

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Ken Cohen/797-1030

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** Townwide

**TITLE OF AGENDA ITEM:** A Resolution of the Town of Davie, Florida approving the contract for collection and disposal of solid waste, bulk waste, recycling and construction and demolition debris between the Town of Davie and Waste Management, Inc. of Florida; providing for severability and providing an effective date.

**REPORT IN BRIEF:** The Town of Davie solicited Request For Proposals (RFP B-04-22) for solid waste, bulk waste, recycling and construction and demolition debris collection and disposal. Two proposals were received, one from Waste Management, Inc. of Florida and one from Republic Services (All Service Refuse). A council workshop was set up to review both proposals and as a result, staff was directed to negotiate a contract with Waste Management, Inc. of Florida. The attached contract (Exhibit A) is a result of the negotiation process.

**PREVIOUS ACTIONS:** There have been numerous renewal and amendment actions over the last 30 years. The last renewal was Ordinance #97-70 and the last amendment was Ordinance #2001-1.

**FISCAL IMPACT:**

Has request been budgeted? yes

If yes, expected revenue: \$2,359,000

Additional Comments: Revenues reflect an increase in the franchise fee from 12 ½% to 19 ½%.

**RECOMMENDATION(S):** Motion to approve the Ordinance

**Attachment(s):**

Ordinance

Contract (Exhibit "A")

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE CONTRACT FOR COLLECTION AND DISPOSAL OF SOLID WASTE, BULK WASTE, RECYCLING AND CONSTRUCTION AND DEMOLITION DEBRIS BETWEEN THE TOWN OF DAVIE AND WASTE MANAGEMENT INC. OF FLORIDA; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie deemed it in the communities best interest to go out for bid on waste services; and

WHEREAS, Waste Management, Inc. of Florida, a Florida corporation, provided the best proposal for the collection and disposal of solid waste, bulk waste, recyclables and construction and demolition debris to the Town of Davie; and

WHEREAS, the Town Council deems it in the best interest of the residents and business operators located within the Town to approve the subject contract; and

WHEREAS, the Town Council wishes to approve the contract as reflected in the "solid waste, bulk waste, recycling and construction and demolition debris collection contract", a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the contract for Collection and Disposal of Solid Waste, Bulk Waste, Recycling and Construction and Demolition debris, a copy of which is attached hereto as Exhibit "A" is hereby approved.

SECTION 2. The Mayor is authorized to execute same on behalf of the Town of Davie.

SECTION 3. All Ordinances and Resolutions or parts of Ordinances and Resolutions in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Resolution is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Resolution.

SECTION 5. This Resolution shall take effect on October 1, 2004.

PASSED AND ADOPTED THIS    DAY OF    , 2004

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

# Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract Town of Davie, Florida

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# **SOLID WASTE, BULK WASTE, RECYCLING AND CONSTRUCTION AND DEMOLITION DEBRIS COLLECTION CONTRACT**

This Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract (hereinafter referred to as "Contract") made and entered into this \_\_\_ day of \_\_\_\_\_, 2004, by and between the Town of Davie, Florida (hereinafter referred to as "TOWN"), a municipal corporation of the State of Florida, acting by and through its duly authorized Council, and \_\_\_\_\_, (hereinafter referred to as "CONTRACTOR").

## **RECITALS:**

WHEREAS, the TOWN issued a Request for Proposals (RFP) B-04-22 for Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection; and

WHEREAS, the CONTRACTOR, in response to the RFP B-04-22, submitted a proposal which was relied upon by the TOWN in selecting the CONTRACTOR; and

WHEREAS, the TOWN has selected the CONTRACTOR, pursuant to the RFP and the CONTRACTOR'S proposal thereto in reliance on the skills, expertise, and past successful experience in operating Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection services, to operate the Franchise, in accordance with the terms, conditions, and provisions of the Contract; and

WHEREAS, the TOWN has determined the execution of the Contract for Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection is in the best interest of the TOWN; and

NOW THEREFORE, in consideration of the mutual benefits and other considerations recited herein, and the terms and conditions hereinafter set forth, the CONTRACTOR and the TOWN do hereby agree as follows:

## **SECTION 1: CONTRACT**

### **1.1 TERM OF CONTRACT**

The term of this Contract shall be for a period of five (5) consecutive years, commencing on October 1, 2004 at 12:00 a.m., EST, through September 30, 2009 at 11:59 p.m., EST. This provision in no way limits the TOWN'S right to terminate this Contract for cause at any time during the initial term, pursuant to Section 12 of this Contract.

### **1.2 EXPIRATION OF CONTRACT PROVISIONS**

In the event a new Contract has not been awarded upon the expiration of the initial term or additional term thereof, and renewal options are not exercised, the CONTRACTOR agrees to provide service to the TOWN for an additional ~~ninety (90)~~ one hundred and eighty (180) calendar day period beyond the expiration of the Contract at the then established rates, provided the TOWN requests said services, in writing, at such time.

### **1.3 OPTION TO RENEW**

After the initial five (5) year term, the TOWN shall have the option to renew for additional terms of a minimum of one (1) year to a maximum of five (5) years. The term of the contract beginning on October 1, 2004 including additional terms shall not exceed thirty (30) years. The parties hereto may renew this Contract by mutual consent, in writing, prior to the expiration of the current term on September 30, 2009 provided the Town Council approves each renewal prior to the end of the respective term. This provision in no way limits the TOWN'S right to terminate this Contract for cause at any time during any additional term, pursuant to Section 12 of this Contract.

#### 1.4 FRANCHISE

The CONTRACTOR shall for the term of the Contract have the exclusive franchise and the sole obligation to operate and maintain a comprehensive Solid Waste, Bulk Waste, Construction and Demolition Debris and other refuse Collection services including residential Recycling in and for the TOWN as specified in this Contract. No other services shall be exclusive to the CONTRACTOR. The Contract specifically excludes the collection of Recovered Materials from Commercial Service Units in the Service Area. The CONTRACTOR is authorized by the TOWN to enter in and upon private property, in, upon over and across the present and future streets, alleys, bridges, easements and other public places of the TOWN for the purposes of collecting the Solid Waste, Bulk Waste, Recyclable Materials, Construction and Demolition Debris and other refuse of the residents, inhabitants, and businesses within the municipal corporate limits of the TOWN, or as directed in conformance with Ordinances and other applicable law.

#### 1.5 ANNEXATIONS

Adjustments to Service Area boundaries and the rights of the parties to this Contract due to annexation shall be as provided by Florida Statutes Section 171.062, as amended, or its successor and this Section.

The annexation of areas to the TOWN subsequent to the commencement of the initial term of the Contract may require the CONTRACTOR to relinquish any or all exclusivity of its Collection services in that portion of the Service Area and such portion may become exclusive to another entity pursuant to municipal decisions. If the TOWN elects to have the CONTRACTOR provide Collection services for the annexed area; the CONTRACTOR shall provide Collection services at the Rate Structure as established in Exhibit 1, 2 and 3. Any and all such relinquishment of exclusive Collection services required by the TOWN due to annexation of a portion of the Service Area shall have no effect on the TOWN'S Rate Structure as established in Exhibit 1, 2 and 3.

### SECTION 2: DEFINITIONS

For the purpose of this Contract, 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 Code of the TOWN shall apply. To the extent the definitions contained herein conflict with similar definitions contained in any federal, state or local law, the definition herein shall prevail. Definitions contained herein shall not be interpreted to require the CONTRACTOR to undertake any conduct contrary to federal, state, or local law. When consistent with the context, words used in the present tense shall include the future, words in the plural shall include the singular, and use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. **Advertising** shall mean any written communication for the purpose of promoting a product or service. The CONTRACTOR'S name in which it is doing business and non-toll telephone service number, written communication as specified in the Contract or written communication as directed by the Town Administrator or his/her designated representative(s), shall not be considered Advertising.
- B. **Bags** shall mean non-dissolvable plastic trash bags, each with a capacity of thirty-nine (39) gallons or less.
- C. **Biological Waste** shall mean, as defined in Chapter 403, Florida Statutes, Solid Waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals.
- D. **Biomedical Waste** shall mean, as defined in Chapter 403, Florida Statutes, any Solid Waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps; human blood, and human blood products and body fluids; and other materials

which in the opinion of the Florida Department of Health represent a significant risk of infection to persons outside the generating facility.

- E. **Bulk Waste** shall mean any and all non-liquid material which is predominantly noncombustible and therefore, should not be processed in a mass burn resource recovery system or which is not susceptible to normal loading and collection in packer-type sanitation equipment. Bulk Waste includes, but is not limited to furniture and large appliances (with refrigerants properly removed and verified), incidental tires, concrete rubble, mixed roofing materials, noncombustible building debris, lumber, rock, cement, asphalt, tar, gravel and other earthen materials, equipment, wire, cable, tree branches or trunks with a diameter of more than four inches, or being in whole or in part of a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion, and Garbage (to the extent that it is contained as an incidental part of Bulk Waste). Bulk Waste must be generated by the customer for whom the Bulk Waste is collected. Bulk Waste does not include items herein defined as Contractor-Generated Waste, or Exempt Waste. Compacting of Bulk Waste containing refrigerants or other potentially harmful fluids or gases is prohibited.
- F. **Bulk Waste Collection Service** shall mean the Collection of Bulk Waste from Residential Curbside Service Units, Multifamily Service Units and Commercial Service Units and delivery of the Bulk Waste to the Designated Disposal Facility.
- G. **Business Day** shall mean any day, Monday through Friday, from 9 a.m., EST till 5 p.m., EST.
- H. **Collection** shall mean the process whereby Solid Waste, Bulk Waste, and Construction and Demolition Debris are removed and transported to the Designated Disposal Facility and Recyclable Materials from Residential Curbside Service Units, Multifamily Service Units, TOWN facilities and Community Events are removed and transported to the Designated Recycling Facility.
- I. **Commercial Bulk Waste Collection Service** shall mean Bulk Waste Collection from Commercial Service Units and delivery of the Bulk Waste to the Designated Disposal Facility.
- J. **Commercial Collection Services** shall mean Commercial Solid Waste Collection Service and Construction and Demolition Debris Collection Service performed in the Service Area. Commercial Collection Services shall be billed at the rates established in the Rate Structure.
- K. **Commercial Service Unit** shall mean all retail, professional, wholesale, institutional and industrial facilities and any other commercial enterprises, including Hotels and Motels, rental apartment houses and licensed recreational vehicle parks, offering goods or services to the public located in the Service Area.
- L. **Commercial Solid Waste Collection Service** shall mean the Collection of Solid Waste from Commercial Service Units in the Service Area and the delivery of the Solid Waste to the Designated Disposal Facility. Commercial Solid Waste Collection Service shall be provided via Container(s) with or without Compactor(s), or Roll-off(s) with or without Compactor(s).
- M. **Community Events** shall mean events sponsored or co-sponsored by the TOWN.
- N. **Compactor** shall mean a mechanism, whether stationary or mobile, with a minimum compaction ratio of 2.5 to 1.0 used for the densification of Solid Waste in Containers or Roll-offs. The CONTRACTOR shall clearly mark all Containers and Roll-offs with Compactors as to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste or Sludge.
- O. **Construction and Demolition Debris** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from new site development, the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development

- operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site.
- P. **Construction and Demolition Debris Collection Service** shall mean the Collection of Construction and Demolition Debris from Residential Curbside Service Units, Multifamily Service Units and Commercial Service Units and delivery of the Construction and Demolition Debris to the Designated Disposal Facility. Construction and Demolition Debris Collection Services are considered Commercial Collection Services, regardless of who generates the Construction and Demolition Debris, which includes (but is not limited to) new construction of Dwelling Units and remodeling projects at existing Dwelling Units.
- Q. **Container** shall mean any metal receptacle, with a capacity of one cubic yard up to and including forty cubic yards designed or intended to be mechanically dumped into a loader-packer type garbage truck. All such Containers must be clearly marked in a manner so as to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste or Sludge.
- R. **Contract** shall mean this Contract.
- S. **Contract Year** shall begin on October 1 at 12:00 a.m., EST, through September 30 at 11:59 p.m., EST of each year for the term of the Contract.
- T. **CONTRACTOR** shall mean the person or entity set out initially above that has entered into this Contract to provide the services described herein for the Service Area.
- U. **Contractor-Generated Waste** shall mean Bulk Waste generated by builders, building contractors, privately employed tree trimmer and tree surgeons, landscape services and lawn or yard maintenance services and nurseries.
- V. **County** shall mean Broward County, Florida.
- W. **Designated Disposal Facility** shall mean the facility or facilities designated by the TOWN for the disposal of all Solid Waste, Bulk Waste, and Construction and Demolition Debris collected pursuant to this Contract.
- X. **Designated Recycling Facility** shall mean the Recyclable Materials Processing Facility designated by the TOWN for the processing of all Recyclable Materials collected pursuant to this Contract.
- Y. **Disposal Charges** shall mean the prevailing per-ton rate charged at the Designated Disposal Facility for the acceptance and disposal of waste materials from Residential Curbside Collection Services, Multifamily Collection Services and Commercial Collection Services.
- Z. **Dwelling Unit** shall mean any individual living unit in a single family dwelling, multifamily dwelling or mixed-used dwelling within a structure or building intended for, or capable of being utilized for residential living, other than those structures or building units included within the definition of Commercial Service Unit herein.
- AA. **Exempt Waste** shall mean Biological Waste, Biomedical Waste, Hazardous Waste, Sludge, sewage, automobiles, automobile parts, boats, boat parts, trailers, internal combustion engines, lead-acid batteries, used oil and tires, dead animals, highly flammable substances, those wastes under the control of the Nuclear Regulatory Commission and those other materials whose size, weight, or both are in excess of that allowed for Bulk Waste as defined herein.
- BB. **Financial Donation** shall mean the financial contribution that the CONTRACTOR shall make to the TOWN as corporate goodwill.
- CC. **Franchise Fee** shall mean the charge to CONTRACTOR for the use of present and future streets, alleys, bridges, easements and other public places of the TOWN, pursuant to this Contract.
- DD. **Garbage** shall mean all putrescent waste which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities.

- EE. **Garbage Can** shall mean any commonly available light gauge steel, plastic or galvanized receptacle of a non-absorbent material, closed at one end and open at the other, and without any jagged or sharp edges, furnished with a closely fitted top or lid and handle. A Garbage Can shall be of a capacity of not less than thirty-two (32) gallons, and not greater than fifty (50) gallons and, including waste materials, such Garbage Can shall not exceed fifty (50) pounds in weight.
- FF. **Garbage Cart** shall mean a heavy plastic receptacle affixed with the TOWN logo, with a rated capacity of not less than thirty-four (34) gallons nor more than ninety-six (96) gallons, having a hinged tight-fitting lid and wheels, which is designed or intended to be used for automated or semi-automated collection. Garbage Carts will be provided by and distributed by the CONTRACTOR.
- GG. **Gross Revenues** shall mean all revenues collected by the CONTRACTOR, from any source whatsoever, arising from, attributable to or in any way derived from the services it provides pursuant to this Contract, inclusive of revenues collected by the CONTRACTOR related to its obligations to pay Disposal Charges, and exclusive of franchise fees. Gross Revenues computations shall not be reduced by Disposal Charges or Franchise Fees, or amounts collected to offset such Disposal Charges or Franchise Fees.
- HH. **Hazardous Waste** shall mean Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under Chapter 470, Florida Statutes.
- II. **Holiday** shall mean Work Day(s) that Collection(s) shall not occur.
- JJ. **Multifamily Bulk Waste Collection Service** shall mean Bulk Waste Collection from Multifamily Service Units on scheduled Bulk Waste Collection days and delivery of the Bulk Waste to the Designated Disposal Facility.
- KK. **Multifamily Collection Services** shall mean Multifamily Solid Waste Collection Service, Multifamily Recycling Collection Service, and Multifamily Bulk Waste Collection Service performed in the Service Area. Multifamily Collection Services shall be billed the rates established in the Rate Structure.
- LL. **Multifamily Recycling Collection Service** shall mean the Collection of Recyclable Materials from Multifamily Service Units within the TOWN, utilizing Recycling Carts, and the delivery of the Recyclable Materials to the Designated Recycling Facility.
- MM. **Multifamily Service Unit** shall mean Dwelling Units utilizing Container(s) with or without Compactor(s) or Roll-off(s) for the accumulation and set-out of Solid Waste.
- NN. **Multifamily Solid Waste Collection Service** shall mean the Collection of Solid Waste from Multifamily Service Units located within the Service Area and the delivery of the Solid Waste to the Designated Disposal Facility.
- OO. **Non-Collection Notice** shall mean a form used by the CONTRACTOR to notify customers of the reason for non-Collection of materials set out by the customer for Collection by the CONTRACTOR pursuant to the Contract, developed by the CONTRACTOR and approved by the TOWN.
- PP. **Ordinance** shall mean those parts of the code of the TOWN governing Collection, disposal and Recycling activities within the TOWN.
- QQ. **Rate Structure** shall mean the rates approved by the TOWN shown in Exhibits 1, 2, 3 and 5.
- RR. **Recovered Materials** shall mean metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled and have been diverted and source separated or have been removed from the Solid Waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any

- use that constitutes disposal. Recovered Materials as described above are not Solid Waste. Construction and Demolition Debris is not Recovered Materials.
- SS. **Recyclable Materials** shall mean those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste. Recyclable Materials to be collected shall include all materials that are accepted by the Designated Recycling Facility. These materials may be re-defined by the TOWN from time-to-time, at the sole discretion of the TOWN.
- TT. **Recyclable Materials Processing Facility** shall mean a facility engaged solely in the storage, processing, resale, or reuse of Recyclable Materials and that meets the requirements of Section 403.7046, Florida Statute.
- UU. **Recycling** shall mean any process by which materials which would otherwise have been Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
- VV. **Recycling Bin** shall mean rigid rectangular receptacles stenciled with the TOWN logo and approved by the Town Administrator or his/her designated representative(s) for the Collection of Recyclable Materials. The quantity per Dwelling Unit and color(s) of the Recycling Bins shall be determined by the Town Administrator or his/her designated representative(s). Recycling Bins shall not contain the name or logo of the CONTRACTOR. Recycling Bins shall be made of plastic or other suitable substance of no less than fourteen (14) gallons.
- WW. **Recycling Cart** shall mean a receptacle stenciled with the CONTRACTOR logo and approved by the Town
- XX. **Residential Curbside Bulk Waste Collection Service** shall mean Bulk Waste Collection from Residential Curbside Service Units and the delivery of the Bulk Waste to the Designated Disposal Facility.
- YY. **Residential Curbside Collection Service** shall mean Residential Curbside Solid Waste Collection Service, Residential Curbside Recycling Collection Service, and Residential Curbside Bulk Waste Collection Service performed in the Service Area. Residential Curbside Service Units shall be billed the rates established in the Rate Structure.
- ZZ. **Residential Curbside Recycling Collection Service** shall mean the Collection of Recyclable Materials from Residential Curbside Service Units within the TOWN, utilizing Recycling Bins, and the delivery of the Recyclable Materials to the Designated Recycling Facility.
- AAA. **Residential Curbside Service Unit** shall mean any Dwelling Unit utilizing a Garbage Can, [Garbage Cart,] Bags or bundles for the accumulation and set-out of Solid Waste.
- BBB. **Residential Curbside Solid Waste Collection Service** shall mean the Collection of Solid Waste from Residential Curbside Service Units in the Service Area and the delivery of that Solid Waste to the Designated Disposal Facility.
- CCC. **Roll-Off Collection Service** shall mean the Collection and disposal of Roll-Off Containers containing Solid Waste and the Collection and disposal of Roll-Off Containers containing Construction and Demolition Debris. All such Roll-Off Containers must be clearly marked to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste or Sludge.
- DDD. **Roll-Off Containers** shall mean any metal receptacle with a capacity of more than eight (8) cubic yards, which is normally loaded onto a motor vehicle. Roll-off Containers utilized for services covered under this Contract shall be owned by the CONTRACTOR.
- EEE. **Rubbish** shall mean all refuse, accumulation of paper, excelsior, rags, wooden or paper boxes and containers, sweep-ups and all other accumulations of a nature other than Garbage and Yard Trash, resulting from the normal activities of a Residential Curbside Service Unit, Multifamily Service Unit or Commercial Service Unit wherein the Rubbish is collected. Rubbish does not include items herein defined as Contractor-Generated Waste or Exempt Waste.

- FFF. **Scheduled Collection Day** shall mean any day in which Collection activities take place.
- GGG. **Service Area** shall mean the municipal limits of the TOWN.
- HHH. **Sludge** shall mean the accumulated solids, residues and precipitates generated as a result of waste treatment or processing including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.
- III. **Solid Waste** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean Sludge unregulated under the federal Clean Water Act or Clean Air Act, Sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or Garbage, Rubbish, refuse, Special Waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recyclable Materials are not Solid Waste.
- JJJ. **Special Waste** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean Solid Wastes that can require special handling and management, including, but not limited to, White Goods, waste tires, used oil, lead-acid batteries, Construction and Demolition Debris, ash residue, Yard Trash and biological wastes.
- KKK. **TOWN** shall mean the Town of Davie, Broward County, Florida.
- LLL. **Town Administrator** shall mean the Town Administrator of the TOWN, or his/her designated representative(s).
- MMM. **Town Council** shall mean the Town Council of the TOWN.
- NNN. **Yard Trash** shall mean any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) inches in diameter. Yard Trash must be generated by the customer and at the Residential Service Unit wherein the Yard Trash is collected. Yard Trash does not include items herein defined as Contractor-Generated Waste or Exempt Waste.
- OOO. **White Goods** shall mean discarded refrigerators, ranges, water heaters, freezers, and other similar domestic appliances. White Goods must be generated by the customer and at the Residential Service Unit or Commercial Service Unit wherein the White Goods are collected.
- PPP. **Work Day** shall mean any day, Monday through Saturday.
- QQQ. **Written Notice** shall mean email or mail when referring to written notice from the TOWN. Written Notice from the CONTRACTOR to the TOWN shall mean mail, and excludes email.

### **SECTION 3: COLLECTION SERVICES TO BE PROVIDED BY CONTRACTOR**

The CONTRACTOR shall provide all Collection Services, as defined in Section 3 herein, within the Service Area, except as provided herein. Said service shall include:

#### **3.1 RESIDENTIAL CURBSIDE COLLECTION SERVICES**

- 3.1.1 **Residential Curbside Solid Waste Collection Service** -- The CONTRACTOR shall pick up, 2x per week, a maximum of ninety-six (96) gallons consisting of either a 96, or a 65 gallon Garbage Cart of Solid Waste including Yard Trash from each Residential Curbside Service Unit. ~~A second~~ Additional 96 or 65 gallon carts may be added at an additional charge. Containers shall be placed within five (5) feet of the street curb, swale, paved surface of the public roadway, closest accessible roadway, or other location agreed to by the CONTRACTOR and within three (3) feet of poles, trees, recycling bins etc. Customer will provide safe and efficient accessibility to the CONTRACTOR'S collection crew and vehicle. In certain cases, it may be decided that properly

containerized residential solid waste containers may be placed at a location mutually agreed upon by the customer and the CONTRACTOR. The Town Administrator or his Designee shall mediate any dispute regarding location of the container. The CONTRACTOR shall collect Christmas Trees from Residential Curbside Service Units from December 25<sup>th</sup> until the end of January, each Contract Year. The CONTRACTOR shall not collect Solid Waste or Yard Trash placed outside of the Garbage Carts on any regularly scheduled solid waste collection day, (excluding Christmas trees). If a scheduled collection day falls on a holiday, CONTRACTOR shall collect all solid waste left curbside on the next scheduled collection day. For the first six months of any new program coming on line, in order to assist the TOWN in a smooth transition, CONTRACTOR shall issue a Non-Collection Notice to the customer containing instructions on the proper procedures for setting out Solid Waste. The CONTRACTOR shall maintain a record of the address where out-of-cart Solid Waste was not collected, the date of non-collection, and the reason it was not collected, to be provided to the TOWN upon request.

- 3.1.2 **Additional Containers** – CONTRACTOR shall distribute additional carts free of charge to Residential Curbside Service Units that request same. Recipients of the additional carts, shall prepay the annual rate for second and additional carts. A resident may put out a total of five (5) carts at any one time. Recipients of additional carts may discontinue the use of the cart, but shall forfeit and waive any unused advanced payment. Should a recipient of an additional carts who discontinues such services, subsequently request resumption, within a twelve (12) month period, of the second or additional carts, in addition to the one year's prepayment, shall pay a delivery charge of \$50.00.
- 3.1.2.1 **Garbage Cart(s) Purchase, Distribution, Replacement and Repair** – The CONTRACTOR shall be responsible for the purchase, distribution and repair of Garbage Carts in the complete Service Area. Contractor shall distribute a 96 gallon cart to each residential Service Unit pursuant to a schedule which shall provide that approximately 25% of the carts required shall be delivered for each thirty (30) day period commencing September 15, 2004 and ending January 15, 2005. CONTRACTOR shall maintain, at all times, a sufficient number of carts to ensure that all extra or replacement carts can be provided within two (2) work days upon notification by the Town or the customer. CONTRACTOR shall distribute fully assembled carts to new service units that are added to the service area during the term of this contract. Upon notification from the Residential Curbside Service Unit to the TOWN or the CONTRACTOR that the customer's Garbage Cart(s) has been damaged, the CONTRACTOR shall repair, if possible, or replace said Garbage Cart(s) with an equivalent Garbage Cart(s) (i.e. capacity, wheels, lid, etc.), at the CONTRACTOR'S own expense, within two (2) Work Days, If carts have been damaged due to customers abuse or negligence, as determined by the TOWN, the Carts shall be repaired or replaced, at the expense of the Customer utilizing the current cost of the cart.
- 3.1.2.2 **Off-Street Collection Service** – The CONTRACTOR shall provide off-street Collection for Solid Waste from Residential Curbside Service Units if all adult occupants residing therein are handicapped and if a request for off-street service has been made to, and approved by the TOWN, in the manner required by the TOWN. All requests for Off-Street Service available under this Section shall be made in writing to the Town with the specific need and criteria attached thereto. The TOWN shall notify the CONTRACTOR in writing of any customers requiring off-street service. No additional monies shall be due to the CONTRACTOR for the provisions of off-street service to handicapped customers. The point of Collection for off-street service shall be the back or side yard or such other location as is mutually agreeable to the CONTRACTOR and the customer. In the event the appropriate location cannot be agreed upon, the TOWN shall mediate the dispute and designate the location for Collection. The CONTRACTOR shall provide off-street service

on the same Scheduled Collection Day that Residential Curbside Solid Waste Collection Service would otherwise be provided to the Residential Curbside Service Unit.

3.1.2.3 **Residential Curbside Bulk Waste Collection Service** – The CONTRACTOR shall pick up Bulk Waste, not to exceed 6 cubic yards per Residential Curbside Service Unit, Town-wide, fifty two (52) times per year on a Scheduled Collection Day of the week that Residential Curbside Solid Waste Collection Service is provided to the Residential Curbside Service Unit. If the customer needs additional Bulk Waste Collection in excess of the amount specified above, it will be provided by the CONTRACTOR at the Additional Bulk Waste Collection rate specified in Exhibit 3. The customer shall pay the additional Bulk Waste Collection Charge in advance of the collection and CONTRACTOR shall not be required to provide such service without such prepayment.

3.1.3 **Residential Curbside Recycling Collection Service** – The CONTRACTOR shall provide Residential Curbside Recycling Collection Service in accordance with Section 3.5.

## 3.2 MULTIFAMILY COLLECTION SERVICES

3.2.1 **Multifamily Solid Waste Collection Service** – The CONTRACTOR shall pick-up Solid Waste from Multifamily Service Units within the Service Area. The size of the Container(s) or Roll-off(s) and the frequency of Collection shall be sufficient to provide that no Solid Waste shall be placed outside the Container(s) or Roll-off(s). The size of the Container(s) or Roll-off(s) and the frequency of Collection (meeting minimum requirements contained in the Ordinance unless less frequent service is approved by the TOWN) shall be mutually agreed upon by the customer and the CONTRACTOR. Collection service scheduled to fall on a Holiday may be rescheduled as long as the minimum frequency requirement is met. The CONTRACTOR shall provide the Container(s) and Roll-off(s) at the approved rental rates. Containers and Roll-offs shall meet accepted industry standards and be maintained by the CONTRACTOR as necessary to maintain efficient and sanitary services. The CONTRACTOR shall notify the TOWN if it is deemed necessary to increase service for a customer. The TOWN reserves the right to approve or decline the service change. If the TOWN approves the service change request, the CONTRACTOR shall notify the customer of the increased service frequency and Rate Structure. If the TOWN declines the service change request, the CONTRACTOR shall continue to provide the customer the current level of service. The CONTRACTOR shall collect Christmas Trees from Multifamily Service Units at no additional cost to the Multifamily Service Unit or the TOWN.

3.2.1.1 **Container(s) and/or Roll-off(s) Replacement** – Upon notification from the Multifamily Service Unit to the TOWN or the CONTRACTOR that the CONTRACTOR damaged the customer's Container(s) and/or Roll-off(s), the CONTRACTOR shall repair or replace said Container(s) and/or Roll-off(s) with an equivalent Container(s) and/or Roll-off(s) (i.e. capacity, wheels, lid, compacting device, etc.), at the CONTRACTOR'S own expense, within two (2) Work Days. If carts have been damaged due to customers abuse or negligence, as determined by the TOWN, the Carts shall be repaired or replaced, at the current cost of the cart at the expense of the Customer.

3.2.1.2 **Multifamily Bulk Waste Collection Service** – The CONTRACTOR shall provide two bulk waste pick collections per year at all multi-family units that utilize commercial collection service, scheduled in advance without additional charges. Additionally, Bulk Waste Collection would be provided as necessary on an individual basis per Exhibit 3 of this Agreement.

3.2.1.3 **Multifamily Recycling Collection Service** – The CONTRACTOR shall provide Residential Multifamily Recycling Collection Service in accordance with Section 3.5

### 3.3 COMMERCIAL COLLECTION SERVICES

- 3.3.1 **Commercial Solid Waste Collection Service** – The CONTRACTOR shall pick-up Solid Waste from Commercial Service Units within the Service Area. The size of the Container(s) or Roll-off(s) and the frequency of Collection shall be sufficient to provide that no Solid Waste shall be placed outside the Container(s), Garbage Cart(s) or Roll-off(s). Customer and CONTRACTOR shall determine the level of service and size of container after considering the type of business, waste generation rate and type, and other similar factors. In the event that same cannot be reasonably agreed upon, the Town shall make the final determination in advance of the change. During the term of this contract, a written service agreement between the CONTRACTOR and the customer, in a format acceptable to the Town, shall be entered into regarding the level and type of service to be provided, for solid waste services only. The written service agreement shall include rate information as set forth in Exhibit 8 to this contract, and shall include the name and address of the Customer, and the name and address of the contact person for the customer in a format as prescribed by the TOWN in advance and a copy shall be filed with the TOWN within five (5) days of execution of the written agreement. The size of the Container(s), Garbage Cart(s) or Roll-off(s) and the frequency of Collection (meeting minimum requirements contained in the Ordinance unless less frequent service is approved by the TOWN) shall be mutually agreed upon by the Commercial Service Unit and the CONTRACTOR. Commercial Service Units generating more Solid Waste than can be stored in three (3) Garbage Carts or generating a large percentage of putrescent waste, as determined by the TOWN and CONTRACTOR, shall be required to use a Container. Collection service scheduled to fall on a Holiday may be rescheduled as determined between the Commercial Service Unit and the CONTRACTOR as long as the minimum frequency requirement is met. The CONTRACTOR shall provide the Container(s) and Roll-off(s) at the approved rental rates. Containers, Garbage Carts and Roll-offs shall meet accepted industry standards and be maintained by the CONTRACTOR as necessary to maintain efficient and sanitary services. The CONTRACTOR shall notify the TOWN if it is deemed necessary to increase service for a customer. The TOWN reserves the right to approve or decline the service change. If the TOWN approves the service change request, the CONTRACTOR shall notify the customer of the increased service frequency and Rate Structure. If the TOWN declines the service change request, the CONTRACTOR shall continue to provide the customer the current level of service. All Containers, Garbage Carts and Roll-offs shall be readily accessible to the CONTRACTOR's crew and vehicles.
- 3.3.2 **Exclusivity enforcement** – The TOWN shall assist CONTRACTOR in enforcing the exclusivity of this contract. In the event that a CONTRACTOR determines that a commercial establishment has not contracted with the CONTRACTOR for garbage collection or roll-off collection service, as the case may be, CONTRACTOR shall notify the TOWN by submitting a Noncompliance Form, substantially in the form of Exhibit 9. The TOWN shall notify the commercial establishment to cure the noncompliance. If the noncompliance is not cured, the TOWN shall file an appropriate enforcement action.

### 3.4 CONSTRUCTION AND DEMOLITION DEBRIS COLLECTION SERVICE

The CONTRACTOR shall provide Construction and Demolition Debris Collection Service within the Service Area. The size of the Roll-off(s) and the frequency of Collection shall be sufficient to provide that no Construction and Demolition Debris shall be placed outside the Roll-off(s). The size of the Roll-off(s) and the frequency of Collection (meeting minimum requirements contained in the Ordinance unless less frequent service is approved by the TOWN) shall be mutually agreed upon by the customer and the CONTRACTOR. Collection service scheduled to fall on a Holiday may be rescheduled as determined between the customer and the CONTRACTOR as long as the minimum frequency requirement is met. The CONTRACTOR shall provide the Container(s) and Roll-off(s) at the approved rental rates. The CONTRACTOR shall deliver the

mutually agreed upon size and quantity of Roll-offs within three (3) Work Days of receipt of the request for services or delivery date requested by the customer, whichever the customer selects. The CONTRACTOR shall pick up for disposal Roll Off Containers within a 24 hour period from the time of the Customer's call, and excluding Sundays, for all ongoing construction sites. All Roll-Off(s) Containers shall be readily accessible to the CONTRACTOR'S crew and vehicles.

### 3.5 RECYCLING

The CONTRACTOR shall provide Recycling Services one (1) time per week to all Residential Curbside Service Units and Multifamily Service Units in the Service Area on their respective regularly scheduled Solid Waste Collection day. The services to be performed by the CONTRACTOR shall consist of Collection of all designated Recyclable Materials and transportation to the Designated Recycling Facility.

3.5.1 **Location of Collection** – The CONTRACTOR shall provide Recycling Service to customers whose Recyclable Materials are properly containerized and have been placed at the appropriate location for Collection. In the event an appropriate location cannot be agreed upon between the CONTRACTOR and the customer, the TOWN shall mediate the dispute and designate the location for Collection. The CONTRACTOR shall report monthly to the TOWN, situations that prevent or hinder Collection on any premises.

3.5.1.1 **Residential Curbside Service Units** – Residential Curbside Service Units shall place Recycling Bins at the curb, within five feet (5') of the street, or other location agreed to by the CONTRACTOR and customer that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle. In certain instances, properly containerized Recyclable Materials may be placed in driveway turnout areas to avoid placing it in the traveled roadway.

3.5.1.1.1 **Off-Street Recycling Service** – The CONTRACTOR shall provide off-street Collection of Recyclable Materials from Residential Curbside Service Units if all adult occupants residing therein are handicapped and if a request for off-street service has been made to, and approved by the TOWN, in the manner required by the TOWN. The TOWN shall notify the CONTRACTOR in writing of any customers requiring off-street service. No additional monies shall be due to the CONTRACTOR for the provisions of off-street service to handicapped customers. The point of Collection for off-street service shall be the back or side yard or such other location as is mutually agreeable to the CONTRACTOR and the customer. In the event the appropriate location cannot be agreed upon, the TOWN shall mediate the dispute and designate the location for Collection. The CONTRACTOR shall provide off-street service on the same Scheduled Collection Day that Residential Curbside Service would otherwise be provided to the Residential Curbside Service Unit.

3.5.1.2 **Multifamily Service Units** – Multifamily Service Units shall place Recycling Carts at a location agreed to by the CONTRACTOR and customer that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle.

3.5.2 **Recyclable Materials to be Collected** – The CONTRACTOR shall collect all Recyclable Materials that are accepted by the Designated Recycling Facility and that are placed in a Recycling Bin or Recycling Cart. Old corrugated cardboard which has been broken down that is placed beside a Recycling Bin or Recycling Cart, and newspapers that are contained in paper bags and placed beside the Recycling Bin or Recycling Cart shall be collected by the CONTRACTOR. Old corrugated cardboard and newspaper that have been properly set out and have become wet due to local weather conditions shall be collected by the CONTRACTOR. If at any time, during the period of this contract, the designated Material Recovery Facility (MRF) determines that additional items will be collected, these additional items will automatically be added to the Town's list of recyclables.

At such time as the TOWN desires to add additional materials to the Recyclable Materials collected, the TOWN shall submit to the CONTRACTOR an expansion proposal, and the CONTRACTOR receiving such proposal shall evaluate and consider the same in good faith. If the CONTRACTOR and the TOWN fail to reach an agreement with respect to the terms and conditions for expansion of the services within sixty (60) calendar days of submission of expansion proposal, the CONTRACTOR shall continue to perform all services as provided by Contract for the remaining term thereof.

- 3.5.3 **Contaminated Recyclable Materials** – The CONTRACTOR shall not be required to collect Recyclable Materials from Residential Service Units if the customer does not segregate the Recyclable Materials from the Solid Waste. If Recyclable Materials are contaminated through commingling with Solid Waste or commingling with Recyclable Materials not accepted at the Designated Recycling Facility (e.g. plastic bags, aluminum trays, polystyrene), the CONTRACTOR shall, if practical, separate said commingled non-compliant materials from the Recyclable Materials. The Recyclable Materials shall then be collected and the Solid Waste or other non-compliant materials shall be left in the Recycling Bin or Recycling Cart along with a Non-Collection Notice of why the Solid Waste or other non-compliant material is not considered a Recyclable Material. However, in the event the Recyclable Materials and the Solid Waste are commingled to the extent that they cannot easily be separated by the CONTRACTOR, or the nature of the Solid Waste renders the entire Recycling Bin or Recycling Cart contaminated, the CONTRACTOR shall leave the Recycling Bin or Recycling Cart un-emptied and issue a Non-Collection Notice to the customer containing instructions on the proper procedures for setting out Recyclable Materials. The CONTRACTOR shall not collect the Recyclable Materials until the customer segregates the Recyclable Materials from the Solid Waste. The CONTRACTOR shall maintain a record of the address where Recyclable Materials were not collected, the date of non-collection, and the reason they were not collected, to be provided to the TOWN upon request.
- 3.5.4 **Recycling Bins** – The TOWN shall be responsible for the purchase of Recycling Bins.
- 3.5.4.1 **Distribution and Replacement** – The CONTRACTOR shall be responsible for the distribution of the Recycling Bins. Upon notification to the CONTRACTOR from the TOWN or customer that a new customer(s) has been added to the Service Area during the term of the Contract, the CONTRACTOR shall distribute a Recycling Bin(s) to such customers within two (2) Work Days. In the event that a Recycling Bin(s) has been stolen or that it has been damaged beyond repair, the customer(s) shall notify the TOWN directly. Upon notification to CONTRACTOR by the TOWN that a Recycling Bin(s) has been stolen or that it has been damaged beyond repair, the CONTRACTOR shall deliver a replacement Recycling Bin(s) to such customer within two (2) Work Days. The CONTRACTOR'S employees shall take care to prevent damage to Recycling Bins by unnecessary rough treatment.
- 3.5.4.2 **Ownership** – Ownership of Recycling Bins at the end of the Contract shall rest with the TOWN.
- 3.5.4.3 **Recycling Carts** – The TOWN CONTRACTOR shall be responsible for the purchase of Recycling Carts.
- 3.5.4.4 **Distribution and Replacement** – The CONTRACTOR shall be responsible for the distribution of the Recycling Carts. The CONTRACTOR shall distribute the number of Recycling Cart(s) required by the customer as to prevent overflow based on one (1) time per week Collection. Upon notification to the CONTRACTOR from the TOWN or customer that a new customer(s) has been added to the Service Area during the term of the Contract, the CONTRACTOR shall distribute a Recycling Cart(s) to such new customers within two (2) Work Days. In the event that a Recycling Cart(s) has been stolen or that it has been damaged beyond repair, the customer(s) shall notify the TOWN directly. Upon notification to

CONTRACTOR by the TOWN that a Recycling Cart(s) has been stolen or that it has been damaged beyond repair, the CONTRACTOR shall deliver a replacement Recycling Cart(s) to such customer within two (2) Work Days. The CONTRACTOR'S employees shall take care to prevent damage to Recycling Carts by unnecessary rough treatment. The CONTRACTOR shall not remove Recycling Cart(s) unless authorized by the Town Administrator or his/her designated representative(s).

3.5.4.5 **Ownership** – Ownership of Recycling Carts at the end of the Contract shall rest with the TOWN CONTRACTOR.

### 3.6 SPECIAL COLLECTION SERVICES

Special collection services included in Exhibit 3 shall be provided by the CONTRACTOR.

### 3.7 CORPORATE GOODWILL

The CONTRACTOR shall provide the following Collection services and Financial Donations to the TOWN. The CONTRACTOR shall be responsible for the expenses of Container(s) and Roll-off(s) rental and maintenance, Collection, Disposal Charges, Recycling processing charges, locks, and all other expenses incurred with providing the Collection services contained in this Section. There shall be no cost to the TOWN or Community Event co-sponsors. The TOWN shall determine the location of Collection, size, quantity, and frequency of Collection for Containers(s), Roll-off(s), Garbage Can(s), [Garbage Carts,] Recycling Bin(s), Recycling Cart(s) and other required equipment to be provided at the expense of the CONTRACTOR.

- 3.7.1 **TOWN Facilities Service** – The CONTRACTOR shall provide Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Services to all current and future TOWN owned and/or operated facilities.
- 3.7.2 **TOWN Properties** – The CONTRACTOR shall provide for the removal of Solid Waste, Bulk Waste, Construction and Demolition Debris and Recyclable Materials from rights of way, roads, swales, vacant lots, parks and properties owned by a governmental entity.
- 3.7.3 **TOWN Construction Site** – The CONTRACTOR shall provide Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Services to any construction site at which the TOWN 's employees or TOWN sponsored non-profit agency are conducting construction, renovation or demolition activity.
- 3.7.4 **Clean-up Days** – The CONTRACTOR shall provide Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Services to a maximum of ~~four~~ two (2) clean-up days per Contract Year sponsored by the TOWN.
- 3.7.5 **Community Events** – The CONTRACTOR shall provide Solid Waste, Bulk Waste, Construction and Demolition and Recycling to a maximum of twenty (20) Community Events per year for the term of the Contract.
- 3.7.6 **Financial Donation** – The CONTRACTOR shall donate 0.5% of Gross Revenues on a monthly basis. The financial donation shall be due to the TOWN according to Section 9 of the Contract.

## SECTION 4: TOWN'S RIGHT TO DESIGNATE COLLECTION SERVICE LEVEL

The TOWN reserves the right to determine the frequency of pick up and size of Container(s) or Roll-off(s) within the Service Area. If the TOWN determines that a change in frequency of service or Container(s) or Roll-off(s)

size is necessary, the CONTRACTOR shall adjust Container(s) or Roll-off(s) and frequency of service accordingly. The customer shall be responsible to pay for the adjusted service levels, whether increased or decreased.

## **SECTION 5: TRANSITION**

The CONTRACTOR understands and agrees that the time between the formal Contract signing and October 1, 2004 is intended to provide the CONTRACTOR with sufficient time to, among other things, order equipment and prepare necessary routing changes. The CONTRACTOR shall be responsible for the provision of all Collection Services beginning October 1, 2004. Accordingly, the CONTRACTOR shall distribute a 96 gallon cart to each residential Curbside Service Unit pursuant to a schedule which shall provide that approximately 25% of the carts required shall be delivered for each thirty (30) day period commencing September 15, 2004 and ending January 15, 2005. The CONTRACTOR shall provide the Town Administrator or his/her designated representative(s) with a transition schedule within five (5) Business Days after execution of the Contract, and shall be available to brief the TOWN staff on the status of transition activities on a weekly basis leading up to initiation of Collection Services on October 1, 2004.

## **SECTION 6: DESIGNATED DISPOSAL FACILITY**

The Designated Disposal Facility and the Designated Recycling Facility shall be the Resource Recovery System disposal facility, landfill, contingency landfill, transfer station or Recyclable Materials Processing Facility designated pursuant to the Interlocal Agreement between the County and the TOWN, as long as the TOWN remains a part of the Interlocal Agreement. If the TOWN elects to withdraw from the Interlocal Agreement, the TOWN reserves the right to designate an alternative Designated Disposal Facility and/or Designated Recycling Facility. For materials not accepted by the Designated Disposal Facility or Designated Recycling Facility, the TOWN reserves the right to designate an additional Designated Disposal Facility(ies) and Designated Recycling Facility(ies).

The CONTRACTOR shall be responsible for all Disposal Charges owed to the Designated Disposal Facility(ies) and the Designated Recycling Facility(ies) resulting from CONTRACTOR Collection services. All Solid Waste, Bulk Waste, Construction and Demolition Debris, Recyclable Materials and other material collected pursuant to this Contract shall be delivered to the Designated Disposal Facility(ies) or the Designated Recycling Facility(ies), as appropriate. The TOWN shall retain ownership of all Solid Waste, Bulk Waste, and Recyclable Materials until delivery to the Designated Disposal Facility(ies) or the Designated Recycling Facility(ies).

In the event that CONTRACTOR commingles any Solid Waste, Bulk Waste, Recyclable Materials, or other materials collected under the terms and conditions of this Contract with materials from other jurisdictions, CONTRACTOR shall indemnify and hold TOWN harmless from any and all losses, claims, or liability associated with the quantities of materials that were commingled.

In the event of a change in the Designated Disposal Facility whereby the newly established Designated Disposal Facility is greater than forty (40) miles from the center of the TOWN, the TOWN and the CONTRACTOR shall negotiate appropriate changes in the Collection rates to compensate for any increases in the CONTRACTOR'S transportation costs.

## **SECTION 7: EDUCATION SERVICES**

The CONTRACTOR shall provide the following public education services. The CONTRACTOR shall distribute notices or any other written materials to Residential Curbside Service Units and Multifamily Service Units through the Owner Associations, within the Service Area. The design of said notices shall be approved by the TOWN, and the CONTRACTOR shall be responsible for all expenses incurred with providing the education services contained in this Section. CONTRACTOR shall reimburse TOWN, in the form of a cashier's check drawn on a U.S. Bank, in (\$) U.S. dollars, payable to the TOWN within thirty (30) calendar days of receipt of TOWN'S invoice, for

public education expenses incurred by TOWN related to the services performed by CONTRACTOR under this Contract.

**7.1 TRANSITION INFORMATION**

CONTRACTOR shall be required to print, and mail, separate from the bill, an informational piece designed by the TOWN to be sent to all residents prior to distribution of the carts. The first mailing shall include the schedule of cart delivery to each area of the Town. CONTRACTOR shall be required to design, print and distribute educational information with the distribution of the each cart. In the event the TOWN deems any other informational piece as necessary to aid in the transition, CONTRACTOR shall be required to design, print and distribute this information to the affected residents.

**7.2 ANNUAL NOTICE**

The CONTRACTOR shall be required to design, print, and distribute, an annual notice to all Residential Curbside Service Units, and Multifamily Service Units through Owner Associations within the Service Area. The notice shall include at a minimum the Scheduled Collection Days, Bulk Waste Collection schedule, set-out requirements, and contact information.

**7.3 NEW CUSTOMER PACKAGE**

The CONTRACTOR shall be required to design, print, and distribute, a new customer package to all Residential Curbside Service Units, and Multifamily Curbside Service Units through Owner Associations added to the Service Area. The notice shall include at a minimum the Scheduled Collection Days, Bulk Waste Collection schedule, set-out requirements, and contact information.

**7.4 SCHEDULE AND/OR ROUTE CHANGE NOTICE**

In accordance with Section 10.1, in the event the Town Administrator or his/her designated representative(s) approves a change in schedule and/or route, the Contractor shall be responsible to provide said service units with a notice. The notice shall comply with all requirements set in the Contract.

**7.5 NON-COLLECTION NOTICE**

The CONTRACTOR shall not be required to collect any Solid Waste, Bulk Waste, Recyclable Materials or Construction and Demolition Debris that do not meet the requirements in this Contract. The CONTRACTOR shall collect that portion of Solid Waste, Bulk Waste or Recyclable Materials that meets the set-out requirement, and shall affix to the Garbage Can, [Garbage Cart,] Bag, or other material, a Non-Collection Notice explaining why Collection was not made. The affixing of the Non-Collection Notice shall occur for the first six (6) months immediately following the onset of the cart system in that area. The CONTRACTOR shall maintain a record of the address of any customer where Solid Waste, Bulk Waste, Recyclable Materials or Construction and Demolition Debris were not collected, the date of non-collection, and the reason they were not collected, to be provided to the TOWN upon request.

**7.6 PUBLIC AWARENESS PROGRAM**

The CONTRACTOR agrees to cooperate in complying with requests of up to forty (40) hours per year from the TOWN to supply a Recycling or Solid Waste truck and driver at public outreach events, provided that notice of at least five (5) Work Days is given. It is understood and agreed that there shall be no charge to the TOWN by the CONTRACTOR for compliance with any requests to provide a demonstration Collection truck and driver in response to the TOWN'S request. In the event that the TOWN'S notice for the

CONTRACTOR'S cooperation under this Section is less than five (5) Work Days, the CONTRACTOR, at its sole discretion, may agree to provide the requested demonstration truck and driver.

## **SECTION 8: HOURS OF COLLECTION**

### **8.1 RESIDENTIAL CURBSIDE COLLECTION SERVICES**

Residential Services shall be made with a minimum of noise and disturbance commencing no earlier than 7:00 a.m., EST and terminating no later than 7:00 p.m., EST Monday through Saturday with no service on Sunday. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the TOWN.

### **8.2 MULTIFAMILY COLLECTION SERVICES**

Residential Services shall be made with a minimum of noise and disturbance commencing no earlier than 7:00 a.m., EST and terminating no later than 7:00 p.m., EST Monday through Saturday with no service on Sunday. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the TOWN.

### **8.3 COMMERCIAL SERVICES**

Commercial Services shall be made with a minimum of noise and disturbance and shall be provided between the hours of 5:00 a.m., EST and 7:00 p.m., EST Monday through Saturday. Services shall not be provided prior to 7 a.m., EST on any Commercial Service Units that abut Residential Curbside Service Units or Multifamily Service Units unless such service is requested by a school in writing, or approved by the Town Administrator or his/her designated representative(s). The receipt of a continued complaint pattern by the TOWN referencing noise or disturbances that occurred during the operating hours set forth in this Section shall be prima facie evidence of "disturbances" and the CONTRACTOR shall adjust the Commercial Service hours at such identified locations as the TOWN shall direct the CONTRACTOR in writing. The adjustment of such hours shall not result in a rate change for the CONTRACTOR. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the TOWN.

## **SECTION 9: CHARGES AND RATES**

### **9.1 BILLING**

The CONTRACTOR is hereby designated the agent and representative of the TOWN for the billing and collection payments for Commercial Collection Services/Rolloff. The CONTRACTOR shall invoice those entities receiving Commercial Collection Services/Rolloff on a monthly or otherwise agreed basis. Commercial Customers shall be directed to make payment to the Contractor at a lockbox designated by the TOWN. The CONTRACTOR shall have access to such lockbox during normal business hours to retrieve such payments.

9.1.1 At any time during the term of this Contract, the TOWN reserves the right to require the CONTRACTOR to be responsible for the billing and collection of payments for all or part of Collection Services performed by the CONTRACTOR within the Service Area. The CONTRACTOR shall bill in accordance with the Rate Structure and generation factors established in the Exhibits and as may subsequently be adjusted pursuant to this Contract. For providing said billing service, the CONTRACTOR will charge the monthly billing fee as stated in the Rate Structure. The CONTRACTOR shall receive payment for billing and Collection Services equal to the CONTRACTOR'S total monthly collections (monies actually received by the CONTRACTOR).

9.1.2 At any time during the term of this Contract, the TOWN reserves the right to assume billing for all or part of Collection Services performed by the CONTRACTOR within the Service Area. To the extent that TOWN elects to assume billing other than through the Property Appraiser's Office, the TOWN, not the CONTRACTOR, shall receive the monthly billing fee for said services. Payment for each month shall be paid by the fifteenth (15) of the following month. In accordance with the Florida Prompt Payment Act, Sections 218.40 – 218.415, Florida Statutes, as amended, the TOWN shall remit a monthly payment to the CONTRACTOR.

9.1.3 At any time during the term of this Contract, the TOWN reserves the right to impose, levy and collect a special assessment for residential curbside solid waste and recycling collection services beginning in January of the following year. Therefore, the CONTRACTOR acknowledges and agrees to provide the residential rate to the TOWN on or before June 15 of each calendar year.

With the levy of a special assessment for residential curbside service, the CONTRACTOR acknowledges that it will discontinue billing for residential solid waste collection services. Effective with the year beginning January 1, 2006 upon receipt of payment to the TOWN from the Revenue Collector of Broward County, the Town shall retain the Franchise Fee for single family solid waste and recycling as set forth in Section 9.6 hereof, and shall pay the CONTRACTOR on the last day of the month following the month of receipt of payment from the Revenue Collector. The amount received prior to January 31 will be paid to the CONTRACTOR in twelve (12) equal installments from February through January of the following year minus the TOWN'S Franchise Fee. The amount received during February will be paid to the CONTRACTOR in eleven equal installments from March through January of the following year minus the TOWN'S Franchise Fee. The amount received during March will be paid out over a ten (10) month period from April through January of the following year minus the TOWN'S Franchise Fee. The amount received during the months from April through December will be paid out in a similar manner with all months paid out by January of the following year minus the TOWN'S Franchise Fee.

In the event that new Certificates of Occupancy are issued during the year, The TOWN will forward all new Certificates of Occupancy to Waste Management who will be authorized to bill the resident until such time as the resident property appears on the tax bill.

In the event that the TOWN utilizes tax roll billing or utility billing as the mechanism for billing services under this Agreement, it is understood and agreed that discounts for early payment as provided by Statute, Ordinance or otherwise shall not be applicable to the compensation paid to CONTRACTOR for services pursuant to this Agreement.

## **9.2 DELINQUENT ACCOUNTS**

For monthly billing, an account shall be delinquent once a service unit fails to pay the billed amount for Collection Services within a period of one (1) month. For annual billing, an account shall be delinquent once the due date lapses on the bill. The CONTRACTOR may request authorization from the Town Administrator or his/her designated representative(s) to stop service; however, the Town Administrator or his/her designated representative(s) reserves the right to deny or approve said request.

The CONTRACTOR shall be solely responsible for collections from delinquent accounts.

## **9.3 COLLECTION OF ADDITIONAL CARTS**

The CONTRACTOR shall be responsible for the billing and collection of payments for collection of additional carts from Residential Curbside Service Units. Residential Curbside Service Units shall be billed in accordance with the Rate Structure.

#### **9.4 SPECIAL COLLECTION SERVICES**

The CONTRACTOR shall be responsible for the billing and collection of payments for special collection services such as locks for containers, backdoor/side of house service, additional bulk waste collections, etc., Special Collection Services shall be billed in accordance with the Rate Structure. Special collection services for current and future TOWN facilities shall be provided at the request of the TOWN facilities and at the expense of the CONTRACTOR.

#### **9.5 PROPOSAL PREPARATION EXPENSES**

The TOWN has incurred approximately Seventy-five Thousand Dollars (\$75,000.00) in costs directly related to the proposal process and resulting Contract. CONTRACTOR agrees that the costs of the proposal process are part of the costs of effecting Collection services and, thus, are the responsibility of the CONTRACTOR. CONTRACTOR further agrees that, in consideration of that responsibility, and because the proposal process ultimately resulted in a benefit to the CONTRACTOR, namely the awarding of this Contract, that the CONTRACTOR shall compensate the TOWN for its costs. Therefore, the CONTRACTOR shall pay the TOWN Seventy-five Thousand Dollars (\$75,000.00) for its costs, and such payment shall be made by a cashier's check payable to the TOWN, drawn on a U.S. Bank, in U.S. dollars, by October 1, 2004

#### **9.6 FRANCHISE FEES AND FINANCIAL DONATION PAYMENTS**

The Franchise Fees and Financial Donation shall be paid as follows:

- 9.6.1 CONTRACTOR shall pay the Franchise Fee and Financial Donation separately. Payments shall be due to the TOWN on or before the fifteenth (15th) day of each month for the term of the Contract.
- 9.6.2 CONTRACTOR shall file with the TOWN, on a monthly basis with the payment of the Franchise Fee and Financial Donation, a financial statement setting forth the computation of Gross Revenues used to calculate the Franchise Fee and Financial Donation for the preceding month and a detailed explanation of the method of computation for the Franchise Fee and Financial Donation each respectively. The statement shall be certified by an independent certified public accountant. For the twelfth (12<sup>th</sup>) month of each Contract Year, Contractor shall provide a summary by an independent certified public accountant of the monthly reports for that Contract Year. The CONTRACTOR will bear the cost of the preparation of such financial statements.
- 9.6.3 Subject to applicable law, no acceptance by the TOWN of any Franchise Fee or Financial Donation payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the TOWN may have for additional sums payable. The Franchise Fee or Financial Donation payment is not a payment in lieu of any other tax, fee or assessment.
- 9.6.4 The event that a Franchise Fee and/or the Financial Donation payment is not received by the TOWN on or before the due date set forth in the Contract, or is underpaid, the TOWN reserves the right to retain funds from its payment to the CONTRACTOR or require the CONTRACTOR to forfeit the prior month's collection consistent with this Contract.

#### **9.7 DISPOSAL AVOIDANCE**

The CONTRACTOR shall remit to the TOWN, in quarterly payments, an amount equal to 100% of the current Disposal Charges at the Designated Disposal Facility for all recycling tons collected within the Service Area by the CONTRACTOR pursuant to this Contract.

The CONTRACTOR shall remit the disposal avoidance payment to the TOWN on or before the fifteenth (15<sup>th</sup>) day of each third (3<sup>rd</sup>) month for the term of the Contract. The disposal avoidance payment shall be accompanied by a financial statement setting forth the computation used to calculate the payment amount.

Subject to applicable law, no acceptance by the TOWN of a disposal avoidance payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the TOWN may have for additional sums payable. The disposal avoidance payment is not a payment in lieu of any other tax, fee or assessment.

The TOWN may inspect and audit, or retain an independent third party to inspect and audit, any and all books and records of the CONTRACTOR relevant to the computation of the disposal avoidance payments due, and may re-compute any amounts determined to be payable under this Section, subject to the applicable statute of limitations. All books and records of the CONTRACTOR relevant to the determination of disposal avoidance shall reside in the County. The cost of the audit will be borne by the CONTRACTOR, if as a result of the audit, the TOWN determines that the CONTRACTOR has underpaid the disposal avoidance payments owed in an amount equal to or greater than two percent (2%) of the disposal avoidance payment actually paid.

In the event that a disposal avoidance payment is not received by the TOWN on or before the due date set forth in the Contract, or is underpaid, the TOWN reserves the right to retain funds from its payment to the CONTRACTOR or require the CONTRACTOR to forfeit the prior month's collection consistent with this Contract.

## 9.8 APPROVED RATE STRUCTURE

The rates shown in the Rate Structure shall apply to all Residential Curbside Service Units, Multifamily Service Units and Commercial Service Units, respectively, within the corporate limits of the TOWN as well as any areas annexed into the TOWN subsequent to the commencement of this Contract.

## 9.9 DISPOSAL ELEMENT ADJUSTMENT

In order for the CONTRACTOR to receive a disposal rate adjustment, as set forth below, based on a change in the Disposal Charge per ton, the CONTRACTOR must provide, in a manner that is acceptable to the TOWN, evidence of the change in the Disposal Charge. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary. The TOWN shall approve the request in accordance with the formula's below to be effective on the date of the change in the Disposal Charge at the Designated Disposal Facility.

**9.9.1 Residential Curbside Collection Service** – The Residential Curbside Collection Service "Monthly Curbside Unit Disposal Rate" is based on the Disposal Charge per ton and the "Monthly Curbside Unit Residential Waste Generation Factor" set forth in Exhibit 1. Any approved change in the per ton Disposal Charges will result in a corresponding change in the appropriate "Monthly Curbside Unit Disposal Rate" based on the following formula:

$$\frac{\text{The new Disposal Charge} \times}{(\text{"Residential Curbside Generation Rate"}/12)}$$

**Less:**  $\text{The old Disposal Charge} \times (\text{"Residential Curbside Residential Generation Rate"}/12)$

**Will Equal:** the change in the Residential Curbside Collection Service "Monthly Curbside Unit Disposal Rate".

The monthly Residential Curbside Service Unit rates shall be adjusted based on the change in the Residential Curbside Collection Service "Monthly Curbside Unit Disposal Rate" as calculated above, and the resulting change in Franchise Fees. The monthly unit rate shall be adjusted \$0.17 for each \$1.00 change in the per ton rate, plus franchise fee.

**9.9.2 Multifamily Collection Service and Commercial Collection Service** – The Multifamily Collection Service and the Commercial Collection Service “Disposal Rate” excluding Compactors is based on the Disposal Charge per ton, the size of the Container, the frequency of Collection, and the “Weight Per Cubic Yard Factor” set forth in Exhibit 2. Any approved change in the per ton Disposal Charges will result in a corresponding change in the “Disposal Rate” based on the following formula:

$$\frac{(\text{“Weight Per Cubic Yard Factor”}/2,000 \text{ pounds}) \times \text{The new Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}{\text{“Weight Per Cubic Yard Conversion Factor”}/2,000 \text{ pounds} \times \text{the old Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}$$

**Less:**  $\frac{(\text{“Weight Per Cubic Yard Conversion Factor”}/2,000 \text{ pounds}) \times \text{the old Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}{\text{“Weight Per Cubic Yard Conversion Factor”}/2,000 \text{ pounds} \times \text{the old Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}$

**Will Equal:** the change in the Multifamily Collection Service “Disposal Rate” for that specific Container size and frequency of Collection per month.

The monthly Multifamily Service Unit and Commercial Service Units rates shall be adjusted based on the change in the Multifamily Collection Service “Disposal Rate” as calculated above, and the resulting change in Franchise Fees. The per yard cubic rate shall be adjusted \$0.10 for each 1.00 change in the per ton rate plus franchise fee.

The Multifamily Service and the Commercial Collection Service “Disposal Rate” for Compactors is based on the Disposal Charge per ton, the frequency of Collection and the “Compacted Weight Per Cubic Yard Factor” set forth in Exhibit 2. Any approved change in the per ton Disposal Charges will result in a corresponding change in the “Disposal Rate”, for Multifamily Collection Services and the Commercial Collection Service as set forth in Exhibit 2 based on the following formula:

$$\frac{(\text{“Compacted Weight Per Cubic Yard Factor”}/2,000 \text{ pounds}) \times \text{The new Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}{(\text{“Compacted Weight Per Cubic Yard Factor”}/2,000 \text{ pounds}) \times \text{The new Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}$$

**Less:**  $\frac{(\text{“Compacted Weight Per Cubic Yard Factor”}/2,000 \text{ pounds}) \times \text{the old Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}{(\text{“Compacted Weight Per Cubic Yard Factor”}/2,000 \text{ pounds}) \times \text{The new Disposal Charge} \times \text{the Container size} \times \text{Frequency per week} \times 4.33}$

**Will Equal:** the change in the appropriate Commercial Solid Waste Compactor Service “Disposal Rate” per month.

The monthly Multifamily Service Unit and Commercial Service Units rates with Compactors shall be adjusted based on the change in the Multifamily Collection Service and Commercial Collection Service “Disposal Rate” for Compactors as calculated above, and the resulting change in Franchise Fees. The per yard cubic rate shall be adjusted \$0.40 for each 1.00 change in the per ton rate plus franchise fee.

## 9.10 ADJUSTMENTS TO GENERATION FACTORS

In the first Contract Year, a generation study shall be completed to update and establish a new “Monthly Curbside Unit Residential Waste Generation Factor”. The CONTRACTOR understands and agrees that the cost of said generation study is the sole responsibility of the CONTRACTOR. The TOWN shall select the organization to perform the study. The CONTRACTOR and TOWN shall work together to develop the methodology for the generation study, including the selection of routes, providing all necessary data, and all other aspects to successfully complete the generation study. The TOWN shall make the final decision on methodology for the generation study. In the event the generation study results in a new Residential Curbside Generation Rate that is higher or lower than the initial generation rate of 1.66, the generation rate shall be revised in accordance with the results of the generation study, and the disposal rate shown in Exhibit 1 shall be revised and calculated as follows:

New Residential Curbside Generation Rate X Disposal Charge / 12

**Equals the New Monthly Curbside Unit Residential Waste Generation Factor**

In the event the generation study results in a Residential Curbside Generation Rate that is lower than the initial generation rate of 1.66, the CONTRACTOR shall reimburse the TOWN retroactively for excess disposal rates charged to Residential Curbside Service Units from the commencement date of October 1, 2004 through the date the revised disposal rate becomes effective.

Due to specific date requirements for establishing rates each year and that the most accurate method of completing a Generation Study is to measure actual rate generation over a twelve (12) month period, it is possible that rates for the year following the Generation Study will have to be set prior to the study being completed. In the event that this happens, any increase in rates required as a result of the study would be spread over the remaining years of the contract. The Generation Study is to be completed during the first year of the contract. If the study results in a rate increase, it will be added to the rates for the second year of the contract. If the study shows a rate increase is required, but the study is not completed prior to the deadline for new rates in the second year, then the rate increase will be divided into thirds and added to the rates of the remaining three contract years, one third at a time. For example, if the Generation Study indicates that the rates should increase by thirty (.30) cents, the rates in the third to fifth year of the contract would increase by an additional ten (.10) cents.

**9.11 ADJUSTMENTS TO OTHER COSTS**

- 9.11.1 Beginning on October 1, 2005 and annually thereafter, the CONTRACTOR shall receive an annual adjustment in the rates that are part of the total Collection element of rates established in the Rate Structure provided in Exhibits 1, 2, and 5 (as adjusted). The adjustment to the costs in Exhibit 5 and to the Collection element of cost in Exhibits 1 and 2 shall be calculated as the Consumer Price Index- All Urban Consumers, Series ID CUURA320SA0, CUUSA320SA0, for Miami-Fort Lauderdale, Florida (CPI. Such adjustment shall be capped at 80% of the CPI
- 9.11.2 The CONTRACTOR shall annually provide the TOWN a certified Operating Cost Statement as described in Exhibit 7A. The report shall include the opinion of an independent Florida Certified Public Accountant, who has conducted an audit of the CONTRACTOR's books and records in accordance with generally accepted accounting principles which include tests and other procedures necessary, that the Operating Cost Statements are fairly presented, in all material aspects, in conformity with generally accepted accounting procedures. The annual Operating Cost Statement shall be provided in a format approved by the TOWN. The annual Operating Cost Statement required for the second, and each subsequent, Contract year shall be delivered to the TOWN no later than October 15th of the respective Contract year. The TOWN shall notify the CONTRACTOR of the rate adjustment calculated as described in Exhibit 7 no later than October 31st of the respective year, to be effective beginning with the payment associated with services provided in October of the respective year, however, the actual rate change shall take place in January of the following year and be adjusted in accordance with Part II of Exhibit 7. No rate adjustments of any type shall be granted to the CONTRACTOR unless all required documents and cost statements have been filed in a timely manner.
- 9.11.3 The CONTRACTOR may petition the TOWN to adjust CONTRACTOR'S rates based upon unusual and unanticipated increases in the cost of doing business limited to a change in the law or regulation "Change in Law". Any such request shall be supported by full documentation establishing the increase in the operating costs and the reasons therefore. The TOWN shall be entitled to audit the CONTRACTOR'S request in order to verify the increase in costs and the reasons therefore.

"Change in Law" means (I) the adoption, promulgation, or modification after the date of this Agreement of any law, regulation, order, statute, ordinance or rule that was not adopted, promulgated, or modified on or before the date of this Agreement, or (II) the imposition of any material conditions in connection with the issuance, renewal, modification of any permit, license or approval after the date of this Agreement which in the case of either (I) or (II) establishes requirements affecting the CONTRACTOR'S operation under this Agreement more burdensome than the requirements that are applicable to the CONTRACTOR and in effect as of the date of this Agreement. A change in any federal, state, county, or other tax law or workers compensation law shall not be a "Change of Law." However, in the event that a federal, state, or local entity imposes a fee, charge or tax after the date of this Agreement that applies to CONTRACTOR'S operations per se, such fee, charge, or tax shall be treated as a Change in Law.

The CONTRACTOR'S REQUEST must be made within one hundred and twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for rate adjustment. The TOWN may request from the CONTRACTOR, and the CONTRACTOR shall provide, such further information within its possession as may be reasonably necessary in making its determination. The Town shall approve or deny the request, in whole or in part, within sixty days (60) days or receipt of the request and all other additional information required by the TOWN.

- 9.11.4 The CONTRACTOR shall supply the TOWN with such further information as may be reasonably necessary to make the calculations to determine the annual adjustment in accordance with the Payment Adjustment Schedule (Exhibit 7). No change in rates except for the Payment Adjustment Schedule as provided by this Contract shall be made.
- 9.11.5 In the event that billing is performed through assessment tax, or any other material change to billing practices occurs, the TOWN and CONTRACTOR agree to act in accordance with the Payment Adjustment Schedule in EXHIBIT 7, Part II

## **9.12 RECYCLING REVENUES**

The TOWN shall retain all sums received by the County and the resulting sale of processed Recyclable Materials as a result of all Recyclable Materials collected pursuant to this Contract. CONTRACTOR shall take all steps necessary to ensure that payments from the Designated Recycling Facility resulting from the sale of Recyclable Materials are paid directly to the TOWN and not the CONTRACTOR. The CONTRACTOR shall maintain proper and accurate records to reflect the weight, by sort category, of the Recyclable Materials recovered each month, including copies of receipts from the Designated Recycling Facility and that portion of the TOWN'S Recyclable Materials sold each month.

## **SECTION 10: SCHEDULES AND ROUTES**

### **10.1 SCHEDULES AND ROUTES TO TOWN**

The CONTRACTOR shall submit a proposed route and schedule to be approved by the Town Administrator or his/her designated representative(s) no later than forty-five (45) calendar days prior to October 1, 2004.

The Town Administrator or his/her designated representative(s) reserves the right to deny the CONTRACTOR's vehicles access to certain streets, alleys, bridges and public ways, inside the TOWN or outside the TOWN in route to Designated Disposal Facilities where it is in the best interest of the general public to do so due to conditions of streets and bridges. The CONTRACTOR shall use best efforts to not interrupt the regular schedule and quality of service because of such street closures.

In the event of a change in residential routes or schedules that will alter the day of Collection, the CONTRACTOR shall have said changes approved by the Town Administrator or his/her designated representative(s) not less than sixty (60) calendar days prior to the change. In accordance with Section 7, of this Contract the CONTRACTOR shall bare all expenses for public education in the event of a change in residential routes (i.e. postage, copies, etcetera).

### **10.2 HOLIDAY PICK-UP SCHEDULE**

Solid Waste and Bulk Waste Collection will not occur on Work Days that the Designated Disposal Facility is closed. Collections that would normally occur on Work Days that the Designated Disposal Facility is closed shall occur on the next regularly scheduled solid waste or bulk waste pick up day.

Recycling Services will not occur on Work Days that the Designated Recycling Facility is closed. Collections that would normally occur on Work Days that the Designated Recycling Facility is closed shall occur on the next regularly scheduled recycling pick up day.

## **SECTION 11: EMERGENCY SERVICE PROVISIONS**

In an emergency event such as a hurricane, tornado, major storm, natural disaster, or other such event, the Town Administrator or his/her designated representative(s) may grant the CONTRACTOR a variance from regular routes and schedules, and such variances shall be submitted in writing to the Town Administrator or his/her designated representative(s), and if requested by the Town Administrator or his/her designated representative(s), the CONTRACTOR shall furnish a map depicting such routes. The CONTRACTOR shall notify the Town Administrator or his/her designated representative(s) on a daily basis indicating what portion of each designated route was completed that day. In addition, the CONTRACTOR shall notify the Town Administrator or his/her designated representative of completion of each route during such event. As soon as practicable after such event, the CONTRACTOR shall advise the Town Administrator or his/her designated representative(s) when it is anticipated that normal routes and schedules can be resumed. The clean-up from emergency events is not exclusive to this Contract. The TOWN reserves the right to select the CONTRACTOR and/or another agency and/or company to perform the clean-up from emergency event(s). The CONTRACTOR shall, by request of the TOWN, work jointly with other agencies and/or companies during emergency events. The clean-up from some events may require that the CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event in accordance with the "Emergency Preparedness Plan", Exhibit 4, submitted by the CONTRACTOR and approved by the TOWN. The CONTRACTOR shall receive additional compensation, above the normal compensation contained in this Contract, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in Exhibit 5, attached hereto and included herein provided the CONTRACTOR has first secured written authorization and approval from the TOWN through the Town Administrator or his/her designated representative(s). If the CONTRACTOR's services are selected by the TOWN, the CONTRACTOR shall be

responsible for the preparation of all documents and forms and support information required by FEMA. Such documents, forms and information shall be submitted to the TOWN by the CONTRACTOR within the time limits established by FEMA for such filings.

Notwithstanding the above, the first 120 hours per calendar year of equipment usage by the CONTRACTOR in response to an emergency event that has not been declared to be a disaster for which Federal or State funds are available for reimbursement pickup shall be without charge to the TOWN (Non FEMA Cleanup Hours). Further provides that (i) Non FEMA Clean up Hours are computed on a per vehicle basis ie., if CONTRACTOR utilizes 3 vehicles each for 10 hours, Non FEMA Clean Up Hours would total 30; and (ii) Non FEMA Cleanup Hours unused in a calendar year do not carry over until the next year. After each emergency event is cleaned up, CONTRACTOR will provide a report to the TOWN of the number of hours used.

## **SECTION 12: CONTRACTOR'S RELATION TO TOWN**

### **12.1 CONTRACTOR REPRESENTATIVE AVAILABILITY**

The CONTRACTOR shall cooperate with the TOWN in every reasonable way in order to facilitate the progress of the work contemplated under this Contract. As such, the CONTRACTOR shall have a minimum of three (3) competent and reliable representatives on duty that are authorized to receive orders and to act on behalf of the CONTRACTOR. The CONTRACTOR agrees that the TOWN shall have twenty-four (24) hour access to said representatives via a non-toll call and email from the TOWN. Answering machines, pagers or other devices that do not provide for immediate contact with the CONTRACTOR'S said representatives shall not meet the requirements of this Section.

### **12.2 INDEPENDENT CONTRACTOR**

It is expressly agreed and understood that CONTRACTOR is in all respects an independent CONTRACTOR as to the work. Even though in certain respects, CONTRACTOR may be required to follow the direction of the Town Administrator or his/her designated representative(s), the CONTRACTOR is in no respect an agent, servant or employee of the TOWN.

### **12.3 SUPERVISION OF CONTRACT PERFORMANCE**

The Town Administrator or his/her designated representative(s) is hereby designated as the public official responsible for the administration of this Contract by the TOWN, and, in such capacity, they are charged with the overall, general supervision of CONTRACTOR'S performance hereunder. CONTRACTOR shall diligently work with the Town Administrator or his/her designated representative(s) to formulate and to adopt guidelines and procedures to facilitate the supervision and review of its performance by the Town Administrator or his/her designated representative(s) and their staff. The CONTRACTOR shall not be required to comply with instructions or directions from any TOWN official except the Town Administrator or his/her designated representative(s) unless such other official has been delegated in writing by the Town Administrator or his/her designated representative(s) to perform specified administrative functions under this Contract.

### **12.4 MONTHLY AND ANNUAL OPERATIONS REPORT**

The CONTRACTOR shall provide to the TOWN a monthly and annual report in accordance with Exhibit 10 of this Agreement identifying each service, additional service, weigh ticket, etc. as provided for Residential Curbside Service Unit, Multifamily Service Unit, or Commercial Service Unit in Microsoft Excel or in an alternative computer program selected by the TOWN. Monthly operation reports shall be submitted to the TOWN no later than the fifteenth (15<sup>th</sup>) day of each month. Annual operations reports shall be submitted to the TOWN no later than the (15<sup>th</sup>) day after the completion of the Contract Year. Operation reports shall

outline the following information for the preceding month or year as applicable: (1) Count of service units by billing class, (2) Container count by customer class and Container Size/Frequency, (3) Multifamily and Commercial customer report including name, address, container size, collection frequency, and monthly bill amount, (4) list of weigh tickets for Solid Waste and Recyclables collected in the TOWN including route number, customer class, truck type, date, and Solid Waste or Recyclable quantity, (5) summary of Additional Services subject to Franchise Fee provided by CONTRACTOR, and associated revenues obtained, and (6) delinquent accounts list. The CONTRACTOR shall maintain the weight tickets from the Designated Disposal Facility for the Collection of Solid Waste, Bulk Waste, or other materials from Residential Service Units or Commercial Service Units delivered from the TOWN and the weight tickets from the Designated Recycling Facility for the Recyclable Materials delivered from the TOWN for review by the TOWN. If the CONTRACTOR fails to provide the above data or additional data requested by the TOWN, the TOWN reserves the right to withhold payment for services as provided in the Contract, and such non-compliance may be considered a breach of contract by the CONTRACTOR, as provided in Section 12.9.

## **12.5 MONTHLY COMPLAINTS AND MISSED COLLECTION REPORT**

Contractor shall maintain an accurate and up-to-date log of date, time, and address of all complaints received and missed collections, the disposition thereof, actions taken to resolve the complaint or missed collection, and the date and time the complaint or missed collection was resolved. The CONTRACTOR shall provide the TOWN with access to the complaint log to the TOWN in the form of a monthly report in Microsoft Excel or in an alternative computer program selected by the TOWN at a monthly meeting between the TOWN and the CONTRACTOR, or upon request by the TOWN. The TOWN reserves the right to correct a complaint if the complaint is not corrected within twenty-four (24) hours of notification to the CONTRACTOR. If the CONTRACTOR fails to provide the above data or additional data requested by the TOWN, the TOWN reserves the right to withhold payment for services or impose the liquidated damage provided in Sections 14 and 15.

## **12.6 AUDIT AND INSPECTION OF WORK RIGHTS**

CONTRACTOR shall, during the term of this Contract, maintain records and accounts of all transactions that result from doing business pursuant to this Contract for the length of the Contract including renewals, utilizing a computerized record-keeping program that is capable of club accounting. Such records shall include complete and legible daily attendance and enrollment records. CONTRACTOR shall also keep financial records so as to satisfy generally accepted accounting procedures. These records shall include a statement of revenues and expenses ("the Revenue/Expense Statements"), identifying the source of the revenues, and shall be provided to the TOWN monthly, along with documentation of the time period represented by each payment. The CONTRACTOR shall maintain a record of addresses served pursuant to this Contract, which shall include the level of service associated with each address. Such books and records shall be made available to TOWN for inspection, review and auditing during regular hours on Business Days, with the exception of Holidays, without advance notice. Any such audit will be at the expense of the TOWN unless the result of the audit shows a variance from the Revenue/Expense Statements of more than two percent (2%).

## **12.7 FACILITY INSPECTION RIGHTS**

The TOWN may, at reasonable times during the term hereof, inspect the CONTRACTOR's facilities and perform such inspections, as the TOWN deems reasonably necessary, to determine whether the services required to be provided by the CONTRACTOR under this Contract conform to the terms hereof and/or the terms of the solicitation documents, if applicable. The CONTRACTOR shall make available to the TOWN all reasonable facilities and assistance to facilitate the performance of inspections by the TOWN's representatives.

## **12.8 LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO UNUSUAL CIRCUMSTANCES**

It is expressly agreed that in no event shall the TOWN be liable or responsible to the CONTRACTOR, or to any other person, on account of any stoppage or delay in the work herein provided for, by injunction or other legal or equitable proceedings brought against the TOWN or the CONTRACTOR, or on account of any delay from any cause over which the TOWN has no control. The CONTRACTOR shall not be responsible for delays or non-performance of the terms and provisions of this Contract where such delays or non-performance are caused by events or circumstances beyond the control of the CONTRACTOR. The CONTRACTOR shall not be entitled to compensation for such period of time as the delay or non-performance shall continue, but will be entitled to pro-rata compensation once said work has been completed. In the event of a strike of the employees of CONTRACTOR, or any other similar labor dispute which makes performance of this Contract by the CONTRACTOR substantially impossible, CONTRACTOR agrees that the TOWN shall have the right to call the bond hereinafter described within one (1) week of such action and engage another person, firm or corporation to provide necessary services with the bond proceeds applied to pay any difference between the Contract price in effect and the costs charged by the successor company. In the event the bond is called, the TOWN will first call and use the cash/surety bond posted by the CONTRACTOR.

## **12.9 BREACH OF CONTRACT**

If, in the opinion of the Town Administrator or his/her designated representative(s), there has been a material breach of Contract, the Town Administrator or his/her designated representative(s) shall notify the CONTRACTOR, in writing, specifying the basis and reason in which there has been a breach of Contract. If, within a period of ten (10) calendar days from the date of the notice, the CONTRACTOR has not eliminated or otherwise cured the conditions considered to be a breach of Contract, the Town Administrator or his/her designated representative(s) shall so notify the Town Council in writing, and a public hearing shall be set for a date within fifteen (15) calendar days of such notice to the Town Council. On the date of the hearing, the Town Council shall hear from the CONTRACTOR and the TOWN's representatives shall make a final determination as to whether or not there has been a breach of Contract and direct what further action shall be taken by the TOWN, as hereinafter provided. Pending resolution of the alleged breach, the CONTRACTOR shall be governed by the provisions of Section 23.

## **12.10 TERMINATION**

If the CONTRACTOR fails to begin work at the time specified, or discontinues the prosecution of the work, or any portion thereof, for any cause not excused as provided herein, and the Town Council makes a final determination that a breach has occurred, and if the CONTRACTOR fails to cure such default within five (5) Business Days after the receipt of such notice from the Town Council, the TOWN may thereupon, by action of the Town Council, declare the Contract terminated and in default within ninety (90) days of said default. Upon such declaration of cancellation or breach, the TOWN may take over the work or any portion thereof or engage another firm to take over the work or any portion thereof. The TOWN shall pay the CONTRACTOR for any payments due for services rendered by the CONTRACTOR prior to termination of the Contract. Such cancellation of the Contract shall not relieve the CONTRACTOR or the cash/surety of liability for failure to faithfully perform this Contract, and, in case the expense incurred by the TOWN in performing or causing to be performed the work and services provided for in said Contract shall exceed the sum which would have been payable under this Contract, then the CONTRACTOR, and the cash/surety, to the extent of its obligation, shall be liable to the TOWN in the amount of any such expenses in excess of the Contract price. The TOWN may apply the cash bond in its possession toward any and all damages incurred as a direct or indirect result of failure by the CONTRACTOR to properly perform its obligations under this Contract and it may look to the cash/surety, the CONTRACTOR and any guarantor for additional damages. The CONTRACTOR'S cash/surety or security will not be released until such time as the term of this Contract otherwise expires.

## **SECTION 13: CUSTOMER RELATIONS**

### **13.1 CUSTOMER OFFICE HOURS**

The CONTRACTOR shall take all reasonable steps and do all things necessary to ensure good and harmonious customer relations in the TOWN. The CONTRACTOR agrees that it shall have telephone service via a non-toll call from the TOWN. The non-toll telephone service shall be listed in the name in which the company is doing business as the CONTRACTOR. The telephone service shall be staffed from 7:00 a.m., EST till 7:00 p.m., EST, Monday through Saturday, by the CONTRACTOR'S employee(s), whom shall be familiar with the TOWN. Answering machines, pagers or other devices that do not provide for immediate contact with the CONTRACTOR'S employee(s) shall not meet the requirements of this Section.

### **13.2 MISSED COLLECTIONS**

If the Collection of any Residential Service Unit or Commercial Service Unit is missed during the regular route Collection, the CONTRACTOR shall ensure that the missed collection shall be picked up on the same day if notification was received by the CONTRACTOR from the TOWN or customer before 3:00 p.m., EST, otherwise the missed collection shall be picked up before 12:00 p.m., EST on the next Work Day after such notification from TOWN or customer. Any deviation from the requirements of this provision must be approved by the Town Administrator or his/her designated representative(s). If the CONTRACTOR fails to comply with this provision, or any of the terms and conditions of the Contract, the TOWN reserves the right to ensure that the collection is made, either with its own force or an outside source, and to charge all costs, plus reasonable overhead, to the CONTRACTOR. The CONTRACTOR shall not be required to collect material from curbside that is non-conforming; however, in each such case, the CONTRACTOR shall notify each resident by Non-collection Notice as described in Section 7.4, notifying the resident of the problem and how the customer needs to correct the problem. The CONTRACTOR shall then notify the TOWN of the location every time a non-conforming location is noticed.

### **13.3 SPILLAGE AND LITTER**

The CONTRACTOR shall not be responsible for cleaning up sanitary conditions around Garbage Cans, [Garbage Carts,] Containers, Roll-off Containers, Recycling Bins, and Recycling Carts caused by the carelessness of the customer; however, the CONTRACTOR shall clean up any Solid Waste, Bulk Waste, Recyclable Materials or other refuse materials including leakage of fluids spilled from Garbage Cans, [Garbage Carts,] Containers, Roll-off Containers, Recycling Bins, Recycling Carts, and Collection vehicles by the CONTRACTOR, CONTRACTOR's vehicles or the CONTRACTOR's employees. During transport, all Solid Waste and Recyclable Materials shall be contained, covered or enclosed so that leaking, spilling and blowing of the Solid Waste, Bulk Waste, Recyclable Materials or other refuse materials is prevented. The CONTRACTOR shall be responsible for the cleanup of any spillage or leakage caused by the CONTRACTOR, CONTRACTOR's vehicles or the CONTRACTOR's employees. Said cleanup shall be done at the CONTRACTOR(s) expense within twenty-four (24) hours of the spillage or leakage.

## **SECTION 14: LIQUIDATED DAMAGES**

Based upon an investigation, the Town Administrator or his/her designated representative(s) shall determine whether liquidated damages shall be assessed against the CONTRACTOR for failure to comply with provisions described in the Contract. Factors to be considered include, but are not limited to, acts of God, repeated occurrences of similar types, and documentation of the incident.

The CONTRACTOR shall have five (5) Work Days from the date of the written notice to file a written letter of protest with the Town Administrator or his/her designated representative(s). A written letter of protest shall be sent via certified mail to attention of the Town Administrator or his/her designated representative(s) at 6591 Orange Drive,

Davie, Florida 33314-3399. If the protest is filed within five (5) Work Days, the Town Administrator or his/her designated representative(s) or individuals appointed by the Town Administrator or his/her designated representative(s) shall conduct a formal review of each properly filed protest. Such review shall be open and subject to Florida's Sunshine Law. The determination of the Town Administrator or his/her designated representative(s) shall be final.

If the protest is not timely filed, the Town Administrator or his/her designated representative(s) shall deduct the amount of the liquidated damage from payment due or to become due the CONTRACTOR.

#### **14.1 TRANSITION PROVISIONS**

Failure by the CONTRACTOR to comply with the transition provisions of this Contract shall result in the Town Administrator or his/her designated representative(s) imposing liquidated damages as set forth below:

- 14.1.1 **General Manager of Operations** – Failure to have the CONTRACTOR'S General Manager of Operations retained within forty-five (45) calendar days prior to October 1, 2004. For each day of delay, Two Thousand Dollars (\$2,000.00) shall be assessed against the CONTRACTOR.
- 14.1.2 **Collection Vehicles** – Failure to have the necessary Collection vehicles delivered to the CONTRACTOR'S equipment yard and street legal address (registered, licensed and tagged) pursuant to a schedule which shall provide that approximately 25% of the vehicles required shall be delivered for each thirty (30) day period commencing September 15, 2004 and ending January 15, 2005. For each day of delay, Two Thousand Dollars (\$2,000.00) shall be assessed against the CONTRACTOR.
- 14.1.3 **Collection Equipment** – Failure to provide purchase orders or other documentation to the TOWN, satisfying that the necessary arrangements have been made to have the necessary Recycling Bins, Recycling Carts, Containers, and Roll-offs delivered to the CONTRACTOR'S equipment yard for distribution pursuant to a schedule which shall provide that approximately 25% of the equipment required shall be delivered for each thirty (30) day period commencing September 15, 2004 and ending January 15, 2005. For each day of delay, Two Thousand Dollars (\$2,000.00) shall be assessed against the CONTRACTOR.
- 14.1.4 **Schedules and Routes** – Failure to provide the Town Administrator or his/her designated representative(s) with a copy of schedules, and routes, including service levels, within thirty (30) calendar days prior to October 1, 2004, and annually thereafter for the term of the Contract as provided for in terms of the Contract. For each day of delay, Two Thousand Dollars (\$2,000.00) shall be assessed against the CONTRACTOR.

#### **14.2 OTHER PROVISIONS**

Following notification by the Town Administrator or his/her designated representative(s) or customer, failure by the CONTRACTOR to remedy the cause of any complaint within the time indicated, failure to comply with Contract provisions or performance failures shall result in the Town Administrator or his/her designated representative(s) imposing liquidated damages against the CONTRACTOR, or any other legal means available. Liquidated Damages are as set forth below:

- 14.2.1 **Spillage and Litter** – Failure to clean up spilled material from loading and/or transporting in compliance with the "Florida Litter Law" and/or as described in the Contract. For each failure, Two Hundred Fifty Dollars (\$250.00) shall be imposed against the CONTRACTOR.
- 14.2.2 **Collection Misses** – Failure or neglect to collect properly prepared Solid Waste or properly prepared Program Recyclables from any customer at those times provided by this Contract within the schedule described in the Contract. For each failure, One Hundred Dollars (\$100.00)

shall be imposed against the CONTRACTOR. For each additional twenty-four (24) hours of failure to collect after previous notification, Two Hundred Fifty Dollars (\$250.00) shall be assessed against the CONTRACTOR.

- 14.2.3 **Route Completion** – Failure or neglect to complete each route (including missing whole streets) on the regular scheduled Collection day within twenty-four (24) hours of the day of notification. For each failure or neglect, Five Hundred Dollars (\$500.00) /route/day for each instance shall be assessed against the CONTRACTOR.
- 14.2.4 **Mixing Materials** – Intentionally mixing Residential Recyclables, Solid Waste, used oil, Exempt Waste, or any other material intended to be collected separately, during Collection. For each instance, One Thousand Dollars (\$1,000.00) shall be assessed against the CONTRACTOR. Intentionally, mixing materials collected from the Service Area with material from outside of the Service Area. For each instance, Two Thousand Dollars (\$2,000.00) shall be assessed against the CONTRACTOR.
- 14.2.5 **Mixing Program Recyclables** – Mixing Recyclable Containers and Recyclable Paper during Collection or tipping at the Designated Recycling Facility. For each occurrence, One Thousand Dollars (\$1,000.00) shall be assessed against the CONTRACTOR.
- 14.2.6 **Mixing Commercial and Residential Program Recyclables** – Mixing Commercial Program Recyclables and Residential Program Recyclables during Collection or tipping at the Designated Recycling Facility. For each occurrence, One Thousand Dollars (\$1,000.00) shall be assessed against the CONTRACTOR.
- 14.2.7 **Customer Complaints other than Collection Misses** – Failure to resolve complaints other than Collection misses within the time provided in the Contract or for all other complaints within five (5) Work Days from the day of notification. For each occurrence, Two Hundred Fifty Dollars (\$250.00) shall be assessed against the CONTRACTOR.
- 14.2.8 **Disposing at non-Designated Disposal Facility** – Failure to dispose of Solid Waste collected in the TOWN at the Designated Disposal Facility shall result in a dollar amount equal to the current tip fee at the Designated Disposal Facility plus twenty-five percent (25%), per ton disposed at non-Designated Disposal Facility being assessed against the CONTRACTOR.
- 14.2.9 **Chronic Complaint Problems** – Failure or neglect to correct chronic problems (chronic shall mean three (3) or more similar complaints at the same premises within a twelve (12) month period) in any category of service. For each occurrence after the second, Two Hundred Fifty Dollars (\$250.00) shall be assessed against the CONTRACTOR. The CONTRACTOR being penalized for more than five (5) chronic complaint problems within a month shall result in Five Hundred Dollars (\$500.00) being assessed against the CONTRACTOR.
- 14.2.10 **Chronic Equipment Problems** – Failure or neglect to correct chronic equipment problems (chronic shall mean three (3) instances of the same or similar problem with the same equipment/trucks within a twelve month period). For each occurrence after the second, Two Hundred Fifty Dollars (\$250.00) shall be assessed against the CONTRACTOR.
- 14.2.11 **Failure to Properly Label Equipment** – Failure to properly and legibly label vehicles, Recycling Bins, Recycling Carts, Containers and Roll-offs according to Contract provisions. For each piece of equipment not properly labeled, One Hundred Dollars (\$100.00) shall be assessed against the CONTRACTOR.
- 14.2.12 **CONTRACTOR Reports** – Failure to provide the reports required by Contract provisions. For each day of delay, Two Hundred Fifty Dollars (\$250.00) shall be assessed against the CONTRACTOR for each report not provided. In addition, the TOWN shall withhold payment for services until receipt of reports.

**Damage to Roadways** – Damage to roadways including but not limited to skid marks and oil spills shall be equal to the cost of fixing the damage plus Two Hundred Fifty Dollars (\$250.00) per occurrence.

- 14.3 In executing this Contract, each party specifically confirms the accuracy of the statements made above in Section 14, and in the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this agreement was made. The CONTRACTOR and TOWN have negotiated this Section 14 subsequent to CONTRACTOR'S submission of a proposal to provide the services required by this Contract.

## **SECTION 15: PAYMENT WITHHELD/FORFEIT PRIOR MONTH'S COLLECTIONS**

In addition to express provisions elsewhere contained in this Contract, the TOWN may withhold from any payment otherwise due the CONTRACTOR or the CONTRACTOR shall remit such amount as determined necessary to protect the TOWN'S interest, or, if it so elects, may withhold or retain all or a portion of any monthly payment or the CONTRACTOR shall forfeit the prior month's collections on the account of:

- (1) Failure to remit Franchise Fee or Financial Donation payment;
- (2) Failure to remit Disposal Avoidance;
- (3) Unsatisfactory progress of the work not caused by condition beyond the CONTRACTOR'S control;
- (4) Defective work not corrected;
- (5) The CONTRACTOR'S failure to carry out instructions or orders of the TOWN or its representative;
- (6) A reasonable doubt that the Contract can be completed for the balance then unpaid;
- (7) Execution of work not in accordance with the Contract;
- (8) Claim filed by or against the CONTRACTOR or reasonable evidence indicating probable filing of claims;
- (9) Failure of the CONTRACTOR to make payments to any subcontractor for material or labor;
- (10) Damage to another CONTRACTOR;
- (11) Unsafe working conditions allowed to persist by the CONTRACTOR;
- (12) Failure of the CONTRACTOR to provide route schedules and other reports as required by the TOWN;
- (13) Use of any subcontractors without the TOWN'S prior written approval.

When the above grounds are removed, payment shall be made for amounts withheld because of them and the TOWN shall not be liable for interest on any delayed or late payment. The TOWN'S right to withhold payments under this Section will be reasonable in light of the nature of the claim, amount of available insurance and performance bond pursuant to this Contract

## **SECTION 16: PERFORMANCE BOND**

The CONTRACTOR shall furnish to the TOWN at the CONTRACTOR'S own cost, for the initial term and each extension, an irrevocable Performance Bond, in form and content approved by the TOWN Attorney and as attached to this Contract as Exhibit 6 for the faithful performance of this Contract and all of its obligations arising hereunder in the amount of Two Million Dollars (\$2,000,000.00). Said bond shall be rated "A+" or better as to management and "FSC XV" or better as to the strength by Best's Insurance Guide or Surety; shall be listed on the

U.S. Treasury Department's list of acceptable sureties for federal bonds or bonding limits shall not exceed 20% of its policy surplus (capital & surplus) as listed in Best's Insurance Guide; and, Surety shall have been in business and have a record of successful and continuous operation for at least five years; further, all bonds shall contain all provisions required by §255.05, Florida Statutes, guarantee the performance of the Contract and serve as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. The CONTRACTOR shall furnish to the TOWN proof of such bond within ten (10) calendar days after the execution of this Contract. Such proof shall include a statement that the policy or bond may not be canceled or altered without at least thirty (30) calendar days prior notice to the TOWN.

Maintenance of said bond and the performance by the CONTRACTOR of all of the obligations under this paragraph shall not relieve the CONTRACTOR of liability under the default provisions set forth in this Contract or from any other liability as a result of any material breach hereunder. The performance Bond may be "called" in the event of any default hereunder by the CONTRACTOR. The calling of the Bond shall in no manner restrict or preclude any additional or further remedies available to the TOWN against the CONTRACTOR for breach, default or damages hereunder.

The CONTRACTOR shall cause to be obtained a corporate guaranty of PARENT COMPANY ("Guarantor"), whereby the Guarantor shall guaranty all of the obligations of the CONTRACTOR under this Contract. The form of the guaranty is attached hereto as Exhibit 6.

TOWN reserves the right to increase the required Performance Bond amount in the event of a change in the Designated Disposal Facility.

## **SECTION 17: EQUIPMENT AND PERSONNEL**

### **17.1 VEHICLES AND COLLECTION EQUIPMENT**

The CONTRACTOR shall provide and maintain and have available at all times the necessary amount of Collection trucks and equipment to perform the work as specified herein. During severe storms and emergencies, the CONTRACTOR shall have sufficient vehicles, personnel, Containers, and other necessary equipment in order to meet the needs of the TOWN.

### **17.2 DEDICATED EQUIPMENT**

Equipment used to provide service pursuant to this Contract shall not mix materials from the Service Area with materials from outside of the Service Area. In the event of a mechanical breakdown, the CONTRACTOR may utilize a truck from another municipality on a temporary basis with the sole purpose of the continuance of service to the TOWN. In the event that the CONTRACTOR mixes material (except as stated above), the TOWN reserves the right to retain funds from its payment to the CONTRACTOR or require the CONTRACTOR to forfeit the prior month's collection consistent with this Contract.

### **17.3 EQUIPMENT IN GOOD REPAIR**

The CONTRACTOR shall use Collection vehicles, one (1) per route, and recently painted, with bodies that are watertight to a depth of not less than eighteen inches (18"), with solid sides, without body damage, using pneumatic tires. The average age of the CONTRACTOR's Collection vehicles shall not exceed three-half (3.5) years old, with no vehicle over seven (7) years old. All vehicles shall be equipped with operational radio transceiver capable of communicating with the CONTRACTOR's dispatch from anywhere in the TOWN. The CONTRACTOR shall provide sufficient equipment, in proper operating condition so regular schedules and routes of Collection can be maintained. Equipment is to be maintained in reasonable, safe, and aesthetically pleasing working condition, in the TOWN'S opinion.

Collection vehicles shall be painted uniformly in color, with the name of the CONTRACTOR and the number of the vehicle printed in letters not less than four inches (4") high, on each side of the vehicle, and

vehicles shall be numbered and a record kept of the vehicle to which each number is assigned. No advertising shall be permitted on vehicles, Recycling Bins, Recycling Carts, Containers, Roll-offs or any other equipment servicing the TOWN. The CONTRACTOR is required to keep Collection vehicles and Containers cleaned and painted to present a pleasing appearance. The CONTRACTOR shall submit for approval by the TOWN a schedule showing the frequency of the cleaning and painting of the vehicles, the age, and miles of the vehicle.

Each non-packer Collection vehicle shall be equipped with a cover, which may be net with mesh not greater than one and one-half inches (1.5"), or tarpaulin, or fully enclosed metal top. Such cover shall be kept in good order and used to cover the load going to and from the Designated Disposal Facility, or when parked, if the contents are likely to be scattered if not covered.

Collection vehicles shall not be overloaded so as to scatter refuse, however, if refuse is scattered from the CONTRACTOR's Collection vehicle for any reasons, it shall be picked up immediately. Each Collection vehicle shall have a fork and broom for this purpose. The CONTRACTOR's Collection vehicles are not to interfere unduly with vehicular or pedestrian traffic and are not to be left standing on streets unattended except as made necessary by loading operations, and shall move with the traffic flow.

#### **17.4 CONTRACTOR'S PERSONNEL**

The CONTRACTOR shall assign a qualified person or persons to be in charge of its operations within the TOWN, and shall give the name or names of the CONTRACTOR's representatives to the TOWN. The CONTRACTOR shall also provide information regarding the experience of the CONTRACTOR's representatives. The CONTRACTOR shall adhere to the following requirements:

- 17.4.1 Each driver shall, at all times, carry a valid Florida driver's license for the type of vehicle they are driving.
- 17.4.2 All employees and contractors of the CONTRACTOR shall be considered to be, at all times, the sole employees or contractors of the CONTRACTOR under its sole discretion and not an employee, contractor, or agent of the TOWN. The CONTRACTOR shall supply competent and physically capable employees and contractors. The TOWN may require the CONTRACTOR to remove any employee or contractor it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the TOWN.
- 17.4.3 The direction and supervision of Collection and disposal operations shall be by competent, qualified and sober personnel, and the CONTRACTOR shall devote sufficient personnel, time and attention to the direction of the operation to assure performance satisfactory to the TOWN. All subcontractors, subconsultants, superintendents, foremen and workmen employed by the CONTRACTOR shall be careful and competent. The CONTRACTOR shall also provide uniforms that are clearly identified with the company name. Employees and subcontractors of the CONTRACTOR shall have and wear proper dress attire at all times. Proper dress attire shall consist of industrial style work pants, a button front shirt or T-shirt with the CONTRACTOR's company name or logo and the name of the shirt bearer, and appropriate footwear.
- 17.4.4 All employees used by the CONTRACTOR during the term of the Contract shall be of a standing or affiliation that will permit the CONTRACTOR's performance herein to be carried on harmoniously and without delay, and in no case, or in any circumstance, will such employees cause any disturbance, interference of delay to any work or service rendered to the TOWN or by the TOWN and in no case or in any circumstances will the employees conduct themselves negligently, disorderly or dishonestly in the due and proper performance of the employee's duties. The CONTRACTOR shall see to it that his employees serve the public in a courteous, helpful and

impartial manner. The CONTRACTOR shall furnish the TOWN with a current roster of employees on the first (1st) Business Day of every month for the term of the Contract.

- 17.4.5 The CONTRACTOR's employees shall follow the regular walk for pedestrians while on private property and shall not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. No employee shall meddle with property that does not concern him. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings. After emptying Garbage Cans, [Garbage Carts,] Recycling Bins, Containers, or Roll-offs, employees shall return them to the same location from which they were taken, in the proper position behind the curb or edge of pavement and anything spilled shall be picked up immediately by such employee. Any damages incurred shall be paid by CONTRACTOR.

## **SECTION 18: WORKING CONDITIONS**

### **18.1 COMPLIANCE WITH STATE, FEDERAL AND LOCAL LAWS**

The CONTRACTOR shall comply with all applicable County, State and Federal laws relating to wages, hours and all other applicable laws relating to the employment or protection of employees, now or thereafter in effect.

### **18.2 EEO STATEMENT**

The CONTRACTOR agrees that it shall not knowingly violate any applicable laws, statutes, codes, rules and regulations related to or prohibiting discrimination in employment in the performance of its work under this Contract.

### **18.3 AMERICANS WITH DISABILITIES ACT COMPLIANCE**

The CONTRACTOR shall comply with the requirements of the Americans with Disabilities Act, as amended from time to time.

### **18.4 FAIR LABOR STANDARDS ACT**

The CONTRACTOR is required and hereby agrees by execution of this Contract to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

## **SECTION 19: INSURANCE**

The CONTRACTOR shall furnish to the TOWN at 6591 Orange Drive, Davie, Florida 33314-3399, certificates of insurance which indicate that insurance coverage has been obtained that meets the following requirements.

The CONTRACTOR shall provide or cause to be provided insurance of the type and on the terms and conditions as specified in this Section. The cost of this insurance is included in the service rate. The failure of the CONTRACTOR to provide such insurance shall be considered a material breach of this Contract. Insurance purchased by the CONTRACTOR shall be purchased from a carrier acceptable to the TOWN. CONTRACTOR shall maintain the coverages for insurance as required by this Section and thereafter during any and every period when CONTRACTOR and/or any of its Emergency Service Provisions Subcontractors are performing any work or furnishing any services pursuant to the Contract. Upon execution of this Contract, CONTRACTOR shall provide or cause to be provided the workers' compensation insurance, comprehensive general liability insurance, business automobile insurance, and the umbrella liability insurance policies.

CONTRACTOR shall provide or cause to be provided the following insurance and shall also ensure that the following insurance language shall be included in the Emergency Service Provisions Subcontractor contracts. Prior to commencement of work, certificates of insurance shall be provided evidencing CONTRACTOR's and its Emergency Service Provisions Subcontractor's compliance with these insurance requirements. Without limiting any of the other obligations or liabilities of CONTRACTOR and the Emergency Service Provisions Subcontractors, CONTRACTOR shall provide, pay for, and maintain in full force until all of the work is completed and accepted by the TOWN (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein.

- (1) Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
  - (a) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.
  - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
- (2) Comprehensive General Liability with minimum limits of Five Million Dollars (\$5,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to CONTRACTOR. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
  - (a) Premises and/or Operations;
  - (b) Independent contractors;
  - (c) Products and/or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000.00) CONTRACTOR shall maintain in force until at least three (3) years after completion of all work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage;
  - (d) Explosion, Collapse and Underground Coverages;
  - (e) Broad Form Property Damage;
  - (f) Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement;
  - (g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
  - (h) Owner and CONTRACTOR are to be expressly included as "Additional Insureds" with respect to liability arising out of operations performed for owner and CONTRACTOR by or on behalf of CONTRACTOR and Emergency Service Provisions Subcontractors or acts or omissions of owner or Contractor in connection with general supervision of such operation.
- (3) Umbrella Liability, general aggregate of Ten Million Dollars (\$10,000,000).
- (4) Business Automobile Liability with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
  - (a) Owned Vehicles; and
  - (b) Hired and Non-Owned Vehicles.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the TOWN. The CONTRACTOR shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) calendar days prior written notice will be provided to owner; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the owner; and (iv) be effective for a period from the date of this Contract through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this Contract through at least five (5) years after completion of the work provided hereunder. Insurance shall be provided to the TOWN at the times required by this Section at which time the CONTRACTOR shall deliver to TOWN a certificate of insurance naming Owner as an additional insured as required hereunder for each policy of required insurance except for professional liability insurance. The minimum coverages and time periods specified above are not intended, and shall not be construed, to limit any liability of the CONTRACTOR to TOWN under this Contract. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). CONTRACTOR is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by this Contract. The cost of deductibles paid by CONTRACTOR shall be included in the cost of the service.

## **SECTION 20: PROPERTY DAMAGE**

The CONTRACTOR shall be responsible for the repair or replacement, if repair is not adequate of any damages to public or private property during the provision of collection service and caused by the CONTRACTOR or the CONTRACTOR's representative.

## **SECTION 21: INDEMNIFICATION**

To the extent of its negligence or other fault, the CONTRACTOR shall indemnify, defend and hold harmless the TOWN and its officials, employees and agents (collectively referred to as "Indemnities") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Contract which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the CONTRACTOR or its employees, agents or subcontractors (collectively referred to as "CONTRACTOR"), regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of the CONTRACTOR to comply with any of the paragraphs herein or the failure of the CONTRACTOR to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Contract. The CONTRACTOR expressly agrees to indemnify and hold harmless the Indemnities, or any of them, from and against all liabilities which may be asserted by an employee or former employee of the CONTRACTOR, or any of its subcontractors, as provide above, for which the CONTRACTOR's liability to such employee would otherwise be limited to payments under state Worker's Compensation or similar laws. Nothing herein is intended to serve as a waiver of sovereign immunity by any party entitled thereto nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this agreement or any other contract. The Town of Davie is a State political subdivision as defined in Chapter 768.28

## **SECTION 22: ASSIGNMENT OF CONTRACT; NON-TRANSFERABILITY**

This Contract, or any portion or interest herein, shall not, under any circumstances, be sublet, assigned, transferred or otherwise encumbered by CONTRACTOR without the express, written consent of the TOWN.

The CONTRACTOR shall not sell or otherwise dispose of any assets that negatively affect the CONTRACTOR'S performance of the TOWN'S pickup or disposal of Solid waste or recycling during the term of this Contract, without the express, written consent of the TOWN. The TOWN has the sole discretion to determine whether the CONTRACTOR's ability to perform its obligations under this Contract has been affected or impaired by such sale or disposition of assets.

For purposes of this Contract, any transaction that results in the CONTRACTOR being purchased by, or merged with, another corporate entity shall constitute a non-permitted assignment and subject the CONTRACTOR to the Breach, Termination or default provisions of this Contract.

## **SECTION 23: OPERATIONS DURING DISPUTE**

In the event that any dispute, arises between the TOWN and the CONTRACTOR relating to this Contract performance or compensation hereunder, the CONTRACTOR shall continue to render service and receive compensation in full compliance with all terms and conditions of this Contract as interpreted, in good faith, by the TOWN, regardless of such dispute.

The CONTRACTOR expressly recognizes the paramount right and duty of the TOWN to provide adequate Collection and disposal services to its residents and further agrees, in consideration of the execution of this Contract, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with the TOWN in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute may present the matter to a court of competent jurisdiction in Broward County, Florida in an appropriate suit therefore instituted by it or by the TOWN.

Notwithstanding the other provisions in this Section, the TOWN reserves the right to terminate this Contract at any time whenever the service provided by the CONTRACTOR fails to meet reasonable standards of the trade, after TOWN provides written notice to the CONTRACTOR pursuant to the terms of this Contract and CONTRACTOR fails to cure such performance problem within five (5) days, or if such problem cannot be cured in such time, fails to take steps to cure same in a reasonable time as determined by the nature of the problem. Upon termination, the TOWN may call the bond and apply the cash and surety bond for the cost of service in excess of that charged to the TOWN by the firm engaged for the balance of the Contract period.

## **SECTION 24: ORDINANCE**

Nothing contained in any TOWN ordinance hereafter adopted, pertaining to the Collection of Solid Waste or the Collection of Recyclable Materials, shall in anyway be construed to affect, change, modify or otherwise alter the duties, responsibilities, and operations of the CONTRACTOR in the performance of the terms of this Contract, unless it is agreed to in writing by both the CONTRACTOR and the TOWN and this Contract is amended accordingly.

## **SECTION 25: AMENDMENTS**

Amendments in writing which are consistent with the purposes of this Contract may be made with the mutual consent of the TOWN and the CONTRACTOR.

## **SECTION 26: MODIFICATIONS TO THE CONTRACT**

The TOWN shall have the power to make changes in this Contract as the result of changes in law, TOWN Code or both to impose new rules and regulations on the CONTRACTOR under this Contract relative to the scope and methods of providing Collection services as shall from time-to-time be necessary and desirable for the public welfare. The TOWN shall give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing Collection services as referenced herein shall also be liberally construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise, of the CONTRACTOR.

The TOWN 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 Contract. The CONTRACTOR agrees that the terms and provisions of TOWN Code as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Contract and the customers of the CONTRACTOR located within the Service Area. In the event any future change in the TOWN Code materially alters the obligations of the CONTRACTOR, then the Collection charges established in this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The TOWN and the CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract 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 Contract, the TOWN 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 Contract under this Section. The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

## **SECTION 27: RIGHT TO REQUIRE PERFORMANCE**

The failure of the parties at any time to require performance of any provisions hereof shall in no way affect their rights thereafter to enforce same. No waiver of any breach of any provisions hereof shall be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

## **SECTION 28: LAW GOVERNING**

The Contract shall be governed and enforced pursuant to the laws of the State of Florida. Venue for any litigation shall be commenced in Broward County, Florida.

## **SECTION 29: COMPLIANCE WITH LAWS AND REGULATIONS**

The CONTRACTOR hereby agrees to abide by and comply with all applicable Federal, State, County, Special District and TOWN laws, statutes, codes, rules and regulations. The CONTRACTOR and its cash/surety shall indemnify, defend and hold harmless the TOWN, its Town Council, its officers, representatives, agents and employees against any claim or liability arising from or based on the violation of any such laws, regulations, ordinances, orders or decrees, whether by itself or its employees. 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 30: SAVINGS CLAUSE**

Should any provision, paragraph, sentence, word or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida

or the TOWN, such provisions, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Contract shall remain unmodified and in full force and effect or limitation of its use.

## **SECTION 31: GENERAL**

### **31.1 NO CONTINGENT FEES**

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee, agent, consultant or lobbyist working solely for the CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee, agent, consultant or lobbyist working solely for the CONTRACTOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the TOWN shall have the right to terminate the Contract without liability at its discretion, to deduct from the Contract price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

### **31.2 NO WAIVER**

No waiver by the TOWN of any term, covenant or condition herein contained shall be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The rights and remedies created by this Contract are cumulative, and are not intended to be exclusive. The use of one remedy under this Contract shall not be taken to exclude or waive the right or use of another and each party shall be entitled to pursue all remedies generally available under the laws of the State of Florida.

## **SECTION 32: LEGAL REPRESENTATION**

It is acknowledged that each party to this Contract had the opportunity to be represented by legal counsel in the preparation of this Contract 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 33: MISCELLANEOUS**

### **33.1 RECORDS**

The CONTRACTOR shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to services provided and fees charged pursuant to this Contract. Upon providing reasonable notice, such books and records shall be available at all reasonable times for examination and audit by the TOWN and its representatives, and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Contract. Incomplete or incorrect entries in such books and records may be grounds for disallowance by the TOWN of any fees or expenses based upon such entries.

### **33.2 MODIFICATION**

This Contract, including Exhibits, constitutes the entire Contract 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.



Telephone: (954) 797-1030  
Facsimile: (954) 797-2095

Copy to: Monroe Kiar, TOWN Attorney  
6191 Orange Drive  
Davie, Florida 33314  
Telephone: (954) 584-9770  
Facsimile: (954) 584-9723

As to CONTRACTOR: John Casagrande  
Marketing Vice President  
2700 NW 48 Street  
Pompano Beach, FL 33073  
Telephone: (954) 984-2001  
Facsimile: (954) 984-2059

Copy to: Ronald M. Kaplan  
Attorney  
2700 NW 48 Street  
Pompano Beach, FL 33073  
Telephone: (954)984-2021  
Facsimile: (954)984-2057

IN WITNESS WHEREOF, the parties have caused these presents to be executed and attested to by their duly authorized officers or representatives and their official seals to be affixed hereon, the day and year first above written.

TOWN OF DAVIE, through its Town Council

Attest:

\_\_\_\_\_  
Russell Muniz, TOWN Clerk

By: \_\_\_\_\_  
Tom Truex, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2004

Approved as to form and legality by  
Office of the TOWN Attorney

By: \_\_\_\_\_  
Thomas J. Willi, Town Administrator

\_\_\_\_ day of \_\_\_\_\_, 2004

By: \_\_\_\_\_  
Monroe Kiar, TOWN Attorney

\_\_\_\_ day of \_\_\_\_\_, 2004

(TOWN SEAL)

CONTRACTOR

WITNESSES:

COMPANY

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2004

ATTEST:

\_\_\_\_\_  
SECRETARY

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF BROWARD    )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_, of \_\_\_\_\_, an organization authorized to do business in the State of Florida, and acknowledged executed the foregoing Contract as the proper official of \_\_\_\_\_ 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 at in the State and County aforesaid on this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

---

NOTARY PUBLIC

My Commission Expires:

## EXHIBIT 1

### Residential Curbside Collection Rates

The following cost proposal form is for Residential Curbside Collection services presented in Scenario 2 located in Table 1.4.1.1 of Section 1 of this RFP. All service rates proposed on this form shall be fixed through October 1, 2005 and shall reflect service requirements as specified in the Contract.

1. Solid Waste Collection (automated, 2 x week, up to 96 gallons) (A) (B)	\$1.12	/Unit/Mo
2. Recycling Collection (manual, two-stream, 1x week) (A)	\$ .05	/Unit/Mo
4. Disposal Rate (D)	\$12.01	/Unit/Mo
5. Cart Expense	\$ .05	/Unit/Mo

- (A) Monthly Residential Curbside Service Unit Collection element shall include the cost for Solid Waste Collection, Recycling Collection and Bulk Collection. Monthly Residential Curbside Service Unit Collection element shall be adjusted according to the Contract.
- (B) Solid Waste Collection shall include up to 96 gallons. Residential Curbside Service Units can select to have additional gallons at the rate specified in Table 3.2. Additional gallons shall not increase the disposal rate of the service rate.
- (C) The TOWN shall select the frequency of Bulk Waste Collection and the rate shall be based upon Table 3.3; this line item shall be inserted prior to execution of the Contract.
- (D) The disposal rate of the above service rate is based upon a residential curbside generation rate of 1.66 tons per Residential Curbside Service Unit per year and a Disposal Charge of \$86.81 per ton at the Designated Disposal Facility. Monthly Residential Curbside Service Unit disposal rate shall be adjusted according to the Contract. Proposer's adjustments to the disposal rate will not be considered by TOWN. The residential curbside generation rate of 1.66 tons per Residential Curbside Service Unit shall be independent of the frequency, gallons, etc. and shall not be adjusted.
- (E) The TOWN shall determine if the Proposer shall perform billing. In the event that TOWN elects for Proposer to bill for Collection services, Proposer will provide said services at the rate stated in Table 3.4; this line item shall be inserted prior to execution of the Contract.

TABLE 3.2- RESIDENTIAL CURBSIDE SOLID WASTE COLLECTION SERVICES		
1. First Additional Cart, up to a maximum of 96 gallons	\$1.25	/Unit/Mo
2. Second Additional Cart, up to a maximum of 96 gallons	\$1.75	/Unit/Mo
3. Third Additional Cart, up to a maximum of 96 gallons	\$1.75	/Unit/Mo
4. Fourth Additional Cart, up to a maximum of 96 gallons	\$1.75	/Unit/Mo

EXHIBIT 1 (CONTINUED)

)

TABLE 3.3- RESIDENTIAL CURBSIDE BULK WASTE COLLECTION SERVICES		
1. Six (6) Collections per year	\$ .05	/Unit/Mo
2. Twelve (12) Collections per year	\$ .10	/Unit/Mo
3. Twenty-four (24) Collections per year	\$ .20	/Unit/Mo
4. Fifty-two (52) Collections per year	\$ .50	/Unit/Mo

TABLE 3.4- BILLING		
1. Billing Cost	\$ .40	/Unit/Mo
	\$ .40	/Unit/Quarter

**EXHIBIT 2**

**MULTIFAMILY AND COMMERCIAL COLLECTION SERVICES**

The following cost proposal form is for Multifamily and Commercial Solid Waste Collection Services, which remain the same in Scenarios 1 through 6 located in Table 1.4.1.1 of Section 1 of this RFP. All service rates proposed on this form shall be fixed through October 1, 2005, and shall reflect service requirements as specified in the Contract.

TABLE 8.1		
1. Solid Waste Collection Service (A) (B)	\$ 7.13	/Cubic Yard
2. Non-compacted Disposal Rate (C)	\$ 4.34	/Cubic Yard
3. Non-compacted Container Rental and Maintenance (D)	\$ 0.00	/Cubic Yard

TABLE 8.2 (F)		
1. Multifamily Recycling Cart Collection (1x per week) (B)	\$0.89	Customer/Month
2. Construction and Demolition Debris Collection Service (B)	\$ 169.00	/Pull
4. Non-compacted Roll-off Rental and Maintenance	\$5.00	/Cubic Yard
5. Compacted Container Rental and Maintenance (D)	\$15.00	/Cubic Yard

- (A) The monthly Solid Waste Collection component of the service rate shall be calculated by multiplying the frequency of Solid Waste Collection per week times the cubic yards of the Solid Waste Container(s)/Roll-off(s) times 4.33 (weeks/month) times the Solid Waste Collection rate stated in Line 1 of Table 8.1
- (B) The Collection element shall be adjusted according to the Contract.
- (C) The monthly disposal rate of the service rate shall be calculated by multiplying the weight per cubic yard factor of 100 pounds per cubic yard for Solid Waste Container(s)/Roll-off(s) without Compactor(s) or the compacted weight per cubic yard factor of 320 pounds per cubic yard for Solid Waste Container(s)/Roll-off(s) with Compactor(s) times the frequency of Solid Waste Collection per week times the cubic yards of the Solid Waste Container(s)/Roll-off(s) times 4.33 (weeks/month) times the Disposal Charge of \$86.81 per ton at the Designated Disposal Facility. Monthly disposal rate shall be adjusted according to the Contract.
- (D) The monthly container rental and maintenance shall be based upon whether the Container has or does not have a Compactor.
- (E) The disposal rate of the Roll-off Collection Service rate shall be per actual weigh ticket at the Designated Disposal Facility.
- (F) The TOWN shall determine if Proposer shall perform billing. In the event that TOWN elects for Proposer to bill for Collection services, Proposer will provide said services at the rate stated in Table 8.3; this line item shall be inserted prior to execution of the Contract.

TABLE 8.3- BILLING		
1. Billing Cost	\$ 0.40	Customer/Mo

**EXHIBIT 2 (CONTINUED)**

<b>Table 8.4 – Commercial Cart Service - Collection (A)</b>				
1 Cart	\$33.00	/Unit/Month	\$ 69.00	/Unit/Month
2 Carts	\$51	/Unit/Month	\$103.00	/Unit/Month
3 Carts	\$68.00	/Unit/Month	\$110.00	/Unit/Month

(A) The Commercial Cart Service collection rates above shall include the collection element only, which shall be adjusted according to the Contract.

The disposal charge for Commercial Cart Collection service shall be calculated as directed below.

Weight per Cart Factors provided by the Proposer shall be used to calculate the disposal element of the applicable rates as follows:

The disposal charge at the Designated Disposal Facility (\$86.81/ton for Solid Waste) x (Weight per Cart Factor)/ 2000) x number of carts x frequency per week x 4.33

Weight per Cart Factor for Solid Waste is: \_\_\_\_\_ lbs. per cart., per collection

<b>Table 8.5 – Commercial Cart Service - Disposal (A)</b>				
1 Cart	\$ 9.56	/Unit/Month	\$19.12	/Unit/Month
2 Carts	\$19.13	/Unit/Month	\$ 38.26	/Unit/Month
3 Carts	\$28.69	/Unit/Month	\$57.39	/Unit/Month

(A) The Commercial Cart Service disposal rates above shall include the disposal element only.

EXHIBIT 3

**Special Collection Services Rates Determined by the TOWN**

(NOT TO BE ADJUSTED DURING TERM OF CONTRACT)  
 (RATES INCLUDE THE COST OF BILLING)

Rolling Out Container (and returning it to original location)	No Charge
Opening (and closing) Doors or Gates	No Charge
Locks	\$9.00 (one time) Charge for Replacements based on cost +10%
Unlocking and Locking	\$20.00 per month
Supplying (and retrofitting) locking mechanism	\$55.00
Adding wheels to or changing wheels	No Charge
Adding lids to or changing lids	No Charge
Moving Container or Roll-off Location Per Customer Request	No Charge at time of scheduled return Non-scheduled returns are \$75.00
Changing Out Sizes (above twice per year)	\$25.00
Additional Unscheduled (Not Including "On-Call") Solid Waste Pick-Ups For Commercial Service Units And Multifamily Service Units	2 x (Applicable 1X Week Solid Waste Collection Cost) + Regular Disposal Charges (\$25.00 minimum or above schedule)
Return Roll-off To Same Spot Or Round Trip For Roll-off.	No Charge
Return Container or Roll-off After Service Was Stopped (applicable only to the same customer)	\$25.00
Residential Off-Street Collection Service (excluding handicapped)	\$25.00/month
Additional Bulk Waste Collection	\$13.00 per Cubic Yard
Freon Removal	

## EXHIBIT 4

### DISASTER RESPONSE PLAN

There are two types of disasters that we plan for. The first type of disaster is somewhat predictable in that we are given some warning prior to the event (i.e., hurricanes, tropical storms, floods, ice storms). The second type is totally unpredictable (i.e., tornadoes, earthquakes, and man-made disasters). The two types of events are handled similarly once the event has occurred, however, in a predictable event there are more steps in the preplanning sequence.

- a. Personnel staffing strengths in the region
  - b. Pre-assign equipment in the region
  - c. Existing client base in the region
  - d. Landfill and transfer station locations, capacities, and availability in the region
  - e. Initial notification of major sub-contractors committed to Waste Management in the Region
2. Concurrently, the Emergency Response Team will begin an inspection to assure there are the necessary equipment and supplies to begin immediate work
    - a. All forms in sufficient quantities for a major event.
    - b. Pre-printed truck numbers
    - c. Pre-Printed truck volume numbers
  3. The Emergency Response Team and key personnel in the region are placed on a 24-hour alert.

#### **Post Event Actions**

1. Once the event has passed the OM will immediately mobilize to the affected area. The OM will arrive within twelve hours of the event's conclusion. He/she will immediately meet with the Region Manager and the District Manager and divide the affected area into sections to begin a damage assessment. It is important that a thorough damage assessment be done so the proper equipment and manpower can be mobilized. If a proper assessment is not made it can delay the clean-up effort.
2. When the damage assessment is complete, a recovery plan is determined. Once resource needs have been qualified, the Regional Manager will notify the divisions that will be supplying the clean-up crews. The clean-up crews will prepare all equipment for mobilization and be ready to leave within 8 hours of Waste Management Inc. of Florida receiving a task order.
3. The Emergency Response Team will be mobilized when the OM has concluded the damage assessment. The OM has the authority to commit the ERT based solely on his judgment, with or without a task order.

#### **Task Order Issuance and Mobilization**

1. Upon the issuance of a task order, the OM and Regional Manager will immediately mobilize key personnel and equipment that are pre-assigned during the pre-planning stage.

2. To ensure immediate response, WMIF will use its local equipment from the affected area to conduct the initial debris collection.
3. Additional equipment and personnel will be mobilized to the affected area, and be ready to begin work, with 12 hours of the notice to proceed.
4. The OM, Project Manager and key members of the Emergency Response Team will meet twice daily with the municipal authority to discuss:
  - a. Progress of the clean-up effort
  - b. Priority or sensitive clean-up areas
  - c. Homeowner concerns or feedback
  - d. Environmental concerns
  - e. Additional equipment or personnel needs

Rate Schedule – The Town has asked for pricing of debris pick-up.

In the event of a major storm, separation of debris into a number of different types will not be practical. You will not have the time, space, money, and etc. to separate the debris into many different categories for collection and disposal.

With this in mind, Waste Management Inc. of Florida offers a general disposal rate of \$30.00 per cubic yard of debris exclusive of hazardous material, and a handling, collection and delivery rate of \$20.00 per cubic yard. We are prepared to offer disposal costs as a pass-through if it may be more cost effective at a tonnage rate.

Right of entry issues will be determined on the basis and extent of damage and work to be done. Enclosed is an equipment schedule and rates for your additional consideration.

Waste Management Inc. of Florida will provide the necessary insurance requirements as requested in this R.F.P

Equipment List

The attached equipment list details the equipment Waste Management Inc. of Florida has available to our Emergency Response Division. This equipment is available within 36 hours of the event occurrence to assist in debris clearing operations. Waste Management Inc. of Florida is fully committed to immediately respond to our clients needs following an emergency situation.

In addition to the equipment available, Waste Management Inc. of Florida is one of the largest purchasers of Caterpillar equipment in the world. With this special relationship comes commitment from Caterpillar to give Waste Management Inc. of Florida preferred customer status on immediate lease for all Caterpillar equipment in an affected area. Caterpillar will mobilize any equipment that Waste Management Inc. of Florida requests within 48 hours of the event. The resource is unparalleled in the disaster recovery industry.

Waste Management Inc. of Florida also has an extensive database of experienced subcontractors throughout the United States. These contractors are some of the largest and most experienced contractors in their respected fields. Should the disaster be of significant magnitude, Waste

Management Inc. of Florida has obtained letters of commitment from our subcontractors that firmly dedicate their assets to our organization following an emergency situation.

Waste Management Inc. of Florida has the resources through its own vast amount of personnel and the national relationships with experienced subcontractors to assist your community to quickly and efficiently recover from any natural or manmade disaster.

## EXHIBIT 5

### Emergency Preparedness Plan Costs

The following cost proposal form is for services to be provided under the Emergency Preparedness Plan. Equipment, tools, vehicles, and manpower cost per hour or day should be included within the form below. The TOWN shall not be responsible for reimbursement of any costs incurred by the Proposer for items not listed in Form 9. All service rates proposed on this form shall be fixed through October 1, 2005, and shall reflect service requirements as specified in the Contract and the Emergency Preparedness Plan. All service rates proposed on this form shall be adjusted according to the Contract.

		DATE	INDICATE IF RATE IS HOURLY OR DAILY
Claw Loader	Prentice Loader	\$170.00	Hourly
Self Loading Truck	Prentice	\$170.00	Hourly
Wheel Loader	Caterpillar	\$140	Hourly
Tandem Dump Truck	Mack	\$100.00	Hourly
Tractor Trailer Dump	Mack	\$160.00	Hourly
Skid Steer Loader	Bobcat	\$140.00	Hourly
D6 Dozer	Caterpillar	\$140.00	Hourly
330 Excavator	Caterpillar	\$140.00	Hourly
950 Wheel Loader	Caterpillar	\$160.00	Hourly
Chainsaw Operator w/gear		\$140.00	Hourly
Supervisor w/Pickup Truck		\$ 65.00	Hourly
Mechanic's Truck w/Tools		\$ 70.00	Hourly
Flagman for Traffic Control		\$ 35.00	Hourly
12 Foot Tub Grinder	Morbark	\$425.00	Hourly
13 Foot Tub Grinder	Morbark	\$475.00	Hourly
Trash Transfer Trailer 110 yds	Mack	\$135.00	Hourly
Clerical		\$ 43.00	Hourly
Mobilization & Demobilization		Pass Through	

Any Place in which a make or model are given, any equivalent may be used

**EXHIBIT 6**

**Performance Bond**

Any singular reference to CONTRACTOR, Surety, TOWN or other party shall be considered plural where applicable.

**CONTRACTOR** (name and address):

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

**SURETY** (name and principal place of business):

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

**TOWN (OWNER):**

Town of Davie  
6591 Orange Drive  
Davie, Florida 33314

**SOLID WASTE, BULK WASTE, RECYCLING AND  
CONSTRUCTION AND DEMOLITION DEBRIS COLLECTION CONTRACT**

Date:

\_\_\_\_\_

Amount:

\_\_\_\_\_

Description (name and location):

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

**BOND**

Date (not earlier than  
Solid Waste Contract  
Date):

\_\_\_\_\_

Amount:

\_\_\_\_\_

Modifications to this Bond:

None \_\_\_\_\_

See Page(s) \_\_\_\_\_

**EXHIBIT 6**  
**Performance Bond**  
**(continued)**

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

**SURETY**

Company: (Corporate Seal)

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

(Any additional signatures please include at the end of page 5 of the exhibit)

**FLORIDA RESIDENT AGENT**

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

1. The CONTRACTOR and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the TOWN for the performance of the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, which is incorporated herein by reference.
2. If the CONTRACTOR performs the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, the Surety and the CONTRACTOR shall have no obligation under this Bond, except to participate in conferences.
3. If there is no TOWN Default, the Surety's obligation under this Bond shall arise after:
  - A. The TOWN has notified the CONTRACTOR and the Surety at its address described in paragraph 10 below that the TOWN is considering declaring a CONTRACTOR Default and has requested and

## EXHIBIT 6

### Performance Bond (continued)

attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract. If the TOWN, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, but such an agreement shall not waive the TOWN's right, if any, subsequently to declare a CONTRACTOR Default; and

- B. The TOWN has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty (20) days after the CONTRACTOR and the Surety have been received.

- 4. When the TOWN has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

- A. Arrange for the CONTRACTOR, with consent of the TOWN, to perform and complete the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract; or
- B. Undertake to perform and complete the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract itself, through its agents or through independent contractors; or
- C. Obtain bids or negotiated proposals from qualified contractors acceptable to the TOWN for a contract for performance and completion of the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, arrange for a contract to be prepared for execution by the TOWN and the contractor selected with the TOWN's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued on the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, and pay to the TOWN the amount of damages as described in paragraph 6 in excess of the balance of the contract price incurred by the TOWN resulting from the CONTRACTOR 's default; or

## EXHIBIT 6

### Performance Bond (continued)

- D. Waive its right to perform and complete, arrange for completion, or obtain a new contractor acceptable to the TOWN and with reasonable promptness under the circumstances:
- (1) After investigation, determine the amount for which it may be liable to the TOWN and, as soon as practicable after the amount is determined, tender payment therefore to the TOWN; or
  - (2) Deny liability in whole or in part and notify the TOWN citing reasons therefore.
5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this bond fifteen (15) days after receipt of an additional written notice from the TOWN to the Surety demanding that the Surety perform its obligations under this Bond, and the TOWN shall be entitled to enforce any remedy available to the TOWN. If the Surety proceeds, on its part, without further notice, the TOWN shall be entitled to enforce any remedy available to the TOWN.
6. After the TOWN has terminated the CONTRACTOR's right to complete the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, and if the Surety elects to act, then the responsibilities of the Surety to the TOWN shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the TOWN to the Surety shall not be greater than those of the TOWN under the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract. To the limit of the amount of this bond, but subject to commitment by the TOWN of the balance of the contract price to mitigation of costs and damages on the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, the Surety is obligated without duplication for:
- A. The responsibilities of the CONTRACTOR for correction of defective work and completion of the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract;
  - B. Additional legal, design professional and delay costs resulting from the CONTRACTOR 's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
  - C. Liquidated damages, or if no liquidated damages are specified in the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.
7. The Surety shall not be liable to the TOWN or others for obligations of the CONTRACTOR that are unrelated to the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection

## EXHIBIT 6

### Performance Bond (continued)

Contract. No right of action shall accrue on this bond to any person or entity other than the TOWN or its heirs, executors, administrators or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after CONTRACTOR Default or within two (2) years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this bond, whichever occurs first. 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 jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the TOWN or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
11. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this bond shall be construed as a statutory bond and not as a common law bond.
12. **DEFINITIONS**
  - A. **CONTRACTOR Default:** Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Solid Waste Contract.
  - B. **Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract:** The Contract between the TOWN and the CONTRACTOR identified on the signature page, including all Request for Proposals and Contract Documents and changes thereto.
  - C. **TOWN Default:** Failure of the TOWN, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Solid Waste, Bulk Waste, Recycling and Construction and Demolition Debris Collection Contract or to perform and complete or comply with the other terms thereof.

**EXHIBIT 6**  
**Performance Bond**  
**(continued)**

**MODIFICATONS TO THIS BOND ARE AS FOLLOWS:**

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corporate Seal)

Company: (Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## EXHIBIT 7

### Payment Adjustment Schedule

#### RATE ADJUSTMENT CALCULATIONS- PART I

The adjustment to the costs in Exhibit 5 and to the Collection element of cost in Exhibits 1 and 2 (as adjusted) shall be calculated as the Consumer Price Index- All Urban Consumers, Series ID CUURA320SA0, CUUSA320SA0, for Miami-Fort Lauderdale, Florida (CPI) - The CPI adjustment shall be calculated as the percentage change in the CPI from the base month, which shall be MAY of the preceding year, to May of the current year, as contained in the Bureau of Labor Statistics publication of the CPI. Such adjustment shall be capped at 80% of the CPI .

If the CPI index becomes obsolete during the term of this Contract, an alternative, related index may be used, as agreed upon between the CONTRACTOR and the Town Administrator or his/her designated representative(s).

#### RATE ADJUSTMENT CALCULATION – PART II

The effective rate during the month of May, less any subsidy, will be used as the base amount to determine what the new rate will be.

The authorized percent increase, as determined by the formula in part one of the exhibit will be used to determine the effective new rate that would be the effective new rate for October. Should the TOWN choose to place billing on the property tax bills, the new rate would be billed on a calendar year, instead of the TOWN'S Fiscal Year. In this case an additional subsidy will be allowed to increase the January monthly billing rate. The subsidy would be equal to the amount of the increase as determined in Part I of this exhibit, that would have been effective as the monthly billing rate during October, November and December of the year preceding January of the new calendar year. For example, if the monthly billing rate for May was \$13.20 and the CPI increase determined by Part I of this exhibit was 5%, then the new monthly rate effective October 1 would be \$13.86 ( $\$13.20 \times 105\% = \$13.86$ ). Using the Property Tax Appraiser's Office for waste collection will not allow for a billing rate change until January of the following year. To compensate for this, the additional amount that could not be billed, \$1.98 ( $\$13.86$  less  $\$13.20 = \$0.66 \times 3$  months =  $\$1.98$ ) would be divided by twelve (12) months to determine a surcharge of \$.16 that would be added to the new monthly rate of \$13.86, bringing the new monthly bill to \$14.02 for the property tax bill.

The base monthly billing rate for determining the new rate for the following year would still be the \$13.86 rate, which is the base rate less the surcharge of \$14.02 (monthly billing rate with surcharge) less \$.16 (surcharge) less \$13.86 (actual rate).

## EXHIBIT 7

### EXHIBIT 7A

#### Operating Cost Statement Description

##### Operating Costs

Labor:

List all administrative, officer, operation and maintenance salary accounts.

Fuel:

List all fuel and oil accounts.

Vehicle Replacement:

List all Collection and Collection related vehicle depreciation accounts.

List all vehicle lease or rental accounts related to Collection or Collection related vehicles.

Vehicle Maintenance:

List all Collection or Collection related vehicle parts accounts.

Other:

List all other expense accounts related to the services provided under this Agreement to cover normal overhead expenses.

Overhead only includes: All insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance expenses; customer billing expenses; office supplies; postage; trade association dues and subscriptions; advertising; employee retirement or profit sharing contributions. Overhead does not include shared overhead or expenses with affiliated businesses or payments to parent or other affiliated businesses.

No later than October 15th of the second Contract year, and each subsequent Contract year, the CONTRACTOR shall submit to the TOWN a certified annual Operating Cost Statement prepared in accordance with general accepted accounting standards for operations within the Service Area. The CONTRACTOR shall provide a description of the expenses classified as "Other".

The CONTRACTOR shall utilize the accrual basis of accounting for expenses.

**EXHIBIT 7**

**COLLECTION SERVICE AGREEMENT  
TERMS AND CONDITIONS  
BETWEEN CUSTOMER AND WASTE MANAGEMENT INC. OF FLORIDA ("COMPANY")**

1. **SERVICES RENDERED; WASTE MATERIALS.** Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous putrescible and non-putrescible solid waste and recyclable materials generated by Customer or at Customer's Service Address. Waste Materials excludes and Customer agrees not to deposit or permit the deposit for collection of Special Waste, such as industrial process wastes, asbestos containing material, petroleum contaminated soils, treated/de-characterized wastes, and demolition debris. Waste Materials also excludes, and Customer agrees not to deposit or permit the deposit for collection of, any radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, (collectively, "Excluded Materials"). Title to and liability for Excluded Material shall remain with Customer at all times.

2. **TERM.** The Company has an exclusive Franchise Agreement with the Town in which Customer is located and for the term of the franchise agreement, this Service Agreement shall be applicable.

3. **CHARGES; PAYMENTS; ADJUSTMENTS.** Customer shall pay for the services and/or equipment furnished by Company in accordance with the charges on the reverse side, as adjusted hereunder, within ten (10) days of the date of Company's invoice. Customer shall pay a service charge on all past due amounts accruing from the date of the invoice at a rate of eighteen percent (18%) per annum or, if less, the maximum rate allowed by law. Company may increase the charges to Customer as permitted by the Franchise Agreement.

4. **CHANGES.** Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties.

5. **EQUIPMENT, ACCESS.** All equipment furnished by Company shall remain the property of Company; however, Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location except for normal wear and tear and damage caused by Company's actions or negligence. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unobstructed access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modifications caused by or resulting from Customer's failure to provide access. Company shall not be responsible for damage to Customer's driving surfaces and curbing caused solely by the weight of Company's vehicles and equipment. Customer warrants that Customer's right of way is sufficient to bear the weight of Company's equipment and vehicles.

6. **INDEMNITY.** The Company agrees to indemnify, defend and save Customer harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs (1) during the collection or transportation of Customer's Waste Materials, or (2) as a result of the disposal of Customer's Waste Materials, after the date of this Agreement, in a facility owned by a subsidiary of Waste Management, inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

7. **MISCELLANEOUS.** (a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, whether written or oral, that may exist between the parties; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; and (e) All written notification required by this Agreement shall be by Certified Mail, Return Receipt Requested. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect to the maximum extent allowed, to the intent and meaning of the severed provision. In the event either party successfully enforces its rights against the other hereunder, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

08-12-04

# EXHIBIT 9

## SOLID WASTE NONCOMPLIANCE FORM TOWN OF DAVIE FAILURE TO CONTRACT FOR SOLID WASTE SERVICES

### CUSTOMER INFORMATION

1. Name: \_\_\_\_\_
2. Address/Location: \_\_\_\_\_
3. Type of Service: \_\_\_\_\_
4. Is a nonfranchised hauler on site? If so, who?  
\_\_\_\_\_
5. Comments: \_\_\_\_\_  
\_\_\_\_\_

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

WASTE MANAGEMENT INC. OF FLORIDA

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