPOSAL FACILITY**

- 5.1 Personnel and Equipment Requirement. Contractor shall provide, at its sole expense, all necessary personnel, materials and equipment for the operation, maintenance and repair of the Disposal Facilities.
- 5.2 Disposal Locations and Alternate Disposal Facility. In the event that either the South or North Disposal Facility (but not both) is rendered incapable to receive the Broward Waste for any length of time, the Participating Communities and the Licensed Waste Hauler(s) shall be required to dispose of Broward Waste at the other Disposal Facility at no additional disposal expense to the Participating Communities or Licensed Waste Hauler. In the event that both Disposal Facilities are rendered incapable, for any reason, to receive the Broward Waste for any length of time, the Participating Communities and the Licensed Waste Hauler(s) shall be required to dispose of Broward Waste at the Alternate Disposal Facility.

In the event that both Disposal Facilities and the Alternate Disposal Facility are rendered incapable, for any reason, to receive the Broward Waste for any length of time, Contractor shall, within twenty-four (24) hours, provide the Participating Communities with another designated Alternate Disposal Facility, subject to Participating Communities approval (which shall not be unreasonably withheld), where the County and the Licensed County Waste Hauler(s) shall be required to dispose of Commercial Waste and Residential Waste. Reimbursements for any incremental tipping fee amount paid that exceeds the Disposal Services Fee, and for any actual and necessary incremental cost for transportation of the Participating Communities Commercial Waste and Residential Waste necessitated by the incapacity of both the Disposal Facilities and the Alternate Disposal Facility shall be determined in accordance with Section 5.3 below. Contractor shall not transport and/or dispose of the Broward Waste at a different disposal facility, unless approved by the County in its sole and absolute discretion.

### 5.3 Alternate Disposal Facility Associated Costs.

5.3.1 In the event that the designated Disposal Facility is rendered incapable to receive the Broward Waste for any length of time for any reason except for Force Majeure or the negligence or intentional misconduct of City or City's Licensed Waste Hauler, Contractor shall reimburse the Participating Communities or the Licensed Waste Hauler, as applicable, for any incremental tipping fee amount paid at the Alternate Disposal Facility pursuant to Section 5.2 that exceeds the Disposal Services Fee, and for any actual and necessary incremental cost for transportation of the Participating Communities Waste to the Alternate Disposal Facility necessitated by the incapacity of Contractor's Disposal Facility.

5.3.2 In the event that the designated Disposal Facility is rendered incapable to receive the Broward Waste for any length of time due to Force Majeure or the negligence or intentional misconduct of the Participating Communities or Licensed Waste Hauler, the County and the Licensed Waste Hauler shall not receive any reimbursement for any additional tipping fees paid at the Alternate Disposal facility or, except as set forth herein, incremental transportation costs necessitated by the incapacity of Contractor's Disposal Facility, however, the Participating Communities and the Licensed Hauler shall be reimbursed by the Contractor for any actual and necessary incremental cost for transportation of Commercial Waste and Residential Waste to an Alternate Disposal Facility necessitated by the incapacity of Contractor's Disposal Facility due to Force Majeure.

5.4 Dates and Hours of Operation. Contractor shall keep its Disposal Facilities open for the receipt of Broward Waste from the Participating Communities and/or Licensed County Waste Hauler from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 6:00 a.m. to 4:00 p.m. on Saturday, during every day of the year, excluding Christmas and Sundays. To the extent permitted by law and to the

extent that capacity is available, Contractor shall use all reasonable efforts to keep the Disposal Facilities open for additional hours to accept Broward Waste.

5.5 Good Working Order Requirement. Contractor shall operate and maintain its Disposal Facilities in good working order, and shall timely make all necessary repairs and replacements, consistent with the prevailing standards in the waste-to-energy industry, and consistent with steam and electrical generating plant practices. Contractor shall maintain the safety of its Disposal Facilities consistent with applicable law and prevailing boiler and electrical generating plant practices.

5.6 Unacceptable Waste.

5.6.1 The Participating Communities shall institute all reasonable procedures to prevent the delivery to the Disposal Facilities of Unacceptable Waste by the Participating Communities, or its agents or contractors. To the extent such procedures would affect the operation of the Disposal Facilities such procedures shall be reasonably acceptable to the Contractor.

5.6.2 The Contractor shall cooperate with the Participating Communities in connection with all matters regarding Unacceptable Waste under this Agreement. The Contractor shall use all reasonable efforts to identify the source of any Unacceptable Waste delivered to the Disposal Facilities.

5.6.3 Should any Unacceptable Waste be delivered to a Disposal Facility, such Unacceptable Waste shall be removed, transported and disposed of by the Contractor in accordance with applicable law governing such wastes, and the Contractor shall clean up the Disposal Facility to the extent required as a result of any such delivery of Unacceptable Waste. The costs of such removal, transport, disposal and clean-up shall be allocated in the following manner:

- i. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Disposal Facility by or on behalf of the County, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by the County, provided that Contractor shall use all commercially reasonable efforts to collect such amounts from the Person delivering Unacceptable Waste to the Disposal Facility before seeking recovery from the County.
- ii. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Disposal Facility by or on behalf of a Directly Billed Participating Community, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by the Directly Billed Participating Community, provided that Contractor shall use all commercially reasonable efforts to collect such amounts from the Person

delivering Unacceptable Waste to the Disposal Facility before seeking recovery from the Directly Billed Participating Community.

- iii. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Disposal Facility other than by or on behalf of the County, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by Contractor.
- iv. Should the Person delivering such Unacceptable Waste be unknown or unidentifiable, the costs associated with such removal, transport, disposal and Disposal Facility clean-up shall be borne by the Contractor.

## 5.7 Energy Production and Recycling Guarantee.

5.7.1 Contractor acknowledges that the State of Florida has legislated certain goals with respect to the Recycling of solid waste. As currently drafted, Section 403.706(4)(a), Florida Statutes, provides that each mega-watt hour ("MwH") generated by a waste-to-energy facility using solid waste as fuel shall count as one (1) ton of Recycled material for the purposes of the County's Recycling goals implemented by the State of Florida.

5.7.2 In support of the County's Recycling objectives, the Contractor shall use all reasonable endeavors to operate the Disposal Facilities in such a manner so as to ensure that each ton of Broward Waste processed at the Disposal Facility will result in the production of .50 MwH of electricity.

5.7.3 The Contractor will provide the County with monthly statements indicating the tonnage processed and corresponding energy production, provided however that compliance with Section 5.7.2 will be measured on annual basis (i.e., in each calendar year, the Disposal Facility must produce that number of MwHs as is equal to the total tonnage of Broward Waste processed in such year x .5).

5.7.4 If in any calendar year the Disposal Facility(ies) has not met the energy production requirement specified in Section 5.7.2., the County shall be entitled to a rebate equal to the greater of (i) \$250,000 or (ii) \$.25 per ton of Broward Waste processed at the Disposal Facilities in such calendar year, to be applied in two (2) equal installments against the first two (2) monthly invoices following the determination of a deficiency in energy production.

- 5.8 For any Waste Disposal Facility or Alternative Disposal Facility within Broward County, which, as of the Effective Date, is not permitted or operational, prior to the Contractor utilizing such Facility under the terms of this Agreement, Contractor shall provide written documentation to the County demonstrating to the County's satisfaction that specific measures have been taken to prevent or minimize impacts upon affected adjacent property within three hundred (300) feet of a boundary of the parcel containing the Facility. Affected adjacent property includes land within a residential land use plan category, a residential zoning

district, or land currently used for residential, school or medical care purposes. Impacts which the Contractor shall be required to mitigate include the effects of excessive noise, objectionable odors, visible emissions, particulate matter (including dust, smoke, soot, and aerosols), solid wastes, hazardous wastes, fire and explosion. Mitigation may include but is not limited to the provision of adequate setbacks, buffers, landscaping, fencing, walls, enclosed areas, and best available technology. Written documentation for operation and mitigation shall be reviewed by the County within thirty (30) days of submittal. Approval by the County, which shall not be unreasonably withheld, must be obtained prior to the Facility being utilized under the terms of this Agreement. Conversion of any Facility, for treating one type of waste in lieu of another, or for treating additional types of waste, shall be required to undergo the review required in this paragraph.

## **ARTICLE 6** **DEFAULT**

In the event there should occur any material breach or material default in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty days after receipt of notice from the non-breaching party specifying such breach or default, subject to the terms and conditions of this Article 6, the non-breaching party may, if such breach or default is continuing, terminate this Agreement upon thirty days notice to the party in breach; provided that if such default is not a payment default and can be cured, and the party in breach shall have commenced to take reasonably appropriate steps to cure such breach or default within a reasonable period of time, the same shall not give rise to a right of termination on behalf of the non-breaching party for so long as the breaching party is continuing to take reasonable steps to cure such default or breach.

## **ARTICLE 7** **INSURANCE**

7.1 Policy Limits. Contractor shall not commence performance under this agreement until Contractor has obtained all insurance required under this section and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the County Administrator.

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

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

- 7.2 County as Additional Insured. The County shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation.
- 7.3 Insurance Company Standards. Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with a minimum rating from AM Best Company of A- Excellent: FSC VII.
- 7.4 Notice of Cancellation. Contractor agrees to furnish County with at least 30 days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least ten days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.
- 7.5 Minimum Level of Coverage. To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor's performance under this Agreement, Contractor shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of \$25,000,000 after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the three year period set forth in Article 7.1 of this Agreement.
- 7.6 Premium Payment Responsibility. Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

## **ARTICLE 8** **LIABILITY**

- 8.1 The County and the Contractor shall each be separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.
- 8.2 The Contractor shall protect, indemnify and hold the County and each Participating Community, their officials, agents, servants and employees,

harmless from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the County in any suit, including appeals, for personal injury to or death of any person(s), or loss or damage to property, or pollution or environmental contamination, arising out of the operation of Contractor's Disposal Facilities, or the performance (or non-performance) of Contractor of its obligations under this Agreement. Contractor is not, however, required by this Article 8.2 to reimburse or indemnify for loss or claim due to the negligence or willful misconduct of the County, any Participating Community or any Licensed Waste Hauler(s).

## **ARTICLE 9** **MISCELLANEOUS**

- 9.1 Parental Guaranty. Contractor shall have its parent company, Waste Management, Inc., guarantee Contractor's performance under this Agreement by executing the Parental Guaranty set forth in Exhibit "B." The County's receipt of the Parental Guaranty executed by Waste Management, Inc. is a condition precedent to the effectiveness of this Agreement.
- 9.2 Joint Preparation. The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 9.3 Merger/Amendment. This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement.
- 9.4 Assignment. Except as provided herein, the Contractor may not assign its obligations as set forth in this Agreement without the prior written consent of the County. The Contractor may (i) without the consent of the County, (a) transfer, assign or pledge Contractor's interest in this Agreement in connection with any financing or re-financing activity or (b) assign this Agreement to another affiliate of Contractor (provided that the parent guaranty remains in place); and (ii) with the consent of the County, which may not be unreasonably withheld or delayed, assign this Agreement in connection with a sale or assignment of its interest in



the Disposal Facilities, provided that Contractor can reasonably demonstrate to the County that the assignee has a financial strength which is equal to or better than that of Contractor at the time of the proposed assignment, and the proposed assigned (or its affiliates) has a commercially reasonable level of prior experience and/or current capability with respect to the operation of a waste-to-energy facility. This Agreement shall be binding on any and all successors to Contractor.

- 9.5 **Records.** Except as otherwise provided herein, the County and Contractor shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- 9.6 **Audit and Inspection Rights and Retention of Records.** County shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Any Participating Community may participate in any audit performed by the County pursuant to this Section 9.6. Contractor shall keep such books, records, and accounts reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Section 2.4.

Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination of this Agreement, unless Contractor is notified in writing by County of the need to extend the retention period. Any Participating Community may participate in any audit performed by the County pursuant to this Section 9.6. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry. Notwithstanding anything herein to the contrary, for a twenty (20) year period following any termination or expiration of this Agreement, the Contractor shall retain records reasonably documenting environmental compliance at the Disposal Facilities, and documentation concerning any disposal of Broward Waste at an Alternate Disposal Facility; provided however that Contractor shall be relieved of any retention obligation if, prior to any disposal of the relevant records, Contractor has offered the County and the

Participating Communities the opportunity to receive copies thereof.

- 9.7 **Access Rights.** Authorized representatives of County, which may also include any Participating Community, shall have access and the ability to inspect any waste disposal facilities operated by Contractor which are utilized to provide any services pursuant to this Agreement during normal business hours, upon County giving reasonable advance notice to Contractor, provided that each representative shall comply with all reasonable safety rules and regulations adopted by Contractor and shall not interfere with Contractor's options.
- 9.8 **Permits and Licenses.** Contractor shall be responsible for the maintenance of all permits and licenses associated with the operations of the Disposal Facilities. Contractor shall at its sole cost and expense conduct such tests at the Disposal Facilities from time to time as shall be required by such permits and licenses, and shall send copies of the test results to County, when the test results are submitted to the state or federal regulatory agencies. Contractor also shall make such test results available for review and copying by County during normal business hours. Contractor shall not be deemed to have breached its obligations under the two preceding sentences in respect of any period during which it may in good faith be contesting the necessity of obtaining any such permit or license, or the validity or application of any requirement of or condition contained in any such permit or license, provided that during such period Contractor shall not otherwise be relieved from performing its obligations under this Agreement. Contractor also shall promptly furnish to County copies of any complaint, notice of violation or regulatory action upon receipt by Contractor regarding any permit, license or relating in any manner to Contractor's operations or Disposal Facilities pursuant to this Agreement.
- 9.9 **Governing Law and Venue.** This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. If either party is required to enforce this Agreement by court proceedings or otherwise, whether or not formal action is required, each party shall pay its own attorney's fees and costs.
- 9.10 **Severability.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provision shall continue to be effective.
- 9.11 **Independent Contractor.** Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the County.

Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of Contractor. This Agreement shall not constitute or make the parties a partnership or joint venture.

- 9.12 Notices. Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

FOR CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With a copy to:  
 Wheelabrator Technologies, Inc.  
 4 Liberty Lane West  
 Hampton, NH 03842  
 Attn: General Counsel

FOR THE COUNTY:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[WTI NOTE: need to add North and South Plants (Attn: Plant Manager)]

- 9.13 Third Party Beneficiaries. Except as provided herein, neither the County nor Contractor intend that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement, and the parties expressly acknowledge that is not their intent to create any rights or obligations in any third person or entity under this Agreement. The Contractor and the County acknowledge and agree that each Participating Community is intended to be a third party beneficiary to this Agreement, and, except where otherwise provided in the ILA, shall be entitled to assert any rights available to the County hereunder.

[Note: WTI expects a comparable provision in ILA making WTI a third party beneficiary re: right to enforce obligation to deliver waste to the Disposal Facility.]

- 9.14 **Priority of Provision.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 12 of this Agreement shall prevail and be given effect.
- 9.15 **Compliance with Laws.** The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 9.16 **Multiple Originals.** This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

#### **ARTICLE 10 CONTRACTOR OPERATIONS REPRESENTATIONS**

- 10.1 County is duly organized and valid existing under the constitution and laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and County is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 10.2 Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and Contractor is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 10.3 Except as otherwise disclosed in writing to County prior to the execution of this Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency, public board, regulatory agency or body pending or, the best of its knowledge, threatened against or affecting the Contractor (pending or threatened litigation) with regard to any issue relating to environmental compliance or the operation, permit or licenses of Contractor at any of the facilities utilized to provide services pursuant to this Agreement. Contractor further agrees to a continuing disclosure requirement for the term of this Agreement to notify County with thirty (30) days of any subsequent pending or threatened litigation with regard to any issue relating to environmental compliance or the operations, permits or licenses of any facilities utilized to provide services pursuant to this Agreement.

**ARTICLE 11  
CRIMINAL BACKGROUND DISCLOSURE**

- 11.1 Prior to the execution of this Agreement Contractor shall provide a description of all past (within the last five (5) years) and pending litigation and legal claims where the Contractor, or an officer, director, executive partner or a shareholder (excluding shareholders of publicly traded corporations) is a named party, whether in the State of Florida or in another jurisdiction, involving allegations that the Contractor has violated or otherwise failed to comply with environmental laws, rules, or regulations or committed a public entity crime as defined by Chapter 287, Florida Statutes, or theft-related crime such as fraud, bribery, smuggling, embezzlement or misappropriation of funds or acts of moral turpitude, meaning conduct or acts that tend to degrade persons in society or ridicule public morals
- 11.2 Prior to the execution of this Agreement, Contractor shall disclose, in writing, to County whether in the last five (5) years the Contractor or an officer, director, executive, partner, or a shareholder (excluding shareholders of publicly traded corporations), who is or was (during the time period in which the illegal conduct or activity took place) active in the management of the Contractor was charged, indicted, found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct of activity (1) is considered to be a public entity crime as defined by Chapter 287, Florida Statutes, as amended from time to time, or (2) is customarily considered to be a white-collar crime or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds, etc., or (3) results in a felony conviction where the crime is directly related to the business activities for which the franchise is sought.

**ARTICLE 12  
PIGGYBACK**

- 12.1 Municipalities may elect to piggyback on this Agreement upon the written consent of Contractor. The Contractor acknowledges that this Agreement is the result of a noncompetitive process initiated at the request for the Board of County Commissioners on March 27, 2012, where it directed county staff to negotiate an agreement for solid waste disposal services with Sun-Bergeron and Contractor. Municipalities which elect to piggyback shall not be deemed third party beneficiaries to this Agreement or have any rights hereunder. Those municipalities shall have first party rights under such independent piggyback contracts.

**IN WITNESS WHEREOF**, the parties have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ date of \_\_\_\_\_, 2012, and CONTRACTOR, signing by and through its \_\_\_\_\_, duly authorized to execute same.

BROWARD COUNTY, by and through  
its Board of County Commissioners

ATTEST:

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

By: \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2012

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JONI ARMSTRONG COFFEY, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
Purvi A. Bhogaita (Date)  
Assistant County Attorney

By \_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney

AGREEMENT between WHEELABRATOR TECHNOLOGIES, INC. AND BROWARD COUNTY FOR SOLID WASTE DISPOSAL SERVICES

CONTRACTOR:

WHEELABRATOR TECHNOLOGIES, INC.

ATTEST:

\_\_\_\_\_

Secretary

(SEAL)

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

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

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**OR**

WITNESSES:

\_\_\_\_\_  
Witness 1 Signature

\_\_\_\_\_  
Witness 1 Print/Type Name

\_\_\_\_\_  
Witness 2 Signature

\_\_\_\_\_  
Witness 2 Print/Type Name

NMP:PAB:slw  
5/31/12  
WheelabratorFinal5-30-12

**EXHIBIT "A"**  
**DISPOSAL SERVICES FEE**

	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>
<i>Term</i>	<i>5 years</i>	<i>5 years + 1 five-year extension (County option) + 2 five-year extensions (mutual)</i>	<i>5 years + 1 five-year extension (County option) + 2 five-year extensions (mutual)</i>
<i>Revenue Share – Energy</i>	<i>25% above \$88 per megawatt hour with \$0.75/ton floor</i>	<i>25% above \$25 per megawatt hour</i>	<i>N/A</i>
<i>Revenue Share – Ferrous Metals</i>	<i>25% above \$50 per ton for ferrous metals pricing, with \$0.50 per ton floor</i>	<i>N/A</i>	<i>N/A</i>
<i>Base Price</i>	<i>\$46.25 per ton</i>	<i>\$43.00 per ton</i>	<i>\$42.00 per ton</i>

*Pricing for optional yard waste, bulk trash, and construction and demolition debris services are the same as above.*



**EXHIBIT "B"**  
**PARENTAL GUARANTY**

**EXHIBIT "C"**  
**PARTICIPATING COMMUNITIES**

**EXHIBIT "D"  
FORM INVOICE**





Wheelabrator South Broward Inc.  
 Attn: Accounts Receivable Department  
 4 Liberty Lane West  
 Hampton NH 03842

Customer: [REDACTED]  
 Account Number: [REDACTED]  
 Invoice Date: 05/22/2012  
 Invoice Number: 0003466-0911-8  
 Due Date: Due Upon Receipt  
 WM ezPay Account ID: [REDACTED]

Date	Ticket	Description	Quantity	U/M	Rate	Amount
05/14/12	165473	Vehicle#:sw1999 Spot msw Ticket Total	13.73	TON		
05/14/12	165581	Vehicle#:sw1750 Spot msw Ticket Total	10.16	TON		
05/14/12	165631	Vehicle#:ja1823 Spot msw Ticket Total	11.61	TON		
05/14/12	165659	Vehicle#:sw1969 Spot msw Ticket Total	11.53	TON		
05/14/12	165834	Vehicle#:sw1968 Spot msw Ticket Total	6.89	TON		
05/15/12	165874	Vehicle#:sw1969 Spot msw Ticket Total	6.20	TON		
05/15/12	165882	Vehicle#:ja1763 Spot msw Ticket Total	5.35	TON		
05/15/12	165976	Vehicle#:sw1968 Spot msw Ticket Total	6.56	TON		
05/15/12	165988	Vehicle#:sw2967 Spot msw Ticket Total	14.01	TON		
05/15/12	165993	Vehicle#:ja1823 Spot msw Ticket Total	13.90	TON		
05/16/12	166189	Vehicle#:sw1999 Spot msw Ticket Total	14.80	TON		
05/15/12	166193	Vehicle#:sw1999 Spot msw Ticket Total	4.73	TON		
05/16/12	166294	Vehicle#:ja1822 Spot msw Ticket Total	9.15	TON		
05/16/12	166311	Vehicle#:sw1969 Spot msw Ticket Total	9.11	TON		

0001080-0000002-0000059



Wheelabrator South Broward Inc.  
Attn: Accounts Receivable Department  
4 Liberty Lane West  
Hampton NH 03842

Customer: [REDACTED]  
Account Number: [REDACTED]  
Invoice Date: 05/22/2012  
Invoice Number: 0003466-0911-8  
Due Date: Due Upon Receipt  
WM ezPay Account ID: [REDACTED]

Date	Ticket	Description	Quantity	U/M	Rate	Amount
		Spot msw	11.88	TON		
		<b>Ticket Total</b>				
05/19/12	167037	Vehicle#:sw2967 Spot msw	11.95	TON		
		<b>Ticket Total</b>				
05/18/12	167091	Vehicle#:sw1350 Spot msw	15.16	TON		
		<b>Ticket Total</b>				
05/19/12	167163	Vehicle#:sw1750 Spot msw	10.85	TON		
		<b>Ticket Total</b>				
05/19/12	167180	Vehicle#:sw1969 Spot msw	11.88	TON		
		<b>Ticket Total</b>				
05/19/12	167189	Vehicle#:ja1763 Spot msw	6.84	TON		
		<b>Ticket Total</b>				
04/21/12	167576	Vehicle#:sw3232 Spot msw	6.38	TON		
		<b>Ticket Total</b>				
05/22/12		Late fee 1.5% N20				
<b>Total Current Charges</b>						[REDACTED]

Payment Received	Amount
05/16/2012 Payment - thank you	[REDACTED]
<b>Total Payments Received</b>	[REDACTED]

**EXHIBIT 5**

**AGREEMENT BETWEEN SUN-BERGERON WASTE SERVICES JV AND CITY OF MARGATE, FLORIDA FOR  
RECYCLABLES PROCESSING SERVICES**

**AGREEMENT**

**BETWEEN**

**SUN-BERGERON WASTE SERVICES JV**

**AND**

**CITY OF MARGATE, FLORIDA**

**FOR**

**RECYCLABLES PROCESSING SERVICES**

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## AGREEMENT FOR RECYCLABLES PROCESSING SERVICES CITY OF MARGATE, FLORIDA

This Agreement for Recyclables Processing Services ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between Sun Recycling, LLC, a Florida limited liability company, and Bergeron Environmental and Recycling, LLC, a Florida limited liability company, doing business as SUN-BERGERON SOLID WASTE SERVICES JV, a Florida Joint Venture (hereinafter referred to as "Contractor"), and the CITY OF MARGATE, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as the "City").

WHEREAS, on March 22, 2013 the Town of Southwest Ranches ("Town") issued an invitation for bid for solid waste disposal and Recyclables processing services (IFB No. 13-003); and

WHEREAS, the Town selected the Contractor and entered into an "Agreement for Solid Waste Disposal and Recyclables Processing Services" ("Town's Contract") dated May 15, 2013; and

WHEREAS, Contractor has offered City the opportunity to "piggyback" on the Town's Contract; and

WHEREAS, the City and Contractor have negotiated changes to the Town's Contract, which are favorable to the City because the changes narrow the scope of services provided by Contractor and they enhance the City's rights under this Agreement; and

WHEREAS, Contractor has offered "most favored pricing" to ensure that City receives revenues from the sale of Program Recyclables that are equal to or greater than the revenues provided through the Town's Contract; and

WHEREAS, Contractor and the City desire to enter into this Agreement to provide for the processing of residential Recyclables generated within the City's municipal boundaries and to set forth how such services will be provided; and

WHEREAS, the City is desirous of securing and maintaining safe, environmentally sound, and financially beneficial Recyclables Processing Services; and

WHEREAS, the City has determined that it is beneficial and in the best interests of the public to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City do hereby agree as follows:

### **SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM**

- A. Effective and Commencement Dates. The Effective Date of this Agreement is the date this Agreement is executed and signed by both the City and Contractor. The Commencement Date is the date that services required pursuant to this Agreement shall commence (i.e., July 3, 2013).

B. Initial Term. The term of this Agreement shall be for a five (5) year period beginning on the Commencement Date (July 3, 2013), and terminating on July 2, 2018.

C. Renewal Option. At the option of the City and with the concurrence of the Contractor, this Agreement may be renewed for two (2) additional five (5) year terms under the same terms and conditions as the initial term, including amendments, subject to approval by the City Commission.

## **SECTION 2. DEFINITIONS**

For the purpose of this Agreement, the definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the City's Code of Ordinances shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

Administrator means the person designated by the City Manager to administer and monitor the provisions of this Contract.

Agreement means this agreement, including all attachments, schedules, and amendments thereto, between the City and the Contractor, governing the provision of the services described herein.

Average Market Value (AMV) means a market index used to determine the revenue paid by the Contractor to the City for Program Recyclables delivered to the Designated Recycling Facility, based on monthly fluctuations in the commodity market.

Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics (veterinary or otherwise), hospitals (veterinary or otherwise), and other facilities processing waste that may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.

City means, depending on the context, either (a) the geographic area contained within the incorporated area of the City of Margate, Florida or (b) the government of the City, acting through the City Commission or its designees.

City's Contract Hauler means the firm that is presently, or that may in the future, contract with the City to collect and transport Program Recyclables.

City Commission means the governing body of the City of Margate, Florida.

Commencement Date means the date services pursuant to this Agreement shall commence -- i.e., July 3, 2013.

Contract Year means (a) with regard to the first Contract Year, the twelve (12) consecutive month period beginning on the Commencement Date and ending on July 2, 2014 and (b) every twelve (12) month period thereafter for the term of the Agreement.

Contractor means the Person or entity that shall provide the services set forth herein.

Designated Processing Facility means the facility designated in this Agreement at which the Contractor will process Program Recyclables, which facility may be the same as or different than the Designated Recycling Facility.

Designated Recycling Facility means the facility designated in this Agreement at which the Contractor will receive delivery of Program Recyclables, which may be a materials recovery facility, recovered materials processing facility, or a transfer station.

Effective Date means the date this Agreement is executed by both the City and Contractor.

Hazardous Waste means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the Florida Administrative Code, or by any current or future Federal, State, or local law.

Holiday means a designated holiday on which the Contractor shall not be required to provide service. For the purposes of this Agreement, Holiday shall only mean Christmas Day unless additional Holidays are approved by the Administrator.

Household Hazardous Waste or HHW means a waste produced in the home containing hazardous substances that may pose a threat to the environment, wildlife, and/or human health. For the purposes of this Agreement, HHW includes aerosol products, ammonia, ammunition, anti-freeze, auto fluids, auto batteries, boat batteries, boat fluids, charcoal starter, compact fluorescent bulbs (CFLs), drain cleaner, fertilizers, fire extinguishers, fireworks, flares, fluorescent tubes, gasoline, herbicides, household cleaners, insect killer, kerosene, lawn chemicals, lighter fluid, mercury thermometers, motor oil, nail polish remover, paint, pesticides, photo chemicals, pool chemicals, propane tanks, rechargeable batteries, rust remover, solvents, spot remover, tires, turpentine, weed killer, wood stains, and wood stripper from residential sources, as well as other items mutually agreed upon by the City and Contractor.

Person means any individual or business entity, including, without limitation, any corporation, limited liability company, joint venture, business trust or partnership.

Program Recyclables means Recyclable Materials collected by or on behalf of the City and over which the City has control, including newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, polycoated cartons, and other materials added by mutual agreement of the City and Contractor.

Recovered Materials means Recyclable Materials which have been processed to market specifications.

Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste.

Rejects means materials, other than Residue, that cannot be recycled and that cannot be processed into Recovered Materials.

Residue means the portion of the Recyclable Material stream accepted by the Contractor that is not converted to Recovered Materials due to breakage and/or transportation or processing inefficiencies.

Single Stream means a recycling process that allows for Recyclable Materials to be collected commingled, with no sorting required by residents, businesses, or haulers.

Solid Waste means rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, commercial, agricultural, or governmental operations. For the purposes of this Agreement, Solid Waste does not include Recyclable Materials, Unacceptable Waste, residential bulk waste, or Solid Waste not controlled by the City.

Ton means a unit of weight equal to 2,000 pounds, also referred to as a short ton.

Unacceptable Waste means Biomedical Waste, Hazardous Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, and those wastes under the control of the Nuclear Regulatory Council.

Work Day means any day, Monday through Saturday, which is not a Holiday as set forth in this Agreement.

### **SECTION 3. RESERVED**

### **SECTION 4. CONTRACTOR'S RECYCLABLES PROCESSING RESPONSIBILITIES**

#### **A. Designated Facilities**

- (1) The following facility is the Designated Recycling Facility at which Program Recyclables will be received by the CONTRACTOR pursuant to this Contract: Sun 2, 2281 NW 16<sup>th</sup> Street, Pompano Beach, FL, or such other facility that may be approved in writing by the CITY.
- (2) The following facility is the Designated Processing Facility at which Program Recyclables will be processed pursuant to this Contract: Sun 2, 2281 NW 16<sup>th</sup> Street, Pompano Beach, FL, or such other facility that may be approved in writing by the CITY.
- (3) The Designated Recycling Facility and Designated Processing Facility may be changed only with prior written approval by the Administrator.
- (4) The Contractor shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility.
- (5) The Contractor shall ensure that the Designated Recycling Facility and Designated

Processing Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.

- (6) The City shall have the right, during the Contractor's hours of operation, to inspect both the operating and maintenance practices of the Designated Recycling Facility and Designated Processing Facility. Operating practices shall include, but not be limited to, the receipt, separation, processing, loading, storage, and transport of Recyclable Materials and Recovered Materials. The Contractor shall reasonably accommodate the City's inspection rights described herein, provided it does not create a safety hazard.

B. Materials Acceptance

- (1) Beginning on the Commencement Date, to the extent allowed by law, the City shall direct the City's Contract Hauler to deliver Program Recyclables to the Designated Recycling Facility during the scheduled receiving hours specified herein. Program Recyclables will be delivered Single Stream. The City makes no assurances or guarantees regarding the quantity or quality of Program Recyclables that will be delivered to the Designated Recycling Facility.
- (2) Beginning on the Commencement Date, the Contractor shall accept deliveries of Program Recyclables at the Designated Recycling Facility between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, and 6:00 a.m. and 4:00 p.m. on Saturday, or other hours approved in writing by the Administrator. The Designated Recycling Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Administrator.
- (3) Program Recyclables are as defined in Section 2. The City reserves the right to designate other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.
- (4) The Designated Recycling Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the Contractor and delays caused by the fault of the delivery vehicle shall not be included in the turn-around time computation. The Contractor will provide the City with access to its records to verify vehicle turnaround time within twenty-four (24) hours notice.
- (5) The Designated Recycling Facility shall be equipped with adequately-sized truck scales and computerized recordkeeping systems for weighing and recording all incoming Program Recyclables delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. Contractor shall calibrate and certify the scales no less frequently than quarterly.
- (6) The Contractor shall weigh all trucks transporting Program Recyclables that enter the Designated Recycling Facility, record such weights separate from all other materials, and generate reports of incoming Program Recyclables as required herein or requested by the City. The Contractor may use tare weights. If the Contractor chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.

- (7) If Hazardous Waste is found within a load of Program Recyclables delivered by the City or its agents to the Designated Receiving Facility, the Contractor shall immediately notify the Administrator and note the incident by taking a photograph of the Hazardous Waste and the truck, including the truck number and the truck driver's information, that delivered the waste. The Contractor is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by the City, provided that the Contractor has adequately documented that such waste was delivered by or on behalf of the City.
- (8) In the event the Contractor fails, refuses, or is unable to accept Program Recyclables on the Commencement Date or anytime thereafter during the term of the Contract, the Contractor will be liable for all hauling, processing, transportation, disposal charges and any other related costs that may be incurred by the City with respect to recycling and marketing such materials, and Contractor will also be required to pay City for any deficit the City incurs if the revenues from the sale of the Program Materials is less than the revenue the City would have received if the Contractor had accepted Program Recyclables at the Designated Recycling Facility on the delivery date.

C. Transport, Processing, Marketing, and Disposal

- (1) Upon acceptance of Program Recyclables at the Designated Recycling Facility, the Contractor shall bear all costs associated with processing or transporting Program Recyclables and marketing and transporting Recovered Materials. The Contractor is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, resulting from the processing of Program Recyclables.
- (2) Unless the Contractor has prior written permission from the Administrator, the Contractor shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. Such prior written permission from the City is provided for all Recyclable Materials or Recovered Materials that have an AMV of \$0.00 or less. The Contractor shall not knowingly, or without reasonable investigation, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or disposes of material other than through recycling. This requirement does not apply to Rejects and Residue.

D. Record Keeping

- (1) The Contractor shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (2) The Contractor shall maintain records of the amounts of Program Recyclables received at the Designated Recycling Facility. Such records shall be kept separate and apart from all other records maintained by the Contractor.
- (3) The Contractor shall maintain such records in accordance with generally accepted

management principles and practices. The City shall have access to such books, records, documents, and other evidence for inspection, review, and copying in Broward County during normal business hours. The Contractor will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Agreement, and Contractor acknowledges that such laws have possible application and agrees to comply with all such laws.

- (4) The Contractor will maintain and allow access to books, records, data, documents, and reports relating to this Agreement in accordance with the records retention requirements set forth in Florida law.

E. Reporting

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Agreement, the Contractor shall submit a report electronically to the Administrator, in a format approved by the Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Recycling Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity.
- (2) Within thirty (30) days of the end of each Contract Year, the Contractor shall provide the Administrator with a report summarizing the total Tons of Program Recyclables delivered to the Designated Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the Contractor shall submit a copy of the annual report to FDEP, summarizing Recyclable Materials deliveries by type, quantity, and source.
- (3) At least fifteen (15) days prior to the end of each Contract Year during the term of this Agreement, the Contractor shall ensure and certify to the City that all required documents are current and on file with the City. Such documents include, but are not limited to, certificates of insurance and the performance bond.

F. Public Education and Information

- (1) The Contractor shall, at no cost to the City, provide an educational presentation at up to two (2) events per Contract Year, as requested by the City.
- (2) The Contractor shall, at no cost to the City, provide tours of the Designated Recycling Facility and Designated Processing Facility upon at least seven (7) calendar days notice by the City. The Contractor shall provide personnel (bilingual upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the City and the Contractor prior to conducting any tours.

**SECTION 5. RESERVED**

**SECTION 6. REVENUE AND PAYMENT FOR RECYCLABLES**

A. Program Recyclables Revenue



- (1) The Contractor shall pay the City monthly for each Ton of Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in Exhibit 1:
  - (a) Each month, the Contractor shall calculate the Average Market Value (AMV) of the Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net, multiplied by the composition percentages as defined in Exhibit 1. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
  - (b) A Contractor's Fee of fifty dollars (\$50.00) per Ton shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A.(2).
  - (c) The Contractor shall pay the City a percentage, as provided in Exhibit 1, of the remaining amount, for each Ton of Program Recyclables delivered to the Designated Recycling Facility during that month. The percentage payable to the City currently is 45.01% of AMV (net of Contractor's Fee).
  - (d) If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), the Contractor shall make no payment to the City and the City shall make no payment to the Contractor. At no time shall the City make payment to the Contractor for accepting, processing, or marketing Program Recyclables, regardless of the AMV.
- (2) The Contractor's Fee of fifty dollars (\$50.00) shall remain the same through the first Contract Year. On July 3, 2014 and each subsequent July 3 during the term of the Agreement, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. If the CPI is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.
- (3) The City or Contractor may conduct a composition study of Program Recyclables delivered to the Designated Recycling Facility. The party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the City. The City reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the composition percentages provided in Exhibit 1 shall be made and shall become effective for the following month and the remainder of the Agreement, or until further adjusted in a future composition study.

- (4) The Contractor acknowledges and accepts that the formula outlined in Section 6.A shall be used for calculating the Contractor's revenue throughout the term of this Agreement. The formula is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the Contractor differs from the market index, or if the Contractor's Fee does not accurately reflect the Contractor's cost for accepting, processing, and marketing Program Recyclables, the Contractor shall not be entitled to other payments or revenues from the City, because the Contractor has taken such items into consideration when establishing the percentage of the AMV less the Contractor's Fee that it will pay to the City. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the Contractor.

B. Invoicing and Payment

- (1) No later than the fifteenth (15<sup>th</sup>) day of each month, the Contractor shall submit a monthly report, in a form acceptable to the City, detailing the total revenue due to the City for the Program Recyclables delivered to the Designated Recycling Facility during the previous month. The report shall be sent to the following address:

City of Margate  
Attn: Administrator (to be named by the City)  
901 NW 66<sup>th</sup> Avenue  
Margate, FL 33063

- (2) The Contractor shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due. Payment shall be remitted to the following:

City of Margate, Florida  
Attn: Finance Department  
5790 Boulevard  
Margate, FL 33063

**SECTION 7. CHANGE IN LAW**

The Contractor may petition the City for a rate adjustment based on a change in law that directly and adversely affected Contractor's cost of providing its services under this Agreement. The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The City may request from the Contractor such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the City, the Administrator shall make a determination regarding the fairness of the request, and shall make a recommendation to the City Commission. The City Commission shall consider the request at a regular meeting. The City Commission may grant or deny the Contractor's request, in the Commission's sole discretion. If the City Commission approves the request, adjusted rates shall become effective upon execution of a written amendment to the Agreement.

**SECTION 8. LIQUIDATED DAMAGES**

- A. Assessment of Liquidated Damages. The City and Contractor recognize and agree that certain

events may cause the City to suffer losses or damages that are by their nature uncertain, difficult to prove, and not ascertainable at the time the Agreement is entered into. The parties agree that certain breaches will cause Contractor to pay City liquidated damages without any proof of the actual damage resulting from the breach. In no event shall these liquidated damages be construed or deemed to constitute penalties. The Administrator may assess such liquidated damages pursuant to this Section on a monthly basis in connection with this Agreement and shall, at the end of each month during the term of this Agreement, notify the Contractor in writing of the liquidated damages assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment, it may request in writing a meeting with the Administrator to resolve the issue. The City shall notify the Contractor in writing of any action taken with respect to Contractor's claims. The Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

B. Reserved

C. Liquidated Damages for Recyclables Processing Service. The City may assess liquidated damages against the Contractor for failing to provide recyclables processing services in compliance with the requirements of this Contract. It is hereby agreed that the City may demand immediate payment from the Contractor, and the Contractor shall comply, for liquidated damages, and not as a penalty, in the following amounts:

- |    |                                                                                                                     |                             |
|----|---------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 1. | Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.B.)                              | \$500 per unaccepted load   |
| 2. | Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 4.B.)  | \$100 per day               |
| 3. | Disposing of Recyclable Materials or Recovered Materials without prior approval of the Administrator (Section 4.C.) | \$1,000 per occurrence      |
| 4. | Failure to submit timely records and reports (Section 4.E.)                                                         | \$100 per calendar day late |
| 5. | Failure to make timely payment to the City (Section 6.B.)                                                           | \$100 per calendar day late |

**SECTION 9. EMERGENCY SERVICE PROVISIONS**

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Administrator may grant the Contractor a variance from regular service. However, Contractor shall make its best effort to resume regular service as soon as possible, and no later than resumption of collection service by the City's Contract Hauler. As soon as practicable after such event, the Contractor shall advise the Administrator when it is anticipated that normal service can be resumed.

**SECTION 10. PERFORMANCE BOND**

A. Prior to commencing services, the Contractor shall furnish to the City, and keep current for the

full duration of the Agreement and any renewal term, a Performance Bond for the faithful performance of this Agreement and all obligations arising hereunder in the amount below. The Performance Bond for recyclables processing services shall be in the amount of ten thousand dollars (\$10,000).

- B. The Performance Bond shall be executed by a surety company licensed to do business in the State of Florida; having an "A" or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the City.

**SECTION 11. INSURANCE**

11.1 *Policy limits.* Contractor shall not commence performance under this agreement until Contractor has obtained all insurance required under this section and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the Administrator. Contractor shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, single limit, and commencing prior to the commencement of the work and continuing to provide coverage for claims based on occurrences during the Initial Term and any Renewal Term of this Agreement (except for Pollution Liability, which may be provided on a claims made basis) for a minimum of three years from the date of termination or expiration of this Agreement:

<i>General Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Automobile Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Pollution Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Worker's Compensation Statutory Amount</i>	

11.2 City as additional insured. The City shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation. All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to City or any other additional insured with respect to claims covered under the policy and (b) Contractor's Insurance applies separately to each insured against whom claims are made or suit is brought, and (c) the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Self-insurance by Contractor shall not be acceptable as providing any of the required insurance coverages required in this Agreement.

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

11.4 Notice of cancellation. Contractor agrees to furnish City with at least 30 days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then Contractor shall furnish, at least ten days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance

remains in full force and effect.

- 11.5 Minimum level of coverage. To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor's performance under this Agreement, Contractor shall maintain a minimum outstanding level of insurance coverage during the term of this Agreement in the amount of twenty-five million dollars (\$25,000,000) after deducting the amount of any claims filed or made against any policy required under this Agreement during the term of this Agreement and the five-year period following the term of this Agreement.
- 11.6 Premium payment responsibility. Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject. Contractor shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement, agrees that they shall have no recourse against City for payment or assessments in any form on any policy of insurance.
- 11.7 If Contractor's Insurance policy is a "claims-made" policy, then Contractor shall maintain such Insurance Coverage for a period of five (5) years after the expiration or termination of the agreement or any extensions or renewals of the agreement. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- 11.8 If any of Contractor's Insurance policies includes a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this article.
- 11.9 The official title of the owner is City of Margate. This official title shall be used in all insurance policies and documentation.
- 11.10 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against City with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 11.11 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which City is named as an additional named insured shall not apply to City in any respect. City shall use its best efforts to provide written notice of occurrence within thirty (30) working days after City's actual notice of such event.
- 11.12 Notwithstanding any other provisions of this Agreement, Contractor's obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

## **SECTION 12. INDEMNIFICATION OF CITY**

- A. Contractor shall indemnify, defend, and hold harmless City, City's contractors, and the public officials, officers, directors, employees, agents, and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all Court or other

dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the Contractor, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the breach of this Agreement, violation of applicable law, and the negligent acts or omissions of the Contractor in the performance of this Agreement. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property.

- B. Contractor further agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against City, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent rights or for the infringement of any and all copyrights or patent claimed by any person, firm or corporation or on account of the City's decision to award this contract to the Contractor.
- C. Contractor agrees, at Contractor's expense, after written notice from the City, to defend any action against the City that falls within the scope of this indemnity as set forth above in Subsections A and B, or the City, at the City's option, may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by Contractor. Additionally, if Contractor, after receipt of written notice from the City, fails to make any payment due under this Agreement to the City or fails to perform any obligation required by this Agreement, Contractor shall pay any reasonable attorneys' fees and costs incurred by the City in securing any such payment from Contractor, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by Contractor from the City that such amount is due, be made by Contractor prior to the City being required to pay same, or in the alternative, the City, at the City's option, may make payment of an amount so due and Contractor shall promptly reimburse the City for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by Contractor of written notice from the City that such payment is past due at least twenty (20) days.
- D. It is specifically understood and agreed that the consideration inuring to the Contractor for the execution of this Agreement consists of the promises, payments, covenants, rights, and responsibilities contained in this Agreement.
- E. The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 11.
- F. The Contractor shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the City in accordance with this Agreement.

### **SECTION 13. POINT OF CONTACT**

The day-to-day dealings between the Contractor and the City shall be between the Contractor and the Administrator or the Administrator's designee.

#### **SECTION 14. NOTICE**

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the City:

Jerry A. Blough, City Manager  
City of Margate  
5790 Margate Boulevard  
Margate, FL 33063

With a copy to:

Eugene M. Steinfeld, City Attorney  
City of Margate  
5790 Margate Boulevard  
Margate, FL 33063

As to the Contractor:

Lonnie Bergeron  
Phil Medico  
Sun-Bergeron Solid Waste Services, JV  
2380 College Avenue  
Davie, FL 33317

With a copy to:

Joe Goldstein, Esq.  
Shutts & Bowen, LLP  
200 East Broward Boulevard  
Suite 2100  
Fort Lauderdale, FL 33301

Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Facsimile transmission is acceptable notice of address changes and shall be effective when received; however, facsimile transmissions received (i.e., printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

by reason of the nature of such default, the same cannot be remedied within fifteen (15) days following receipt by the Contractor of written demand from the City to do so, the Contractor fails to commence the remedy of such default within said fifteen (15) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the Contractor having the burden of proof to demonstrate, (a) that the default cannot be cured within fifteen (15) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the Contractor to provide service for a period of three (3) consecutive Work Days, the City may secure the Contractor's billing records on the fourth (4<sup>th</sup>) Work Day in order to provide interim Contract service until such time as the matter is resolved and the Contractor is again able to perform pursuant to this Contract; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the City under this Agreement to the Contractor shall cease and this Agreement may be deemed terminated by the City.

- B. Habitual Violations Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Section, in the event that the Contractor's record of performance shows that the Contractor has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the Contractor, in the opinion of the City, and regardless of whether the Contractor has corrected each individual condition of default, the Contractor shall be deemed a "habitual violator," shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively and shall constitute a condition of irredeemable default. The City shall thereupon issue the Contractor a final warning citing the circumstances therefore, and any single default by the Contractor of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Agreement. In the event of any such subsequent default, the City may terminate this Agreement upon giving of written final notice to the Contractor, such cancellation to be effective upon the date specified in the City's written notice to the Contractor, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the Contractor shall have no further rights hereunder. Immediately upon the specified date in such final notice the Contractor shall cease any further performance under this Agreement.
- C. Termination Without Cause In addition to and notwithstanding any other provisions of the Agreement, this Agreement may be terminated by the City for convenience, without cause, upon providing the Contractor with ninety (90) days written notice.
- D. Effective Date of Termination In the event of the aforesaid events specified in subsections A, B, and C above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the City's written notice to the Contractor and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the City under this Agreement to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors for the



operation of the herein specified services. The Contractor, for failure to perform, shall reimburse the City all direct and indirect costs of obtaining interim service.

#### **SECTION 16. MODIFICATIONS TO THE AGREEMENT**

The City shall have the power to make changes in this Agreement as the result of changes in law, City Code, or both to impose new rules and regulations on the Contractor under this Agreement relative to the scope and methods of providing the service specified herein as shall from time-to-time be necessary and desirable for the public welfare. The City shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. If a change is required as a result of an amendment to the City's Code, upon receipt of the proposed change, Contractor shall have ten (10) business days to either accept the change or to terminate this Agreement by providing the City with ninety (90) days written notice of termination. Failure to provide the City with written notice of termination shall constitute acceptance of the proposed change. The scope and method of providing service as referenced herein shall also be liberally construed to include, but they are not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor.

The City and the Contractor understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. The Contractor agrees that the terms and provisions of any City Code of the City related to Solid Waste services and regulations, as it now exists or as it may be amended in the future as a result of any changes in the law, shall apply to all of the provisions of this Agreement. In the event any future change in the City Code materially alters the obligations of the Contractor, then the fee established in the Exhibits to this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, the City and the Contractor shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the Contractor due to any modification in the Agreement under this Section. The City and the Contractor shall not unreasonably withhold agreement to such compensation adjustment.

#### **SECTION 17. PERMITS AND LICENSES**

The Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect.

#### **SECTION 18. INDEPENDENCE OF AGREEMENT**

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting the Contractor as an agent, representative or employee of the City for any purpose

whatsoever. The Contractor is to be, and shall remain, an independent contractor with respect to all services performed under this Agreement.

#### **SECTION 19. FORCE MAJEURE**

If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, State, or Federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Agreement for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

#### **SECTION 20. EMPLOYEE STATUS**

Persons employed by the Contractor in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.

#### **SECTION 21. EQUAL OPPORTUNITY EMPLOYMENT**

Contractor shall comply with all Federal, State and City laws applicable to the Contractor services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA") and the South Florida Building Code. The Contractor is expected to fully comply with all provisions of all laws and the City reserves the right to verify the Contractor's compliance with them. Failure to comply with any laws will be grounds for termination of the Agreement for cause.

#### **SECTION 22. PROJECT GUARANTEE AGREEMENT**

Prior to Contractor's commencement of work pursuant to this Agreement, Contractor shall deliver to City, in a form acceptable to the City in its sole discretion, a project guarantee agreement executed by Southern Waste Holdings Management, LLC, and Southern Waste Systems Holdings, LP, and Bergeron Land Development, Inc., in the form provided in Exhibit 2.

#### **SECTION 23. RIGHT TO REQUIRE PERFORMANCE**

The failure of the City at any time to require performance by the Contractor of any provision hereof shall in no way affect the right of the City thereafter to enforce same, nor shall waiver by the City of any

breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

#### **SECTION 24. GOVERNING LAW**

The parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

#### **SECTION 25. CONSENT TO JURISDICTION**

Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in courts having jurisdiction over Broward County, Florida. The parties expressly, voluntarily, and irrevocably waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term.

#### **SECTION 26. LITIGATION AND WAIVER OF JURY TRIAL**

In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

**Waiver of Jury Trial:** The parties to this agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

#### **SECTION 27. COMPLIANCE WITH LAWS**

The Contractor shall conduct its operations under this Agreement in compliance with all applicable Federal, State and local laws and regulations.

#### **SECTION 28. SEVERABILITY**

If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

#### **SECTION 29. ASSIGNMENT AND SUBLETTING**

No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by the Contractor without the express written consent of the City. The City shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written

consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Contractor, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the City under this Agreement to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors, the Contractor, or any other person or company for the service which is the subject of this Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of the Contractor.

### **SECTION 30. MODIFICATIONS**

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

### **SECTION 31. LEGAL REPRESENTATION**

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

### **SECTION 32. FUND APPROPRIATION**

The Contractor understands and agrees that the City, during any fiscal year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Agreement shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Contractor shall not proceed with services under this Agreement without City's written verification that the funds necessary for Contractor's compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Commission at the time of the adoption of the budget.

### **SECTION 33. PUBLIC ENTITY CRIME**

Contractor understands that a person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City and may not transact business with the City in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Contractor herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Agreement.

#### **SECTION 34. FINANCIAL INTEREST**

Contractor warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no person who acts in the City as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor and, further, that no such person, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the Contractor.

#### **SECTION 35. ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

#### **SECTION 36. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS**

City shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement during normal business hours. Contractor shall keep such books, records, and accounts reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Section 4.

Contractor shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination of this Agreement, unless Contractor is notified in writing by City of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by City to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either Federal or State law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry.

### **SECTION 37. THIRD PARTY BENEFICIARIES**

Neither the City nor Contractor intends that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights in any third person or entity under this Agreement.

### **SECTION 38. PAYMENT DISPUTES**

If the City disagrees with any amount stated in any invoice from the Contractor, the City shall notify the Contractor of such dispute. The City shall make payment to Contractor of the undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty five (45) days of the City's notice of such dispute, the parties shall resolve the dispute in a manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of its obligations to City under this Agreement.

### **SECTION 39. RESERVED**

### **SECTION 40. MOST FAVORED PRICING AND MATERIAL TERMS**

In the event that Contractor subsequently enters into an agreement for a term of more than 12 months (including renewal and option periods) for the processing and/or recycling of another governmental entity's Recyclable Materials (or a private entity that provides the recycling for all or substantially all of the Recyclables generated within a governmental entity's jurisdiction) generated anywhere within Miami-Dade, Palm Beach, or Broward County (an "Eligible Agreement"), Contractor shall provide the City with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the City determines that the Eligible Agreement includes a recycling payment that is greater than the payment set forth herein for the City, the City may provide written notice to Contractor of City's determination and, if the City does so, the Program Recyclable payments to the City shall be increased to the amount set forth in the Eligible Agreement, and such change shall be effective retroactive to the effective date of the Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the greater Recyclables payment (subject to annual adjustments as provided above).

### **SECTION 41. HEADINGS**

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

### **SECTION 42. EXHIBITS**

Each exhibit referred to in this Agreement forms an essential part of this Agreement. Each such exhibit is a part of this Agreement and each is incorporated by this reference.

**SECTION 43. REPRESENTATIONS**

As an inducement to the City, Contractor represents and warrants that: (a) Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right and authority to enter into and perform its obligations under this Agreement; and (b) Contractor is duly authorized to execute and deliver this Agreement without further approvals or authorizations.

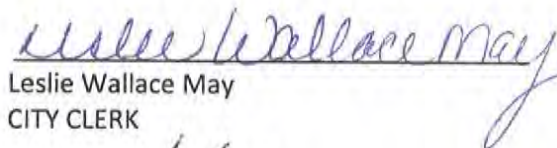
IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement on the respective date(s) below each signature.

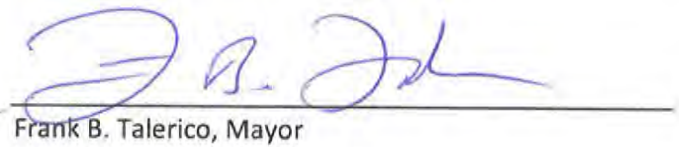
CITY:

City of Margate, Florida  
A municipal corporation

ATTEST:

By:

  
\_\_\_\_\_  
Leslie Wallace May  
CITY CLERK

  
\_\_\_\_\_  
Frank B. Talerico, Mayor

Date: 7/3/13

Date: 7/3/13

  
\_\_\_\_\_  
Jerry A. Blough, City Manager

Date: 7/3/13

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY  
Date: 7/3/13

CONTRACTOR:

SUN-BERGERON SOLID WASTE SERVICES  
A general partnership

WITNESSES: Heather R

Heather Brown

[Signature]

Aleida Cruz (Waldman)

Date: June 28, 2013

[Signature]

Print Name: Lonnie Neil Bergeron

Print Title: Manager

Date: June 28, 2013

(CORPORATE SEAL)

STATE OF FLORIDA     )  
                                          ) SS:  
COUNTY OF BROWARD )

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

IN WITNESS OF THE FOREGOING, I have set my hand and official seal in the State and County aforesaid on this 28 day of June, 2013.

Heather R  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_





## EXHIBIT 1

### PROGRAM RECYCLABLES REVENUE

Contractor submitted the attached form in response to the Town of Southwest Ranches ("Town") IFB No. 13-003, establishing the procedure that will be used by the Contractor and Town in the calculation of Program Recyclables Revenue payable by the Contractor to the Town.

In accordance with the Most Favored Pricing provisions in Section 40 of this Agreement, the City and Contractor acknowledge that, as of the date of this Agreement, the Contractor has provided more favorable payment terms than those offered to the Town. Specifically, the Contractor offered better payment terms to the City of Deerfield Beach, Florida under the contract resulting from Deerfield Beach's Invitation to Bid No. 2012-13/22. Accordingly, the City and Contractor agree that the current applicable percentage of AMV (net of the Contractor's Fee of \$50.00) due to the City is 45.01% of AMV (net of Contractor's Fee).

TOWN OF SOUTHWEST RANCHES, FLORIDA  
 Invitation for Bids  
 IFB No. 13-003

PART VI - FORM C  
 PROGRAM RECYCLABLES REVENUE FORM

Company Name Sun-Bergeron Solid Waste Services, JV

Bidders wishing to provide Recyclable Materials processing services must complete this form in its entirety in ink or typewritten.

Bidder shall enter the percentage of the Average Market Value (AMV) less a Contractor's fee of \$50.00 that it will pay the Town for each Ton of Inland Program Recyclables delivered by the Town or its agents to the Designated Recycling Facility, as determined by the Designated Recycling Facility scales.

The payment per Ton shall be calculated as follows:

- Each month, the Contractor shall calculate the AMV of the Town's Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in [RecyclingMarkets.net](http://RecyclingMarkets.net) multiplied by the composition percentages of the Town's Program Recyclables, as defined in the table below, which calculates the AMV for March 2013.

Calculation of the March 2013 Average Market Value

Material	Index Description	Index Value (Mar '13)	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Newspaper	PS # baled, F.O.B. seller's dock	77.8	\$77.80	17.0%	\$13.13
Compressed containers	PS # baled, F.O.B. seller's dock	112.5	\$112.50	16.0%	\$17.25
Mixed paper	PS # baled, F.O.B. seller's dock	70	\$70.00	24.5%	\$17.15
Steel cans	1-Ton, sorted, baled and delivered	115.0	\$115.00	3.7%	\$4.26
Aluminum cans	Cans/Dr., sorted, baled and delivered	79.6	\$1,590.00	2.4%	\$18.16
Plastics #3-#7	Commingled (3-7, sorted, baled and picked up)	0.2	\$6.00	3.3%	\$0.32
PET	Cans/Dr., baled and picked up	50.8	\$416.00	3.7%	\$22.71
Natural HDPE	Cans/Dr., baled and picked up	22.5	\$690.00	2.2%	\$14.38
Colored HDPE	Cans/Dr., baled and picked up	24.8	\$516.00	3.2%	\$16.51
Glass (Mix)	1-Ton, delivered	0.0	\$0.00	22.5%	\$0.00
Polycoated Cartons	None at this time	0.0	\$0.00	0.5%	\$0.00
Construction	N/A	N/A	\$0.00	1.0%	\$0.00
				100.0%	\$128.66

Note: The index values for March 2013 are used for estimation purposes only, and are subject to fluctuation as determined by Secondary Prices and Material Pricing found on [RecyclingMarkets.net](http://RecyclingMarkets.net). Prices to be used are the first published Regional Average prices for the Southeast USA in the month for which payment is being made. No market index currently exists for polycoated cartons in [RecyclingMarkets.net](http://RecyclingMarkets.net); therefore, the value is set at 0. When a market index for polycoated cartons or aseptic containers becomes available on [RecyclingMarkets.net](http://RecyclingMarkets.net), it will be utilized.

## PROJECT GUARANTEE AGREEMENT

This PROJECT GUARANTEE AGREEMENT (the "Guarantee"), dated as of \_\_\_\_\_, 2013, is executed and delivered by **Bergeron Land Development, Inc., Southern Waste Holdings Management, LLC, and Southern Waste Systems Holdings, LP** (collectively "GUARANTORS").

The City of Margate ("City") is a municipal corporation of the State of Florida. The City entered into a contract with Sun Recycling, LLC, a Florida Limited Liability Company, and Bergeron Environmental and Recycling, a Florida Limited Liability Company, doing business as Sun-Bergeron Solid Waste Services JV ("Sun-Bergeron JV") to provide recyclables processing services, dated \_\_\_\_\_, 2013 (the "Recyclables Agreement").

Guarantors **Southern Waste Holdings Management, LLC, and Southern Waste Systems Holdings, LP, 790 Hillbrath Drive, Lantana, Florida 33462**, are the parent companies of Sun Recycling, LLC, the joint venture partner of Sun-Bergeron JV, and they have a direct interest in work to be performed under the Recyclables Agreement, and in consideration thereof, and as an inducement to the City to enter into the Recyclables Agreement, have agreed to guarantee to the City the performance by Sun-Bergeron JV of its obligations under the Recyclables Agreement.

Guarantor **Bergeron Land Development, Inc., 19612 S.W. 69th Place, Fort Lauderdale, FL 33332**, is the parent company of the Bergeron Family of Companies. Its affiliated company, Bergeron Environmental and Recycling LLC, is the joint venture partner of Sun-Bergeron JV, and it has a direct interest in work to be performed under the Recyclables Agreement, and in consideration thereof, and as an inducement to the City to enter into the Recyclables Agreement, has agreed to guarantee to the City the performance by Sun-Bergeron JV of its obligations under the Recyclables Agreement.

For value received and intending to be legally bound hereby, Guarantors, jointly and severally, thus agree and covenant to the City as follows:

1. Subject to the provisions hereof, Guarantors guarantee to the City the full, timely and faithful performance and discharge by Sun-Bergeron JV of all and singular of their obligations, covenants, agreements and undertakings at the time and in the manner required by the Recyclables Agreement.

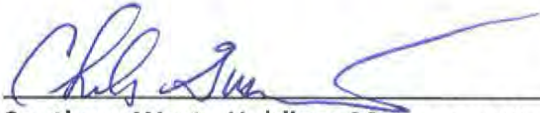
2. If for any reason Sun-Bergeron JV fails to observe or perform any of its obligations or responsibilities under the Recyclables Agreement, Guarantors agree to cause to be promptly observed and performed all such obligations and responsibilities, as set forth in the Recyclables Agreement; provided that the City shall promptly notify Guarantors in writing at their addresses above of any such failure on the part of Sun-Bergeron JV and responsibilities to be observed and performed; and provided further that Guarantors shall thereupon be entitled to all of the rights and benefits of Sun-Bergeron JV under the Recyclables Agreement.

3. This Guarantee shall remain in full force and effect notwithstanding any amendment or modification, extension of time, or other indulgence or concession granted by the City to Sun-Bergeron JV with respect to the Recyclables Agreement. If Sun-Bergeron JV fails to promptly observe and perform its obligations or responsibilities under the Recyclables Agreement, it shall not be necessary for the City to exhaust its remedies against either such party before proceeding under this Guarantee.

4. In no event shall the aggregate of the obligations and liabilities of Guarantors be greater than obligations and liabilities of Sun-Bergeron JV under the Recyclables Agreement, and the Guarantors shall have available to them, in any action or proceeding by the City seeking performance of this Guarantee, or damages for its non-performance, all defenses which Sun-Bergeron JV would be able to raise in an action by City against Sun-Bergeron JV seeking performance or damages for non-performance under the Recyclables Agreement.

5. This Guarantee is for the exclusive benefit of the City and in no event shall inure to the benefit of any other parties.

6. This Guarantee shall be governed by and construed according to the laws of the State of Florida.



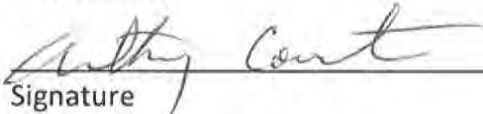
Southern Waste Holdings Management, LLC,  
and Southern Waste Systems Holdings, LP

By Charles Gusmano

As the Managing Member of Southern Waste Holdings Management, LLC ("SWHM LLC"), and on behalf of Southern Waste Systems Holdings, LP ("SWSH LP"), as the authorized signatory for SWHM LLC, the General Partner of SWSH LP

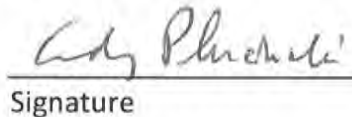
Dated:

WITNESSES:

  
Signature


ANTHONY CORRENTI, CFO  
Print Name and Title

28 day of June, 2013

  
Signature

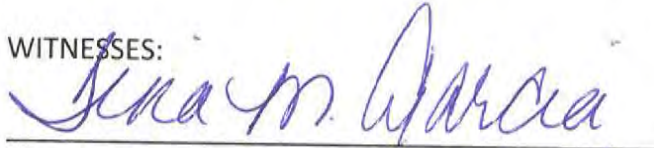
Andy Plocinski  
Print Name and Title

28 day of June, 2013

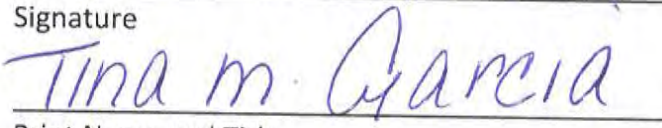


**Bergeron Land Development, Inc.**  
By Ronald Bergeron, Sr.  
As its President  
Dated:

WITNESSES:

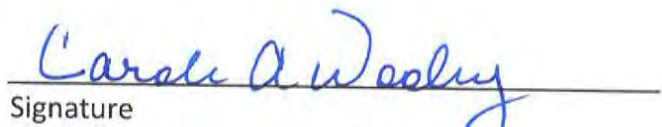


Signature

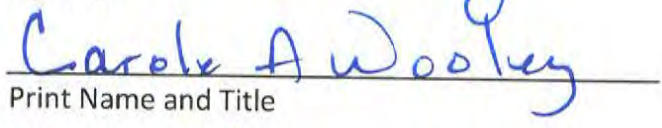


Print Name and Title

28 day of June, 2013



Signature



Print Name and Title

28 day of June, 2013

**EXHIBIT 6**

**MEMORANDUM OF UNDERSTANDING BETWEEN WASTE MANAGEMENT INC. OF FLORIDA AND THE CITY OF MARGATE, FLORIDA FOR IMPLEMENTATION OF RECYCLEBANK RECYCLING REWARDS**

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 12-125

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH WASTE MANAGEMENT FOR IMPLEMENTATION OF THE RECYCLING REWARDS PROGRAM.

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

SECTION 1: That the City Commission of the City of Margate, Florida, hereby approves a Memorandum of Understanding with Waste Management for implementation of the Recycling Rewards Program.

SECTION 2: That the Mayor and City Manager are hereby authorized and directed to execute said Memorandum of Understanding on behalf of the City of Margate, a copy of which are attached and made a part of this Resolution.

SECTION 3: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 16<sup>TH</sup> day of MAY, 2012.

ATTEST:

*Leslie Wallace May*  
LESLIE WALLACE MAY  
CITY CLERK

*P-R*  
MAYOR PAM DONOVAN

RECORD OF VOTE

Varsallone	<u>Yes</u>
Peerman	<u>Yes</u>
Talerico	<u>Aye</u>
McLean	<u>Yes</u>
Donovan	<u>Yes</u>

**CERTIFICATION**

I CERTIFY THIS TO BE A TRUE & CORRECT COPY OF THE DOCUMENT ON FILE AT CITY HALL WITNESS BY HAND AND OFFICIAL SEAL OF THE CITY OF MARGATE THIS 6 DAY OF June, 2012

*[Signature]*  
CITY CLERK *Joseph Kavarash*

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is dated this 16 day of May 2012 by and between WASTE MANAGEMENT INC. OF FLORIDA ("WMIF"), a Florida corporation, and CITY OF MARGATE, FLORIDA, a Florida municipal corporation ("City").

WHEREAS, WMIF and the City are parties to that certain Amended and Restated Franchise Agreement dated October 5, 2011, (the "Collection Agreement") and

WHEREAS, The City is desirous of instituting programs that will help achieve the recycling goals set forth in Chapter 403.706 Florida Statutes of recycling 75% of recyclable solid waste by December 31, 2020; and

WHEREAS, WMIF has an alliance with Recyclebank that allows WMIF to offer incentive-based recycling program that rewards residents for the amount they recycle; and

WHEREAS, City and WMIF desire to institute a program to obtain the benefits and efficiencies of utilizing the Recyclebank rewards program; and

WHEREAS, the parties desire to memorialize their understanding as set forth herein.

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

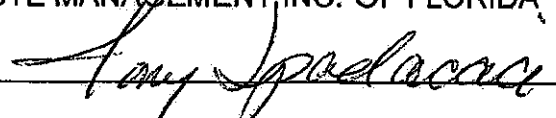
1. Term. The term of the program shall be for three years. The term shall commence upon the acquisition and distribution by the City of rollout carts to single family residences for the storage and collection of single stream curbside recyclables. The parties may extend the term for additional periods by mutual written agreement.
2. Rewards Program. The program shall be substantially as set forth in the proposal attached hereto.
3. Cost. Provided that this Memorandum of Understanding is approved, accepted and executed prior to May 31, 2012, the initial set-up fee and the cost



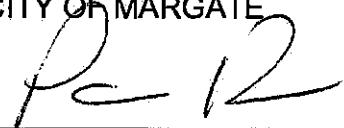
of the first two years of the program shall be waived and the City shall incur no cost for same. The fee to the City for the third year of the program shall be \$0.37 per single family residence per month. This fees shall be payable monthly to WMIF.

IN WITNESS WHEREOF, this Memorandum of Understanding is executed by the authorized representatives of the parties as of the day and year first above written.

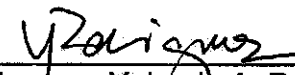
DATE: 5/15/2012

WASTE MANAGEMENT, INC. OF FLORIDA  
By:   
Name: TONY SPADACCIA  
Title: MGR. GOV. AFFAIRS

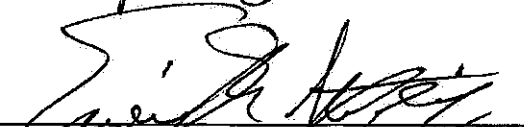
DATE: 5/16/12

CITY OF MARGATE  
  
Mayor Pam Donovan

5/16/12

  
City Manager Yolanda A. Rodriguez

5/16/12

  
City Attorney Eugene M. Steinfeld  
Approved as to form

**EXHIBIT 7**

**LIST OF CITY PROPERTIES TO RECEIVE COLLECTION SERVICES**

**City of Margate**

City Properties to Receive Service

<u>Address</u>	<u>Service Type</u>	<u>Container Size (Yards)</u>	<u>Number of Containers</u>	<u>Collections Per Week</u>
901 NW 66 Avenue (DEES Admin)	MSW	4	1	2
	RM	0.5	3	1
5790 Margate Boulevard (Govt Ctr)	MSW			
	RM			
6009 NW 10 Street (NWFPC)	MSW	4	1	2
	RM	0.5	5	1
6630 NW 9 Street (WWTP)	MSW	2	1	2
	RM	0.5		1
980 NW 66 Avenue (WTP)	MSW	2	1	2
	MSW	6	1	2
	RM	0.5	4	1
	Rolloff	30	1	on-call
5785 Park Drive (FSI)	MSW	2	1	2
	RM	0.5	2	1
600 Rock Island Road (FSII)	MSW	2	1	2
	RM	0.5	2	1
5395 NW 24 Street (FSIII)	MSW	2	1	2
	RM	0.5	1	1
6200 Royal Palm Boulevard (Calypso)	MSW	-	-	-
	RM	0.5	8	1
2500 Rock Island Road (Firefighters)	MSW	-	-	-
	RM	0.5	2	1
665 SW 50 Avenue (Southeast Park)	MSW	-	-	-
	RM	0.5	2	1
1695 Banks Road (Sports Complex)	MSW	6	1	2
	RM	0.5	6	1
851 NW 66 Avenue (Vinson Field)	MSW	-	-	-
	RM	0.5	2	1
6199 NW 10 Street (Weisinger)	MSW	4	1	2
	RM	0.5	2	1
102 Rock Island Road (PW)	MSW			2
	RM	0.5	18	1
	Rolloff	30	3	on-call

Notes

Container size of 0.5 yards is equivalent to a 95-gallon cart.

## EXHIBIT 8

### (WASTE MANAGEMENT'S PROPOSED RECYCLING REWARDS PROGRAM)

Request for Proposal for  
Garbage and Recycling Collection Services  
RFP No. 2015-010

CITY OF MARGATE

## CHAPTER 22: RECYCLING REWARDS PROGRAM

# Recycling Rewards Program

## Waste Management's Recyclebank Pays Back Residents for Doing the Right Thing!

Here is a brief recap of how Waste Management's recycling rewards program, Recyclebank, which is currently in place can continue to help The City of Margate create a more sustainable future by rewarding residents with discounts and deals for taking every day green actions. In addition to rewarding residents the program works on increasing foot traffic in local businesses, which are the economic heart of the city.



Here is how the program works:

Residents recycle their paper, metal, plastic, and glass through their curbside recycling program. The weight of the recycled materials converts into Recyclebank points. Residents can use the points for valuable everyday rewards from hundreds of local and national businesses.

Recyclebank can be an impactful program for Margate

- It rewards residents for recycling
- It promotes a greener community through recycling and reuse
- It educates and empowers citizens through the use of the program

Recyclebank also benefits Margate residents:

- Residents have the satisfaction knowing they are doing the right thing for the community
- Reward points are redeemable at more than 3,000 local and national businesses, including such national brands as:
  - McDonald's
  - Olive Garden
  - Bed, Bath, and Beyond
  - Dick's Sporting Goods
  - Coca-Cola, Dole, and many other national brands

The program can be implemented in two different ways:

- **Community Weight Based Model**- Recyclables are collected by route. Tonnage is calculated and divided by all households on the route. Program points are awarded to households who are members of program. This option is the most cost efficient option.
- **Self-Reporting** – A bit lower tech -- residents log-in to the Recyclebank site regularly to state they have set out recycling. Points are awarded based on the resident's online commitment.

The deployment of the Recyclebank program has a proven, structured, 90-day implementation process to successfully launch the Recyclebank rewards program in Margate. The residents in single-family homes in Margate have been utilizing Recyclebank for the past 3 years. If Waste Management is awarded this contract and the City selects to continue the Recyclebank program, Waste Management will roll-out Recyclebank to the multi-family units. Following a similar 90-day implementation listed below:

Days	Activities
Project Commencement	<ul style="list-style-type: none"> <li>▪ Agreement signed and received by all parties</li> <li>▪ Recyclebank program team identified</li> </ul>
1-30	<ul style="list-style-type: none"> <li>▪ Kickoff meeting                             <ul style="list-style-type: none"> <li>○ Route &amp; address lists</li> <li>○ Marketing &amp; communication plan</li> <li>○ Local reward partner recruitment</li> <li>○ Ongoing weekly status calls scheduled</li> </ul> </li> <li>▪ Implementation timeline confirmed</li> <li>▪ Communications plan developed</li> <li>▪ Cart delivery plan developed</li> </ul>
31-60	<ul style="list-style-type: none"> <li>▪ Communication pieces designed</li> <li>▪ Initial press released distributed</li> <li>▪ Local reward partner outreach</li> <li>▪ City letter to residents sent</li> </ul>
61-90	<ul style="list-style-type: none"> <li>▪ Recyclebank program information sent</li> <li>▪ Customer service introduction &amp; training</li> <li>▪ Local reward partner outreach</li> <li>▪ Account registration begins</li> </ul>
91+	<ul style="list-style-type: none"> <li>▪ First rewarded pick-up begins</li> <li>▪ Community outreach events</li> <li>▪ Account registration continues</li> </ul>

Waste Management provides multi-channel marketing support to introduce and promote the Recyclebank program, including direct mail, out-of-home advertising, and door hangers. Community outreach is also an opportunity, leveraging existing community groups, providing support, communication tools, and making appearances at community events.

Recyclebank is a simple, exciting program that gets residents excited about recycling and helping to green the community.

The residents of the City of Margate are currently enjoying the use of RecycleBank's program. Below is a short list of some of the local businesses that offer rewards through RecycleBank.

Avon Beauty Center (Local rep offers discount)  
Barks and Bubbles Pet Grooming Salon (franchise)  
Bash Wine Cafe & Catering  
Beauty of Wax3  
Big Wheel Cycles  
Broward Elite All Stars  
CC & E Alterations and Custom Made  
Cell Phone Repair  
Jean's Jamaican Restaurant  
Kenpo Karate Care  
Kingshead Pub & Restaurant  
Live Love Yogurt (franchise)  
La Bamba Mexican and Spanish Restaurant  
Lou Scalia's Pro Shop  
Louie K's Club Sandwich  
Mazzola's Restaurant  
Mike's Bigger Guys  
Museum of Science and Discovery  
Nikicreations Salon

**EXHIBIT 9**

**SPECIFICATIONS FOR CARTS**

The following pages are the specifications that the City included in its bid for rollout recycling carts (Bid No. 2012-015). All rollout carts provided by the Contractor shall meet the specifications for the carts and the warranty provided herein. The following changes may be made due to the various sizes of carts required:

	<u>35-gallon Cart</u>	<u>65-gallon Cart</u>	<u>95-gallon Cart</u>
US Liquid Gallon Capacity	35-gallons + or – 5%	65-gallons + or – 5%	95-gallons + or – 5%
Minimum Load Rating	120 lbs.	200 lbs.	330 lbs.
Minimum Resin Weight	17 lbs.	27 lbs.	34 lbs.
Minimum Wheel Diameter	8 inches	10 inches	10 inches
Maximum Height	40 inches	41 inches	48 inches
Maximum Width	21 inches	27 inches	30 inches
Maximum Depth	23 inches	29.5 inches	35 inches
Minimum In-mold Label Size	3.5" x 11"	9.5" x 14.5"	9.5" x 14.5"
Third Digit of Serial Number	3	6	9

Serial numbers shall follow the same nine-digit format provided in the specifications with the first two digits representing the year the cart was manufactured (15 for 2015) and the third digit representing the cart size (9 for 95-gallon, 6 for 65-gallon, and 3 for 35-gallon). In addition, the serial number for all garbage carts shall begin with G.

## **SPECIAL AND TECHNICAL CONDITIONS**

The City of Margate seeks a qualified CONTRACTOR to furnish rollout recycling carts as specified in the special and technical conditions portion of the bid packet. It shall be the responsibility of the CONTRACTOR, in addition to furnishing the carts to deliver the carts to the individual resident addresses for the maintenance and replacement of the units.

CONTRACTORS responding to this bid solicitation shall be primarily engaged in the recycling cart and bin manufacturing and delivery business and must have been regularly engaged in this field for a period of no less than five years.

The CITY reserves the right to inspect the CONTRACTOR'S equipment and perform such investigations as may be deemed necessary to insure that competent personnel and management will be utilized in the performance of the contract.

The initial contract period shall be for one (1) year from the date of award with an option to renew for four additional one (1) year options providing for funding and that all terms and conditions remain the same.

### **1. PRICING:**

1.1 All pricing shall remain firm against any increase during the first contract period. Thereafter, it shall be the CONTRACTOR'S responsibility to notify the CITY in advance of any anticipated price changes by the manufacturer. The pricing will be adjusted upward or downward to reflect the cost of doing business measured by fluctuations in the Consumer Price Index (CPI), as published by the U.S. Department of Labor, Bureau of Labor Statistics for all urban consumers in the Miami – Fort Lauderdale area for the twelve months of the prior contract year. The pricing shall be adjusted at one hundred percent of the percentage change for the year in the CPI. Any price changes will remain firm for one year from the date of adjustment.

1.2 In the event of any decrease in price either by the manufacturer or if the CONTRACTOR shall charge a lower price to other customers, the CITY shall be notified promptly and receive such decrease.

1.3 The Base Requirement price for carts shall include all costs associated with manufacturing and delivering of a cart to one location in the CITY. Associated costs include, but are not limited to, resin, labor, overhead, profit, packaging, required assembly at the factory, lids, wheels, axles, miscellaneous parts, incidentals, fuel, stamps design and layout,

and transportation. It is the intent of the CITY to purchase only trailer loads of carts for each order during the initial distribution program for the CITY.

1.4 Optional Pricing for Recycling Carts: The CITY, at its sole discretion, will choose which, if any, options will be required in addition to the Base Requirement for carts at the time of ordering. It is anticipated, but not guaranteed, the CITY will select all the options for the carts for the initial distribution project to the CITY.

1.4.1 In-molded label for carts shall be one price per cart for label design, layout, proofing, color printing, ultra violet ray protection, and placement on the lid of the cart.

1.4.2 Radio Frequency Identification Tag (RFID) price shall include the ultra high frequency radio tag and installation on the cart at the factory. In addition the tag shall be tested and replaced if it fails to be readable at the factory. A report of RFID tag numbers associated to the cart serial number shall be provided to the CITY in an approved electronic format.

1.4.3 Assembly, distribution, exchanges, and tracking shall include all services required in Section 11. Price shall reflect all costs including equipment, labor, fuel, transportation, incidentals, communications, supervision, and profit.

1.4.4 Maintenance of recycling carts shall include the repair or replacement of the rollout carts. The price shall reflect all costs associated with the repair or replacement of the carts.

## **2. ESTIMATED QUANTITIES:**

The CITY is obligated, during the period stipulated, to purchase all of its normal requirements as specified from the CONTRACTOR and the CONTRACTOR is obligated to furnish the services which the CITY requires for its operation. The dollar values and/or quantities stated herein are given as a general guide for bidding purposes and are not guaranteed amounts. Actual requirements may be more or less than those estimated herein.

Should a need arise for supplies or services which are not available, the CITY reserves the right to secure services from other sources to meet its immediate needs without prejudice of the contract.

Initially, the CITY plans to purchase approximately 13,000 rollout recycling carts and have those items delivered to all residences located throughout the CITY



that received curbside recycling service. After the initial distribution, the CITY will purchase recycling carts as needed.

The attached CD details the number of 65 gallon recycling units per the CITY defined routes for which the purchase and distribution services will be required as part of this agreement.

### **3. LITERATURE:**

Two sets of complete descriptive literature must be furnished with bid. Failure to do shall be sufficient cause for rejection of the bid. The use of recycled paper for literature is encouraged.

### **4. SAMPLES:**

Each Contractor shall specify the product being proposed and shall supply a sample and sufficient data for each recycling cart being bid. All samples shall be delivered to the Department of Environmental and Engineering Services Administration Building, located at 901 NW 66<sup>th</sup> Avenue, Margate, FL 33063 within 48 hours after the bid opening date and time. All packages shall be marked "Sample for Bid No. 2012-015" and each sample shall bear the name of the Contractor, item number, and shall be tagged or marked in a substantial manner. Failure to submit the required samples will be sufficient cause for rejection of the bid.

The CITY reserves the right to retain the article(s) submitted as a sample for testing purposes and will be free from any redress or claim on the part of the Contractors if any articles or materials are lost or destroyed. Upon notification by the CITY that a sample is available for return, it shall be removed within ten days or the CITY will not be responsible for its disposition.

### **5. WARRANTY:**

The CONTRACTOR warrants the recycling carts furnished to be of the highest quality, complying with the specifications and free from all defects whatsoever in workmanship and materials, for a period of 10 years from the date of delivery. Replacements and repairs under this warranty are to be made by the CONTRACTOR at no cost to the satisfaction of the CITY for the duration of this warranty. The CONTRACTOR shall submit with its proposal a warranty specimen of the exact warranty offered for the rollout carts.

The replacement material supplied by the CONTRACTOR shall carry the manufacturer's standard new material warranty. The CONTRACTOR must accept any and all defective carts returned under warranty and pay for all freight and delivery costs including disposal costs.

The CONTRACTOR'S warranty is understood to include, whether stated in the CONTRACTORS's warranty or not the following:

- Failure of the body and lid to maintain their original shape
- Damage or cracking of the container body through normal operating conditions
- Failure of the wheels to provide continuous easy mobility as originally designed
- Failure of any metal components to remain free from excessive rust or corrosion, to be determined by the CITY
- Failure of any portion of the bottom of the container body to remain impervious to wear-through despite repeated contact with abrasive surfaces
- Failure of mechanism holding wheels on axles
- Failure of any container, container body, lid, wheels, or other component part to conform to the minimum standards as specified herein
- Deterioration, cracking, or failure of containers due to ineffectiveness of UVR inhibitors
- Color shall be non-fading
- Failure of the lid to prevent rainwater from entering the container when in the closed position
- Damage to the container body, lid or other component parts through opening or closing the lid
- Failure of the retaining bar from damage during the interface with standard ANSI approved lifting devices
- Failure of the lid to remain fully functional and continuously hold lid in the originally designed and intended position whether open or closed

The determination of the failure will be at the sole discretion of the CITY.

The CONTRACTOR will specify on their bid response, a local office that will handle all warranty repairs and replacement.

## **6. PACKAGING:**

When practical, all CONTRACTORS must package and ship all products purchased by the CITY in packaging and containers made of recyclable or Biodegradable materials. CONTRACTORS are encouraged to eliminate packaging or use the minimum amount necessary for product protection, in order to minimize waste to the greatest extent practicable.

## **7. PROJECT MANAGER:**

All project management will be coordinated by project manager, or designee. The CONTRACTOR shall designate, in the bid response, a project manager and telephone number, and all coordination between the CITY and the CONTRACTOR shall be the responsibility of the Project Managers.

## **8. ROLLOUT CART SPECIFICATIONS:**

8.1 The cart must hold a capacity of 65 (plus or minus 2%) US liquid gallons of fluids with a load rating in excess of 200 lbs. Minimum resin weight of an unassembled cart shall be 27 lbs. or greater. The body of the cart shall one piece. The interior shall be smooth and free from crevices, recesses, projections, and other obstructions where recyclables could become trapped. Exterior shall be smooth with no protruding parts or pieces. Overall maximum height shall be 41 inches, maximum width shall 27 inches, and maximum depth shall be 29.5 inches. The cart must be designed to withstand winds averaging 35 miles per hour when empty (based on the average wind resistance of the four sides of the cart).

8.2 The bottom of the cart shall be designed with a double drag rail system to prevent wear and tear. In addition, the bottom base shall be reinforced.

8.3 The cart shall be designed to have the capability of being emptied in a fully automatic and semi-automatic fashion. The cart shall be equipped with integrally molded pick up points. The cart shall be designed with a molded upper and lower envelope and lower catch bar attachment points. If a metal bar is used for the catch point it must be assembled to the cart before delivery from the factory.

8.4 All recycling carts shall be the color of the CITY'S choosing and any variation in pricing for different colors shall be specified in the bid response. The CITY'S Project Manager or designee shall approve the color before manufacturing. The samples provided by the Contractors should be bright in color.

8.5 All carts shall have a brand or logo stamp on two sides. A sample of the CITY's current stamp is provided on the attached CD. The CONTRACTOR shall mold in a stamp on the container or lid to read "Property of the City of Margate" as well as user instruction for the safe use and load rating of the cart. The CITY's Project Manager or designee shall approve the stamp designs and layouts prior to manufacturing of the carts.

8.6 Carts delivered from the factory will be assembled as much as possible for transport.

8.7 The lid shall be manufactured in the same manner and made from the same material as the cart body. Cart lids shall be mounted to the frame of the carts. It shall be configured that it will not warp, bend, slump, or distort to such an extent that it no longer fits the cart properly or become otherwise unserviceable. The lid shall be assembled to the cart prior to delivery from the factory. The lid shall be stable and self-balancing when in an upright position. The cart shall not tip over or otherwise move when the lid is opened. The lid shall be watertight and promote vector control. The lid should be sloped to direct water off and away from the cart. The lid shall be watertight as possible to prevent falling or windblown rain from entering the cart. The lid must have an external handle or a design that allows users to open the lid without touching the interior of the cart. The lid handle must be a minimum of 20 inches across the top of the lid. The lid handle must be integrally molded part of the cart body. Bolt on lid handle mounts are not acceptable. Metal hinges are not acceptable. Handle must have comfortable gripping areas for pushing or pulling the cart. The handle must not have any possible pinch points.

8.8 The wheels shall be blow-molded and if unassembled from the factory shall be snap-on type for ease of assembly. Wheels shall be at least 10 inches in diameter and all assembled pieces like spacers shall be included with any other locking features. Wheels not mounted at the factory, along with any other necessary parts, must be nested into each cart for quick assembly.

8.9 The cart shall be designed with a foot operated tilt feature designed into the axle area to facilitate user easy in tipping. Using the axle as a fulcrum is unacceptable. The axle shall be one solid rod with at least 3/4 inch thickness and have yield strength of 50,000 pounds per square inch. The axle shall be supported by at least four areas across the entire length of the axle allowing the axle assembly to absorb and distribute the impact of the cart hitting the ground or pavement. The axle must be rust resistant, tempered, and rolled solid steel. Axles not mounted at the factory, along with any other necessary parts, must be nested into each cart for quick assembly.

8.10 All carts shall be made from at least 10% post-consumer recycled plastic. In addition, the carts must be 100% recyclable. The plastic resin must be first quality high-density polyethylene supplied by a national petro-chemical producer.

8.11 The carts shall be stabilized against ultraviolet rays with color pigment and ultraviolet inhibitor compounded at a minimum of 3% by weight.

8.12 The recycling carts shall be wind resistant up to an average of at least 35 miles an hour without tipping over or moving in any fashion. The CONTRACTOR shall furnish American National Standards Institute (ANSI) wind tunnel testing information for the recycling carts.

8.13 The cart shall have a visible serial number stamped on the front of the cart in an area where wear will not occur. The stamped serial numbers shall be white in color. The serial number shall follow a nine digit format with the first 2 digits representing the year manufactured (i.e. 12 for this year) the next number being a 6 to represent a 65-gallon cart and the next numbers to be sequential. Each cart shall have a unique number. Another serial number format may be used with approval from the CITY'S Project Manager or designee.

**9. IN-MOLDED LABEL – IN-MOLDED LABEL PRICE OPTION FOR RECYCLING CARTS SHALL INCLUDE:**

In-molded label shall be permanently molded into the carts lid. It should not wear or peel from normal uses. It shall be protected from ultra-violet rays and other effects of the sun.

The attached CD details a sample label for recycling carts. It shall be 4-color and contain similar images and language as seen in the sample in-mold label file. All proofs for the label shall be approved by the Project Manager or designee prior to production. The sample provided by the Contractor shall demonstrate the ability of the Contractor to produce a similar label and also demonstrate the label area size of the cart's lid.

The size of the label for the 65-gallon lid shall be at least 9-1/2 inches by 14-1/2 inches.

**10. MAINTENANCE:**

CONTRACTOR shall undertake and be responsible for maintenance of the carts. Maintenance includes, but is not limited to, the repair or replacement of lids, wheels, axles, stop-bars and handles. All expenses related to maintenance shall be the responsibility of CONTRACTOR. When it has been determined that a cart is damaged beyond repair, CONTRACTOR shall substitute a new cart for the damaged cart, which shall be delivered by the CONTRACTOR to one location within the CITY once a week or directly to the residence. CONTRACTOR shall

not provide a non-warranty replacement without prior approval of the CITY. CONTRACTOR will handle all warranty repairs and replacements at no cost to the CITY. CONTRACTOR will provide to the CITY the serial number, RFID tag, and address for each replaced cart.

CONTRACTOR will re-decal carts when necessary and/or add new decals to carts describing the expanded list of recyclable materials to be placed in each cart.

**11. ASSEMBLY, DISTRIBUTION, EXCHANGES, AND TRACKING SERVICES  
PRICE OPTION FOR RECYCLING CARTS:**

The CONTRACTOR shall be responsible for coordinating the delivery of carts from the manufacturing plant, unloading loads of carts, assembling necessary parts, distributing the carts to homes throughout the CITY, and performing exchange duties. The CONTRACTOR shall have its own assembly and distribution division of its company. No sub-contractor or contract companies shall be used in assembly and distribution services.

The CITY shall provide a staging area that is sufficient for one trailer load of carts at a time. Should additional staging areas be required, the CONTRACTOR will locate and utilize the additional area at no additional cost to the CITY.

The CONTRACTOR shall unload all delivery trailers in a timely manner and unload them in a manner not to create noise. Any damage to the carts during any phase of the delivery, unloading, assembly, distribution, or exchanging shall be the responsibility of the CONTRACTOR to replace in kind.

The CONTRACTOR shall provide all necessary equipment and labor to assemble and transport the assembled carts to each residential address as directed by the CITY.

Carts shall be assembled in a timely manner and once assembled shall be placed in a manner that does not inhibit normal operations at the CITY facility. Any carts placed in an area that disrupts operations at that CITY facility would be the responsibility of the CONTRACTOR to move to a more appropriate place at the facility.

The CONTRACTOR will be required to attach any literature to the carts as required by the CITY. The literature will be provided by the CITY along with bags to place the literature in to protect it from outside weather conditions.

The CONTRACTOR shall assemble, distribute, and make exchanges in all but extreme weather conditions.

**11.1 DISTRIBUTION, EXCHANGES, AND TRACKING SERVICES:**

11.1.1 The CITY will provide the CONTRACTOR with a list of addresses for each recycling collection route where distribution and tracking services will be required. The address list will include street number, street name, city, and zip code number. If requested by the CONTRACTOR, large maps of the zones (other than ADC type street maps that can be purchased by the CONTRACTOR) can be provided by the CITY.

11.1.2 The CONTRACTOR will be required to distribute the 65-gallon cart to all residences that receive curbside recycling service. The CONTRACTOR will develop a distribution plan that follows a logical pattern when distributing the carts. Once in a development, the CONTRACTOR will finish all delivery services until moving to the next development. The CONTRACTOR will work within each recycling collection route until all delivery services are completed before moving to the next recycling collection route. The distribution plan shall be approved by the CITY prior to its implementation.

11.1.3 The CONTRACTOR will place the carts in a neat and orderly fashion at each address. For single-family and town-homes with garages and driveways, the carts will be placed in an upright position next to a mail box by the curb or end of the road, but not blocking the mailbox, public road, or driveway. Carts shall not be placed on the sidewalk. Any cart placed in a manner that obstructs the roadway, sidewalk, driveway, or mailbox will be the responsibility of the CONTRACTOR to immediately place correctly as directed by the CITY Project Manager or designee.

11.1.4 The CONTRACTOR will record the cart serial number and RFID tag for each and every address where the carts are delivered. For private driveways with multiple addresses, the CONTRACTOR shall place a sticker or tie a tag to the carts identifying the address number to which the cart has been assigned. The CONTRACTOR will keep an electronic file of the address assignments of carts by serial and RFID tag number and present it to the CITY in an acceptable electronic format upon completion of each recycling collection route.

11.1.5 For two weeks after carts have been initially distributed the CONTRACTOR shall provide exchange services for carts residents report as being damaged. The CONTRACTOR shall dedicate at least one full-time employee and vehicle to this task.

The CITY will provide an exchange work order list each morning that cart exchanges are required. The CONTRACTOR is required to go to each address on that report for which cart exchange service is requested and remove the initially delivered container and replace it with a new cart. This will require the exchange to physically go to each house.

It is expected that exchanges will be completed within 2 working days from the initial call from the resident. The CONTRACTOR'S designated exchange person shall report to the Department of Environmental and Engineering Services office each working day to receive the work order for that day. The work order shall include the resident's name, complete address, scheduled recycling collection day, phone number and comment section. The Contractor's exchange person shall phone the person requesting an exchange if additional information is needed. The Contractor may have to visit the property multiple times until the exchange problem is resolved. The Contractor shall complete a log of when the exchange was handled and shall document the new cart information (serial number and RFID tag number) for each address.

The CONTRACTOR will update and present the CITY with a complete updated electronic file after all exchanges have been complete.

The designated exchange staff member shall provide the CITY with their cell-phone number and be available via cell-phone. The cost of exchanging damaged carts during this period shall be the responsibility of the CONTRACTOR.

11.1.6 The CONTRACTOR shall collect from homes and recycle an estimated 15,000 existing red 9 or 18-gallon or green 20-gallon plastic recycling bins. The collection shall take place on the same day that carts are delivered. The older bins have the City of Margate logo and cannot be reused or redistributed for any other purpose. All plastic bins shall be disposed of by a City approved recycling process. The CONTRACTOR shall provide a fair market purchase price to the CITY on the Bid Sheet for the recycling content value, inclusive of shipping costs.

11.1.7 The CONTRACTOR shall provide a qualified assembly and distribution staff that is sufficient to respond to and solve any problems resulting from the distribution or assembly of the carts within 24 hours.



11.1.8 The CONTRACTOR shall follow directions by CITY staff while assembling and distributing carts. All CONTRACTOR employees shall be dressed in an appropriate manner with shirts that identify the CONTRACTOR. Appropriate safety gear like reflective clothing shall be worn at all times by the distribution staff. The CITY may require the CONTRACTOR to remove any unacceptable employee from these services who is wanton, negligent, or discourteous in performance of duties as outlined in the contract. All CONTRACTOR personnel shall be courteous with the public and CITY personnel at all times. CONTRACTOR employees shall answer questions from the public, direct them to CITY staff who may be accompanying them, or direct the resident to the CITY's Department of Environmental and Engineering Services staff.

11.1.9 The Contactor shall immediately pick-up and/or clean-up any materials dropped on the roadway or parking lot while in the process of assembly or distribution.

11.1.10 All vehicles used by the CONTRACTOR in the distribution of carts shall be kept clean and presentable and clearly marked on its exterior with the name and telephone number of the CONTRACTOR.

11.1.11 All distribution and exchange services shall take place between 7 am and 6 pm Monday through Thursday. No distribution or exchange services shall take place outside of those times unless approved by the Project Manager or designee.

11.1.12 The CONTRACTOR shall propose an electronic tracking system where the CITY can track the progress of cart distribution services.

The tracking system shall be web-based and the CITY will be provided with access to reports detailing delivery of carts by address each day. The reports shall be as real time as possible. A one-day lag in report data shall be acceptable. The reports shall detail addresses delivered, Global Positioning System coordinates, serial and RFID tag number. In addition to daily reports, the CONTRACTOR shall use GPS information to plot on a CITY map progress of delivery.

## **END OF SPECIAL AND TECHNICAL CONDITIONS**

**EXHIBIT 10**

**PERFORMANCE BOND**

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

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

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**CITY:**

City Manager  
City of Margate  
5790 Margate Boulevard  
Margate, FL 33063  
Telephone: (954)972-6454

BOND No.

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

Amount: One Million Dollars (\$1,000,000)

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_ (hereinafter "CONTRACTOR"), as Principal, and \_\_\_\_\_, (hereinafter "SURETY"), as Surety, are held and firmly bound unto the City of Margate, Florida (hereinafter "CITY"), as Obligee, in the amount of One Million Dollars (\$1,000,000), for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, Directors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the SURETY states that it has read all of the "Franchise Agreement for Solid Waste and Recycling Collection Services" (hereinafter "Agreement") that is attached hereto and incorporated herein by reference, and SURETY has carefully considered the CONTRACTOR's obligations and duties under the Agreement, including but not limited to the provisions of Sections 29, 30, and 31; and

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

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

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

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

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

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

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

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

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

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

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

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

11. The SURETY represents and warrants to the CITY that it has a rating of "A" or better as to management and "FSC X" or better as to strength by Best's Insurance Guide or Surety; (b) it is listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds; (c) it has been in business continuously for at least five years; and (d) it will not cancel or alter this BOND without providing at least 60 days advance notice to the CITY.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corporate Seal)

Company: (Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

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Title

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Witnesses:

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Print Name

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Print Name

FLORIDA RESIDENT AGENT FOR SURETY

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax