

Solid Waste and Recycling Collection Services Franchise Agreement

This Agreement is hereby made and entered into this _____ day of May, 2023, between the TOWN OF HIGHLAND BEACH, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "Town") and WASTE MANAGEMENT INC. OF FLORIDA, a Florida corporation (hereinafter referred to as "Contractor").

In consideration of the mutual benefits, the parties herein agree as follows:

1. Term

The term of this Agreement shall be for the period beginning June 1, 2023, and expiring May 31, 2028. This Agreement may be renewed for two one-year (1) periods upon mutual agreement of the parties.

2. Definitions

To the extent the definitions contained herein conflict with similar definitions contained in any federal, state or local law, the definition herein shall prevail. However, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

Agreement: This Franchise Agreement for solid waste and recycling collection services executed by the Town of Highland Beach and the Contractor and all exhibits and amendments thereto. The term "Agreement" may be used interchangeably with the term "Contract."

Applicable Law: All applicable Federal and State of Florida laws, local (municipal and county) ordinances, and the rules and regulations of all authorities having jurisdiction over any part of the services provided under this Agreement.

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

Biomedical or Biohazardous Waste: As defined by F.S. § 403.703(2), as may be amended.

Biological Waste: As defined by F.S. § 403.703(3), as may be amended.

Bulk Waste: Any non-vegetative item which cannot be containerize, bagged, or bundled; including but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bathtubs, water heaters, sinks, bicycles, and other similar domestic appliances, household goods. There shall be no weight limit for any item of Bulk Waste. The term "Bulk Waste" may be used

interchangeably with the term "Bulk Trash."

Business Days shall mean Monday through Saturday, except for Holidays.

Collection: The process whereby Solid Waste, Garbage, Trash, Bulk Trash, Vegetative Waste or Recovered Material is gathered and transported to a Designated Facility.

Commercial Recycling Collection Service: The Collection of Recovered Materials by the Contractor for entities within the Service Area that are not serviced by Residential Recycling Collection Service.

Commercial Single Stream Recycling Collection Service: The practice of collecting Source Separated Recovered Materials generated by commercial establishments in a commingled form without separating the fiber from the other materials as is required under Dual Stream Collection.

Commercial Solid Waste: Solid Waste that is not Residential Solid Waste, but for the purposes of this Agreement shall exclude commercial Vegetative Waste, the collection of which is not exclusive to the Contractor.

Commercial Solid Waste Collection Service: The collection of Commercial Solid Waste within the Service Area. Such service includes both Containers and Compactors, but does not include Roll-off Collection Services.

Compactor: Any container which has compaction mechanism(s), whether stationary or mobile, all inclusive.

Construction and Demolition Debris (C&D): Materials generally considered to be not water soluble and which are nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project. Mixing of a de minimis amount of waste other than C&D from the construction site will not automatically cause it to be classified as other than C&D.

Container shall mean and include any container designed or intended to be mechanically dumped into a loader packer type truck or recycling vehicle. All Containers must be of the specifications as designated by the Town Manager.

Containerized Residential Recycling Collection Service: The collection of Recovered Materials by the Contractor from Dwelling Units in the Service Area that require the use of Containers for the collection of Recovered Materials, and which also receive Residential Collection Service for Solid Waste, and the delivery of those Recovered Materials to the Recovered Materials Processing Facility or designated Authority transfer station.

Containerized Residential Solid Waste Collection Service: Solid Waste collection service of all Dwelling Units whose Garbage, Trash or Bulk Trash is collected by means of a central or shared Container and not by means of a Garbage Can.

Contract Administrator shall mean the person designated by the Town who shall act as the Town's representative during the term of this Agreement.

Contractor: A person or entity identified as such in the first paragraph of this Agreement that has entered into this Agreement to provide the services described herein for the Service Area. The term "Contractor" may be used interchangeably with the term "Franchisee."

Curbside Residential Recycling Collection Service: The collection of Recovered Materials by the Contractor from all Dwelling Units in the Service Area that also receive Curbside Residential Solid Waste Collection Service for Solid Waste, and other Dwelling Units as designated by the Town, and the delivery of those Recovered Materials to an Authority Recovered Materials Processing Facility or designated Authority transfer station.

Curbside Residential Solid Waste Collection Service: Residential Solid Waste and Vegetative Waste Collection service for all Dwelling Units from which Garbage is collected by means of a Garbage Can at curbside or roadway and delivery to an Authority designated disposal facility or transfer station.

Designated Facility: An Authority owned disposal, processing, recovery, recycling or transfer facility, or another facility if specifically designated in writing by the Town Manager to the Contractor.

Dual Stream Recycling Collection: The practice of collecting Recovered Materials in two separate containers, one for fiber and one for commingled containers and other materials accepted in the Town's recycling program.

Dwelling Unit: Any type of structure or building unit intended for or capable of being utilized for residential living other than a licensed Hotel or Motel unit

Effective Date: The date this Agreement has been executed by both the Town and the Franchisee, or June 1, 2023, whichever is later.

Fiscal Year: October 1st of a given year and September 30 of the following year during this Agreement

Force Majeure: Any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, or sabotage.

Garbage: All putrescible 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, but shall not include Vegetative Waste or Special Waste.

Garbage Cart: A Container intended for Solid Waste collection between thirty-five (35) and sixty-five (65) gallons capacity on wheels for rolling, with a non-removable hinged lid, suited to automatic dumping equipment provided by the Franchisee's collection vehicles and containing not over two hundred fifty (250) pounds of waste. The term "Garbage Cart" may be used interchangeably with the term "Refuse Cart", and/or "Garbage Can."

Hazardous Waste: A hazardous waste as identified by the State of Florida Department of Environmental Regulation in Florida Administrative Code 17-730, as may be amended, or the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., and implementing regulations, as may be amended.

Holiday: A designated holiday on which the Franchisee shall not be required to provide Collection Service or to maintain office hours as set forth in Section 7 of the Agreement.

Household Hazardous Waste (HHW): Solid Waste as defined by Florida Department of Environmental Protection as a hazardous waste in the State of Florida Administrative Code, or by any future legislative action or by federal, state or local law.

Hotel: Any public lodging establishment containing sleeping room accommodations for twenty-five (25) or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry as defined in Chapter 509, Florida Statutes, as may be amended

Land Clearing: The removal of vegetation for the purpose of improving real property through remodeling, new construction or agricultural use. Land clearing shall include, but is not limited to, trees, brush, dirt, rocks or similar obstructions/materials being removed from a parcel of assessed residential land using mechanical devices such as a bobcat, backhoe, front-end loader, tractor, bulldozer, etc. Removal refers to the physical action of the equipment digging, scraping, bulldozing, and/or pulling debris from the ground. Transporting legally cut vegetation to the curb using a mechanical device does not constitute land clearing. A chainsaw is not to be considered a mechanical device in the removal process.

Mixed Paper shall be defined as a mixture of paper products including magazines, catalogues, phone books, cereal boxes, soda and beer can boxes, chipboard, file folders, envelopes, letter paper, junk mail, notebook paper and any other clean paper products.

Peak Times shall mean the period beginning on November 1 of a given year and ending on May 31 of the following year, unless otherwise specified by the Town.

Public Awareness Program shall mean that program developed by the Town to inform and encourage residential and commercial collection customers to use all Collection services offered by the Town through the Agreement. It shall also mean information

concerning level of service and changes in scope of service.

Multifamily Collection Service: Process whereby Solid Waste and/or Recyclables are collected by the Franchisee from Multifamily Users and transported to an authorized facility for processing of disposal.

Multifamily User: A person or entity, including, but not limited to, owners, lessees, and sub-lessees or abodes other than single-family, duplex, triplex, and quadplex dwellings.

Program Recyclables: Recyclables collected from Residential and Multifamily Users, Town facilities and public areas. Program Recyclables shall include the following list of materials, which may be amended to add or delete materials upon mutual agreement of the Town and the Franchisee: all paper; all plastic containers; rigid mixed plastics; aluminum, tin/steel, and bimetal cans including empty aerosol cans; and glass containers.

Recovered Materials shall mean waste materials and byproducts that have been recovered or diverted from solid waste, but does not include materials and byproducts generated from, and commonly reused within, an original manufacturing process (asphalt, shingles, sheet rock, concrete, wiring, etc.).

Recovered Materials Processing Facility (RMPF) shall mean any facilities operated or managed by, for or on behalf of the Authority for the purpose of receiving, sorting, processing, storing, and/or preparing Recovered Materials, plus other items authorized by the Authority, for sale, as specifically designated by the Authority.

Recyclable Materials (Recyclables): Those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

Recycling Bin: A Container intended for Recyclables collection no less than eighteen (18) gallons capacity, suited to manual collection.

Recycling Cart: A Container intended for Recyclables collection with a ninety-five (95) gallons capacity on wheels for rolling, with a non-removable hinged lid, suited to automatic dumping equipment provided by the Franchisee's collection vehicles and containing not over two hundred fifty (250) pounds.

Recycling Container: A Recycling Bin, cart, dumpster, compactor, or other container as approved by the Town for collection of Recyclables pursuant to this Agreement, including but not limited to, those collected from Residential Users, Multifamily Users, Commercial Users, Town facilities, and public areas.

Residential Collection Services: Process whereby Solid Waste, Program Recyclables, Yard Trash, and Bulk Waste, are collected by the Franchisee from Residential Curbside Users and/or Containerized Residential (Multifamily, four units or less) Users, and transported to an authorized facility for processing of disposal.

Residential User: A person, including, but not limited to, owners, lessees, and sub-lessees utilizing a building, a portion thereof, specifically designed for and used for

occupancy of that person. For the purposes of this Agreement, Residential User shall include users of single family, duplex, triplex, and quadplex dwellings.

Residential Solid Waste: shall mean Garbage, Trash and Bulk Trash resulting from the normal housekeeping activities of a Dwelling unit, but shall not include Vegetative Waste or Special Waste. Residential Solid Waste shall also mean Construction and Demolition Debris (C&D) resulting from minor home repair from the Dwelling Unit

Roll-off Collection Service: shall mean the Collection of C&D-only roll-off containers, or the Collection of C&D by other mechanical means, within temporary locations in the Service Area, limited to new construction sites and remodeling or refurbishment sites. Permanent businesses or manufacturing companies that generate C&D on site as part of their operations may obtain roll-off containers from any source, including the Contractor, for the purpose of recycling the C&D material, if, and only if, they also have a container for all other Commercial Solid Waste which is collected exclusively by the Contractor. Roll-off collection Service also includes the collection of commercial vegetative waste.

Service Area: The corporate limits of the Town of Highland Beach, Florida for which the Contractor has been granted this Agreement.

Sludge: A solid or semi-solid, or liquid generated from any waste water treatment plant, water supply treatment plant, air pollution control facility, septic, grease trap, portable toilets and related operations, or any other such waste having similar characteristics or effects.

Solid Waste: shall mean garbage, rubbish, trash, and other discarded waste, Residential Solid Waste and Commercial Solid Waste, but shall not include Special Waste, as defined in this Agreement, or Recovered Materials. Solid Waste shall mean Bulk Waste, Garbage, rubbish, refuse, Trash, Vegetative Waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations, but for the purpose of this Agreement shall not include Special Waste.

Solid Waste Authority Disposal Facility: A place or places specifically managed or operated by the Solid Waste Authority of Palm Beach County.

Source Separated: Recovered Materials that are separated from Solid Waste at the location where the recovered materials and solid waste are generated. The term does not require that various types of Recovered Materials be separated from each other, and recognizes de minimis Solid Waste may be included in the recovered materials. Materials are not considered Source Separated when two or more types of Recovered Materials are deposited in combination with each other in a Container located where the materials are generated and when such materials contain more than 10 percent solid waste by volume or weight, in which case the materials are Solid Waste. The term "various types of Recovered Materials" means metals, paper, glass, plastic, textiles and rubber.

Special Services: Any services requested or required by the customer which are in addition to or a change in residential Solid Waste Collection Service, Residential Recycling Collection Service, Commercial Recycling Collection Service and Commercial Solid Waste Collection Service as set out or similar to those listed in Exhibit I.

Special Waste: For the purposes of this Agreement, Special Waste refers to wastes that can require special handling and management, including but not limited to, Biohazardous Waste, Biological Waste, Hazardous Waste, lead-acid batteries, automobiles, boats, internal combustion engines, non-automobile tires, Sludge, dead animals, livestock waste, septic tank waste. Special Waste may also include items determined by the Town Manager to be reasonably unmanageable.

Town: Town of Highland Beach, Florida.

Trash shall mean all refuse accumulation of paper, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than Garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, but shall not include Vegetative Waste.

Vegetative Waste shall mean any vegetative matter resulting from yard and landscaping maintenance and shall include materials such as tree and shrub trimming materials, grass clippings, palm fronds, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards, but shall not include any vegetative matter resulting from activities of a landscaping company or similar business.

3. SERVICES PROVIDED BY CONTRACTOR

The Contractor shall provide mandatory Residential Solid Waste Collection Services and Residential Recycling Collection Service in the Service Area. The right to provide such Collection Services in the Service Area shall be exclusive to the Contractor. The Town will be billed directly for these services in accordance with the rates set forth in Exhibit I, and the Town will bill the residents.

The Contractor shall provide Commercial Solid Waste Collection Services in the Service Area, which shall be an exclusive right to the Contractor. The Town will be billed directly for these services in accordance with the rates set forth in Exhibit I, and the Town will bill the property owners.

Roll-off Collection Services shall not be exclusive to the Contractor. Collection of commercial Vegetative Waste shall not be exclusive to the Contractor. Collection of commercial Recovered Materials shall not be exclusive to the Contractor. Notwithstanding any other provision of this Agreement, collection of Solid Waste contained in roll-off containers excluded from Roll-off Collection Services for businesses in the Service Area is exclusive to the Contractor.

The Contractor shall provide Commercial Recycling Collection Services in the Service Area upon request by the Customer or the Town, or through the solicitation efforts of

the Contractor. However, Commercial Recycling Collection Services are not exclusive to the Contractor in the Service Area.

The Contractor shall provide solid waste and recycling collection services to the Town Hall complex buildings and facilities, and the Town Fire Department. These services shall be provided at no charge to the Town.

The Contractor shall use good faith and its best efforts to cooperate with any commercial recycling haulers collecting Source Separated Recovered Materials from commercial customers in the Service Area.

Upon receiving notice from the Town, the Contractor shall provide Garbage Cans directly to requesting Town residents within five (5) business days of receiving the request. Garbage Cans shall be delivered fully assembled. It is the responsibility of the Contractor to ensure that an adequate supply of Garbage Cans is available to fulfill the needs of the Town. Storage of this supply shall be the responsibility of the Contractor.

4. SOLID WASTE AND VEGETATIVE WASTE COLLECTION SERVICE

A. Curbside Residential Solid Waste and Vegetative Waste Collection Services: The initial Curbside Residential Collection Service provided by this Agreement shall be as set forth in this Section 4A and shall continue until such time as the Contract is terminated. Whereas the Contractor is providing Solid Waste and Vegetative Waste Collection Service on behalf of the Town, all Solid Waste and Vegetative Waste collected by the Contractor must be collected in the manner and for the rates and fees provided herein, and delivered to a Designated Facility.

Solid Waste collected by the Contractor in the Service Area pursuant to this Agreement may not be delivered to any facility other than those specified herein unless authorized by the Contract Administrator, in writing. In addition to the provisions and prohibitions provided for herein, Contractor is required to comply with all Federal, State and local laws, regulations and rules, including rules of the Authority and Town, and is subject to the penalties provided for therein. To the extent that the requirements, prohibitions and penalties provided for in this Agreement are more stringent than those provided for under Federal, State and local laws, regulations and rules, including any rules of the Authority and Town, this Agreement prevails.

1. **Conditions and Frequency of Service:** All Curbside Residential Solid Waste and Vegetative Waste properly containerized in Garbage Cans or otherwise prepared for collection as dictated by this Agreement shall be collected by the Contractor:

All Curbside Residential Solid Waste Collection Service, with the exception of the holidays identified in Section 7, shall be provided as follows:

Garbage collection services for single family and multi-family dwellings of four units or less shall be performed on Monday and

Thursday between the hours of 7:00 a.m. to 5:00 p.m. and a three (3) man crew shall be required on the collection vehicle. The Town will notify the Contractor of any projects that may affect traffic and Contractor will work with Town to address such circumstances.

All Vegetative Waste shall be placed at an accessible pickup location and shall be collected separately from Residential Solid Waste and Recovered Materials by the Contractor. If the customer has moderately commingled Residential Solid Waste and Vegetative Waste, the Contractor shall separate the Residential Solid Waste from the Vegetative Waste and collect the materials separately. If, due to the extent of commingling, separating the Vegetative Waste from the Residential Solid Waste is impractical, the Contractor shall tag the pile with a Town provided tag, and is not required to collect the commingled material until the first regularly scheduled collection day after customer has properly separated the material, although nothing shall preclude the Contractor from collecting the Vegetative Waste and Residential Solid Waste sooner. In the event the customer does not wish to properly separate the material, the customer may pay the Contractor or any other private hauler to collect the non-conforming material. If the Contractor fails to tag the non-conforming pile, the Contractor will be required to collect the pile at no cost to the customer or the Town by the end of the next Business Day. The Contractor shall not intentionally commingle Vegetative Waste with Residential Solid Waste.

Vegetative Waste shall be collected on Mondays, between the hours of 7:00 a.m. and 5:00 p.m. for single family units and multifamily units of four (4) or less. The Contractor shall also provide an extra collection service on the first Monday following January 1st to collect Christmas trees.

With the exception of palm fronds, tree branches and Christmas trees, the Contractor shall have a reliable expectation that all Vegetative Waste will be bagged or containerized, and that each container, when filled, will not exceed 50 pounds in weight or 50 gallons in capacity. The Contractor shall have a reliable expectation that branches will not exceed 6 feet in length or 50 pounds in weight, that there is no length limitation on palm fronds and Christmas trees. In the event that Vegetative Waste is not presented as stated in this paragraph, the Contractor shall tag the pile with a Town provided two tag and is not required to collect the non-conforming material until the first regularly scheduled collection day after the customer has properly presented the material, although nothing shall preclude the Contractor from collecting the Vegetative Waste sooner.

Trash, Bulk Trash, and Construction and Demolition Debris (C&D) resulting from minor home maintenance and repair only will be

collected at the curb. Contractor is required to collect a maximum of four(4) cubic yards of C&D per collection day per dwelling units. In the event that the customer places more than four (4) cubic yards of C&D for Collection, the Contractor shall collect four (4) cubic yards of C&D and shall tag the remaining pile with a Town provided tag. The Contractor shall at a minimum return on each subsequent regular Solid Waste collection day and collect a minimum of two (2) cubic yards until the pile is gone, however nothing shall preclude the Contractor from collecting the C&D sooner. Small pieces of C&D, such as tile or roofing material, shall be containerized and weigh not more than 50 pounds per container. There shall be no weight limit for any item of Bulk Trash. In the event Bulk Trash contains Chlorofluorocarbons (CFC's), the Contractor shall collect the Bulk Trash item separately in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to the Authority landfill or to a scrap dealer located in Palm Beach County.

2. **Accessibility:** Contractor shall collect all Residential Solid Waste and Vegetative Waste placed Curbside where the edge of the waste is within six (6) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location agreed to by the Contractor that will provide safe and efficient accessibility for the Contractor's collection crew and vehicle. In the event there is insufficient space between the curb and the sidewalk to place Residential Solid Waste and Vegetative Waste, if the edge of all Residential Solid Waste and Vegetative Waste to be collected is within two (2) feet of the sidewalk, the Contractor shall be required to collect it.

In the event there is no other accessible location available to the customer, all Residential Solid Waste and Vegetative Waste placed under electrical wires, trees or other obstructions preventing the use of a vehicle with mechanical loading capability shall be collected by means of a rear-load collection vehicle. Contractor may request, in writing, the Town Manager to approve an alternate Collection location. Contract Administrator's decision regarding the approval of a suitable alternate Collection location shall be final.

For purposes of this Agreement, public road or public right-of-way means a road owned and maintained by the County or special district, or a road on private property for which an easement has been granted to the public and when such road is constructed and maintained to a standard whereby access is available by the collection vehicle.

Where the resident of a dwelling unit is physically unable to deliver Residential Solid Waste to curbside and this is so certified by the Contract Administrator, or the residential structure is located in such

a manner as to prevent access to the Residential Solid Waste by the Contractor's crew or vehicle, an alternative location may be arranged between the customer and the Contractor. In the event the customer and the Contractor cannot agree on an alternative location the Town Manager shall designate the alternative location, and the Contract Administrator's decision shall be final. Regardless of any accommodation made pursuant to the facts described in this paragraph, Vegetative Waste must continue to be placed curbside.

If the customer requests Special Services, such as back door service, due to a documented medical condition, these services shall be billed directly to the customer by the Contractor in accordance with Exhibit I. In the event that a Special Service request is not listed in Exhibit I, such charges shall then be established through negotiations between the Contractor and the customer. In the event the customer and the Contractor cannot reach an agreement on the cost, the Town Manager shall determine the cost, and such determination shall be final.

B. Containerized Residential Solid Waste Collection Services: The initial Containerized Residential Collection Service provided by this Agreement shall be as set forth in this Section 4B and shall continue until such time as the Contract is terminated.

- 1. Conditions and Frequency of Service:** The Contractor shall provide Containerized Residential Solid Waste Collection Service to all Dwelling Units in the Service Area that are suitable to receive such service and request such service. Solid Waste collection services for multi-family units greater than four (4) shall be on Monday and Thursday between the hours of 8:00 am and 4:00 pm and a three (3) man crew shall be required on the collection vehicle. During peak times multi-family units greater than four (4) shall also have a Saturday Solid Waste collection which shall be between 8:00 a.m. and 12:00 p.m., and they shall also require a three (3) man crew on the collection vehicle. A minimum of once per week service is required of all customers. Normal collection service, not including Bulk Trash Collection, shall be twice per week. The size and location of the Container shall be determined by the Contractor and the residential complex in accordance with this Agreement. However, size and frequency shall be sufficient to provide that no Residential Solid Waste need be placed outside the Container. Storage capacity shall be suitable for the amount of waste generated by the customer. In the case of an unresolved dispute, the Contract Administrator shall resolve such issue. The Contractor shall be paid the appropriate containerized unit collection rate in accordance with Exhibit I. Any service requested by the residential complex above three times per week or greater than the two times per week annual average, with the exception of Bulk Trash collection, shall be paid in accordance with the collection rates in Exhibit I.

The frequency of collection of Vegetative and bulk waste, outside the container for multi-family dwellings greater than four (4) units shall occur on Monday between the hours of 8:00 a.m. and 4:00 p.m. Any disputes as to the frequency of Bulk Trash collection shall be resolved by the Contract Administrator, whose determination shall be final. In the event Bulk Trash contains Chlorofluorocarbons, (CFC's), the Contractor shall collect the Bulk Trash item separately, in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to the Authority landfill or to a scrap dealer located in Palm Beach County. There shall be no weight limit for any Bulk Trash item.

2. **Method of Collecting:** Collection shall occur on a regular basis with the frequency of pickup as provided herein. Such service shall be provided by mechanical Container as defined herein. However, where a customer generates less than two (2) cubic yards per week of waste, alternate non-mechanical containers (e.g., Garbage Cans) may be utilized.

The Contractor shall provide Containers at the approved rental rates as necessary. Commercial Container rental rates, terms, and provisions contained in the Agreement shall also apply to Containers rented for residential service. Customers may use their own Container(s) provided that the customer is completely responsible for its proper maintenance and repair. Such Containers shall be of a type that can be serviced by the Contractor's equipment.

The Contractor shall collect all Residential Solid Waste placed in a Container or alternate non-mechanical container, and shall not be required to collect Residential Solid Waste that is not so placed. The Contractor has a reliable expectation that Vegetative Waste will not be commingled with Garbage. Where alternate non-mechanical containers (e.g., Garbage Cans) are used, they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers or Compactors shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

All Containers and Compactors provided by the Contractor shall be in good condition. In the event a Compactor, which is provided by a source other than the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case-by-case basis, within 24 hours of notification, sufficient to provide uninterrupted service to the customer until the Compactor is repaired or replaced. Contractor may charge the customer for any Container rental in accordance with the rates set

forth in Exhibit I. In the event a Compactor, which is provided by the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case-by-case basis, within 24 hours of notification sufficient to provide uninterrupted services until Compactor is repaired or replaced at no charge to the customer. The Contractor shall have a regularly scheduled replacement program for all Containers to ensure Containers are in good condition.

3. **Service Interruption:** The Contractor may not stop service to a residential containerized customer for non-payment of fees for special services without notification by certified letter to the Contract Administrator or his designee and the customer at which time the Contract Administrator shall have five (5) Business Days following receipt of such notice to investigate and respond.

C. **Commercial Solid Waste Collection Service:** The Contractor shall collect and dispose of all Commercial Solid Waste in the Service Area. Such Commercial Collection Service shall be governed by the following material terms:

1. **Conditions and Frequency of Service:** A minimum of once a week service is required of all commercial customers or such other minimum frequency as provided by law. However, customers utilizing a roll-off Compactor Container shall have the ability to receive service on an on-call basis provided the roll-off Compactor is free from leaks or spillage. Permanent roll-off and Compactor Containers must be collected within 24 hours of customer request. There shall be no odor at any time emanating from the roll-off Compactor, or vermin in the immediate area. If complaints are received, or an inspection conducted by the Town proves the roll-off Compactor violates any of the above criteria, the Contract Administrator will determine the frequency of service. The size of the Container and the frequency of collection shall be determined between the customer and the Contractor. However, size and frequency shall be sufficient to provide that no Commercial Solid Waste need be placed outside the Container. Storage capacity shall be suitable for the amount of waste generated by the customer.
2. **Method of Collecting:** Service shall be provided by mechanical Container as defined herein. However, where a customer generates less than one (1) cubic yard per week of waste, alternate non-mechanical containers may be utilized (e.g., Garbage Can(s)). Commercial small waste generators who generate less than one cubic yard per week may use up to three (3) Garbage Cans, and shall be charged the monthly rate, as set out in Exhibit I.

The Contractor shall provide Containers as necessary however, customers may own their Container provided that the customer is completely responsible for its proper maintenance. Such customer provided Containers shall be of a type that can be serviced by the Contractor's equipment. All Commercial Solid Waste shall be placed in a Container, Compactor or acceptable other Garbage Can. Vegetative Waste shall not be commingled with Garbage. All Containers or Compactors shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

Compactors may be obtained by customers from any source provided that such Compactor must be of a type that can be serviced by the Contractor's equipment and the customer shall be completely responsible for its proper maintenance. Compactor frequency of collection shall be sufficient to contain the waste without spillage.

All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container and any other labeling as may be required by the Town. In the event a Compactor, which is provided by a source other than the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case-by-case basis, within 24 hours of notification sufficient to provide uninterrupted service to the customer until the Compactor is repaired or replaced. The Contractor may charge the customer in accordance with the rates set forth in Exhibit I.

In the event a Compactor, which is provided by the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case-by-case basis, within 24 hours of notification sufficient to provide uninterrupted service until the Compactor is repaired or replaced. The Contractor may charge the customer for collection and disposal only in accordance with rate set forth in Exhibit I.

3. Level, Type and Disclosure of Rates for Commercial Collection and Other Services:

a. Commercial Collection Service: The Contractor shall only charge the Town the rates as set out in Exhibit I or as otherwise allowed by this Agreement. The customer shall subscribe to a level of service sufficient to meet the needs of the customer in a sanitary and efficient manner. However, upon failure of the parties to reach such an agreement, the Contract Administrator or his designee shall establish the level and type of service to be provided including the

location, size of the Container and number of pick-ups per week and the "TOTAL RATE" to be charged within the approved rate limits contained in Exhibit I. The Contractor will be responsible for the billing of Special Service fees and compactor rental charges.

b. **Disclosure:** By October 1st of each year of this Agreement the Contractor shall provide the customer an annual disclosure statement which may be placed either directly on the billing statement generated by the Contractor's billing system or on a separate cover letter included with the billing statement and provide a Level of Service form as provided in Exhibit I. Contractor shall send a commercial customer list to the Town as well as a master copy of the disclosure statement.

- D. **Method of Payment:** The Town or its designee will be responsible for the billing and collection of payments for Residential Solid Waste Collection Service, (with the exception of additional Solid Waste Collection Service exceeding Peak Times), and for the billing and collection of Commercial Solid Waste Collection Service. Collection Services at rates not to exceed those set out in Exhibit I. Contractor shall also be responsible for billing and collection of payments for Special Services related to Residential and Commercial Solid Waste Collection Service.
- E. **Hours of Collection:** Curbside Residential Solid Waste Collection Service shall be provided between the hours of 7:00 a.m. and 5:00 p.m. on Monday and Thursday. Dwelling Units receiving Containerized Residential Solid Waste Collection Service and non-residential collection sites located within 150 yards of residential uses shall only be collected between the hours of 8:00 a.m. and 4:00 p.m. on Monday and Thursday end during the peak time of the year from 8:00 a.m. to 12:00 p.m. on Saturdays. Other nonresidential locations may be collected at any time. The hours of collection may be extended with the prior consent of the Contract Administrator.
- F. **Routes and Schedules:** The Contractor shall provide the Contract Administrator in a format acceptable to the Contract Administrator, the schedules for all Collection routes and keep such information current at all times.

If the Contractor desires to make subsequent changes in the curbside collection service routes or schedules that will result in a benefit to the community, a written request shall be made to the Contract Administrator not less than 60 days prior to the requested date of change. Such request shall include the proposed location and details of the route or schedule change, and the reason for change.

The Contract Administrator shall review requested day or starting point change(s) to routes and approve or deny the request(s) within 10 Business Days.

The Contract Administrator's decision shall be final. In the event a requested route or schedule change is approved by the Contract Administrator, the Contractor shall notify the customer(s) affected in writing or other manner approved by the Contract Administrator not less than two (2) weeks prior to the change, at no cost to the Town. Notification of day or starting point changes to routes for Curbside Residential customers shall be by door hanger, unless otherwise approved by the Contract Administrator, and distributed by the Contractor at no cost to the Town and the customer. Notification to Curbside customers shall be done twice - once two (2) weeks prior to the change and once one (1) week prior to the change. The Contractor shall provide a draft copy of the route change notification to the Contract Administrator for review and approval not less than three (3) weeks prior to printing and distribution.

5. RECYCLING COLLECTION SERVICE:

The Contractor shall provide Residential and Commercial Recycling Collection Service in the Service Area, as provided within the Agreement. The Town or its designee shall be responsible for the billing and collection of payments for Residential Recycling Collection Services. The Contractor shall be responsible for billing and collection of Commercial Recycling Collection Service cost not being billed and collected by the Town or its designee. Unless otherwise provided for in this Agreement, all Recovered Materials collected by the Contractor in the Service Area must be collected in the manner and for the rates and fees provided herein, and delivered to the Authority's Recovered Materials Processing Facility or an Authority transfer station, or other facility designated in writing by the Contract Administrator. Notwithstanding the foregoing, the Contractor shall retain the right to continue to provide Commercial Recycling Collection Service to Contractor's existing Commercial Recycling Collection Service customers in the Service Area, including the delivery of said materials to facilities not designated by the Town, under agreements effective and in place as of the date of award of the franchise governed by this Agreement for the term of said agreements. Unless specifically provided to the contrary herein, Contractor shall not compete with the Authority for Recovered Materials within the Franchise area. Recovered Materials collected by the Contractor in the Service Area pursuant to this Agreement may not be delivered to any facility other than those specified herein unless authorized by the Contract Administrator, in writing. In addition to the provisions and prohibitions provided for here, Contractor is required to comply with all Federal, State and local laws, regulations and rules, including rules of the Town, and is subject to the penalties provided for herein. To the extent that the requirements, prohibitions and penalties provided for in this Agreement are more stringent than those in Federal, State and local laws, regulations and rules, including rules of the Town, this Agreement prevails. Contractor shall, upon request of the Town provide Town with a list of all Commercial Recycling Collection Service customers in the Service Area as of the effective date of this Agreement, which list shall include the expiration date for each such customer.

A. Curbside Residential Recycling Collection Services will be governed

by the following terms and conditions:

1. **Conditions and Frequency of Service:** The Contractor shall provide Curbside Residential Recycling Collection Services to all Dwelling Units receiving Curbside Residential Solid Waste Collection Service located in the designated Service Area and to other such Dwelling Units as determined appropriate by the Contract Administrator. This service shall be provided on Mondays between the hours of 7:00 a.m. and 5:00 p.m. Recovered Materials shall not be commingled with other Residential Solid Waste. Contractor's collection personnel shall not knowingly collect Recovered Materials and place in a solid waste collection vehicle or Garbage Can. Commingling of Solid Waste with Recovered Materials shall be subject to assessments as set forth in this Agreement Recovered Materials set out for collection by Customers must be collected in a vehicle designated solely for the purpose of collecting Recovered Materials. The Town will notify the Contractor of any projects that may affect traffic and Contractor will work with Town to address such circumstances.
2. **Accessibility for and Manner of Curbside Recycling Collection:** Contractor shall collect all Recovered Materials placed in a Recycling Container or paper bag and additionally cardboard and/or paper bags, which may be placed beside the container, when any edge of said Recovered Materials is placed within six (6) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location agreed to by the Contractor that will provide safe and efficient access for the Contractor's collection crew and vehicle. The Contractor must collect as many Recycling Containers, paper bags, bundles, or flattened cardboard, as the customer sets out. Cardboard and/or paper bags shall be collected if placed next to, or inside, the Recycling Container(s). Where the resident is physically unable to deliver Recovered Materials to curbside and this is certified by the Contract Administrator, or the Dwelling Unit is located in such a manner as to prevent access to the Contractor's crew or vehicle, an alternative location may be arranged between the customer and the Contractor at no extra cost to the customer. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pick-up, and such designation shall be final.
3. **Recycling Containers:** The Contractor shall ensure distribution of Recycling Containers supplied by the Town to each unit that is to receive Curbside Residential Recycling Collection Service in the Service Area. The title to these Recycling Containers shall be vested with the Town. However, customers may use their own

additional Recycling Containers or paper bags as long as they are similar and suitable for the service.

B. Containerized Residential Recycling Collection Services will be governed by the following terms and conditions:

1. **Conditions and Frequency of Service:** The Contractor shall provide Containerized Residential Recycling Service to Dwelling Units as are designated by the Town that are located in the Service Area. Containerized Residential Recycling Service shall be provided at least once every week.
2. **Accessibility and Schedule for Containerized Residential Recycling Collection:** All Recovered Materials, with the exception of cardboard, are to be collected in a Recycling Container or Container designated for Recovered Materials which shall be located in such location and shall be collected on a schedule as mutually agreed to by the owner or governing association (of the multiple unit residential complex or development being serviced) and the Contractor that will provide safe and efficient access for the Contractor's collection crew and vehicle. Cardboard shall be collected if placed next to, or inside, the Recycling Container or Container. If there is a large amount of cardboard placed outside of the Container (i.e., in the case of a 101-gallon container), an alternate, larger Container shall be provided, upon agreement by the customer and the Town. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pickup, and such designation shall be final.

C. Commercial Recycling Collection Service: The Contractor shall provide Commercial Recycling Collection Services on behalf of the Town for any business in the Service Area where the Town has arranged, negotiated or contracted for such service, and Contractor shall have the right to solicit Commercial Recycling Collection Service agreement with any business in the Service Area upon terms and conditions consistent with this Agreement.

1. **Conditions and Frequency of Services:** The Contractor shall provide Commercial Recycling Collection Services to all businesses or commercial entities located in the designated Service Area resulting from its own solicitation, by request of the customer, or where a contract meeting the terms and conditions of this Agreement is arranged by the Contract Administrator or his designee. The size and frequency of service of the Container designated for Recovered Materials shall be determined by a waste audit and agreed to by the customer and the Contractor. However, size and frequency shall be sufficient to provide that no Recovered Materials need be placed outside the Container. Storage capacity shall be suitable for the amount of Recovered Materials generated by the customer. The

Contractor shall provide Containers as necessary however, customers may own their Container provided that the customer is completely responsible for its proper maintenance. Such Containers shall be of a type that can be serviced by the Contractor's equipment. Compactors may be obtained by customers from any source provided that such Compactor be of a type that can be serviced by the Contractor's equipment and the customer shall be completely responsible for its proper maintenance. Compactor frequency of collection shall be sufficient to contain the Recovered Material without spillage. All Commercial Recovered Materials shall be placed in a Container, Compactor or other acceptable Recycling Container. All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container. All Containers and Compactors provided by the Contractor shall be clearly labeled to indicate they hold Recovered Materials only.

Recovered Materials shall not be commingled with other solid waste. Contractor's collection personnel shall not knowingly collect Recovered Materials and place them in a Solid Waste collection vehicle. Commingling of Recovered Materials with Solid Waste shall subject the Contractor to assessments as set forth in this Agreement. Recovered Materials set out for collection by customers must be collected in a vehicle designated solely for the purpose of collecting Recovered Materials and shall be delivered to a facility designated by the Town.

Where Recycling Containers are they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

2. **Level, Type and Disclosure of Rates for Commercial Recycling Collection and Other Services:** The customer shall subscribe to a level of service sufficient to meet the needs of the customer in a sanitary and efficient manner. However, upon failure of the parties to reach such an agreement, the Contract Administrator, or his designee, at the election of the customer and Contractor may establish the level and type of service to be provided including the location, size of the Container and number of pick-ups per week and the "TOTAL RATE."
3. **Ownership:** Notwithstanding any other provision of this Agreement, a commercial generator of Recovered Materials retains ownership of those materials until he or she donates, sells, or contracts for the donation or sale of those materials to another person or entity. Nothing in this Agreement shall prevent a Recovered Materials dealer

or other person or entity properly registered to engage in the Recovered Materials business in Palm Beach County, whether for profit, or nonprofit, from accepting and transporting commercially generated, Source Separated Recovered Materials from such commercial generator, provided however, that such activities be subject to applicable State and local laws, regulations and rules, including rules of the Town, and provided that the transporter reports such information to the Town in accordance with applicable State and local laws and rules, including rules of the Town.

D. **Method of Payment:** The Town or its designee will be responsible for the billing and collection of payments for Residential Recycling Collection Service. The Contractor shall be responsible for billing and collection of payments for Commercial Recycling Collection Service. The Town shall provide recycling Containers for commercial customers utilizing a 95-gallon or 101-gallon Container(s) at no charge to the contractor or customer. The Contractor may be asked to bill the Town or the customer for all or a part of the Containers used by the customer for Commercial Recycling Collection Service.

E. **Hours of Collection:** Residential Recycling Collection Service shall be conducted between the hours of 7:00 a.m. and 5:00 p.m. on Mondays for single family dwellings and multifamily dwellings of four (4) units or less. Multifamily dwellings with greater than four (4) units shall be collected on Mondays and Thursdays between the hours of 8:00 a.m. and 4:00 p.m. and nonresidential collection sites located within 150 yards of residential uses shall only be collected between the hours of 8:00 a.m. and 4:00 p.m. on Business Days. The hours of collection may be extended with the prior consent of the Contract Administrator.

F. **Routes and Schedules:** Route and schedule changes shall be handled as specified in Section 4, Paragraph F.

G. **Replacement of Recycling Containers for Residential Dwelling Units:**

1. The Contractor will replace at its expense any Container or Recycling Container damaged through the fault or negligence of the Contractor or its personnel (including agents, employees or subcontractors) in accordance with Section 10, and report all such replacements to the Town. Replacement Recycling Containers or Containers designated for Recycling for Residential Dwelling Units will be provided by the Town with the cost for replacement containers deducted from the Contractor's monthly fees.
2. The Town, at its expense, will supply to the Contractor, for distribution to the customer, replacement Recycling Containers or Containers which were originally provided by the Town and lost or damaged by the occupant of a Dwelling Unit, and the Contractor shall report all such replacements to the Town.

3. The Contractor shall promptly deliver Recycling Containers or Containers as requested by the Town on behalf of the residential customers for the purpose of excess Recovered Materials or for new residential customers.

- H. **Contaminated Recovered Materials:** In the event the curbside customer places solid waste in the Recycling Container(s) or Container(s), the Contractor must collect all Recovered Materials and leave the solid waste in the Recycling Container(s) or Container(s). The Contractor must then place a contamination sticker on the Recycling Container(s) or Container(s) advising the customer of the reason the solid waste was not collected. Contamination stickers will be provided to the Contractor by the Town.

In the event the Contractor is unaware that a load of Recovered Materials collected pursuant to Residential Containerized Recycling Collection or Commercial Recycling Collection is commingled with Solid Waste, and the Contractor is charged a disposal fee by the Town, the Contractor is authorized to make an effort to identify the customer responsible for the contamination and charge the customer the applicable disposal charges based on the size of the container serviced for that customer.

- I. **Recovered Materials Processing Facility (RMPF):** The Contractor shall deliver all Recovered Materials collected from the Service Area to the Solid Waste Authority RMPF, or a SWA transfer station or other facility designated, in writing, by the Contract Administrator.
- J. **Change in Scope of Recycling Collection Service:** From time to time, at the sole option of the Town, it may be necessary to modify the scope of Recovered Materials that will be included in Recycling Collection Service. Should this occur, the Town and the Contractor agree to enter into good faith negotiations to amend this Agreement to reflect the impact of any such modification.

6. **CHARGES, RATES AND LEVEL OF SERVICES:**

A. **Solid Waste and Recycling Collection Rate Adjustments:** For all Collection services, with the exception of those specifically excluded, the charges shall be based on the rates established in Exhibit I, and as subsequently adjusted pursuant to the rates set forth in Exhibit I.

No change in rates except for the Payment Schedule adjustment as provided by this Agreement shall be made without the approval of the Town. Annual rate adjustments shall be effective the following October 1, unless otherwise mutually determined by the Town and the Contractor.

- B. **Billing, Collection, and Payments:**

1. The Town will be responsible for the billing and collection of payments for those units included in the Town's Residential Solid Waste Collection Services and the Residential Recycling Collection Services programs. The Town shall make monthly payments in arrears to the Contractor for the Residential Solid Waste Collection service and Residential Recycling Collection Services provided pursuant to this contract. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the Town collects from customers for such service. Payments from the Town to the Contractor will be due and paid no later than the 10th day of the month following the month during which services were rendered.

On or before October 1st, and before commencement of work by the contractor under the terms of this agreement, the Town shall provide to the Contractor the estimated total number of units to be serviced. By November 1st of each Fiscal Year, the Town shall provide to the Contractor a detailed listing of all the units to receive these services. Thereafter, and for the duration of this agreement, the Town shall promptly notify the Contractor of new residential units to be serviced and/or deleted and payments will be adjusted accordingly. New Dwelling Units which are added for service during the Town's Fiscal Year will be added to the customer service list and payment will be paid by the Town to the Contractor in the Contractor's monthly payment. Payment will be prorated based upon the day of Certificate of Occupancy and verification of the beginning of actual service, whichever is later. The payments from the Town to the Contractor for units added by Certificate of Occupancy are paid no later than the tenth day of the month, two months following the month during which the Dwelling Unit is provided a Certificate of Occupancy. After the first year of the Agreement, the Dwelling Unit becomes part of the total number of the subsequent year's total number of units, provided annually to the Contractor on or before October 1.

2. In the event the Contractor provides service to Dwelling Units whose parcel was not included on the detailed listing provided by the Town, the Contractor must provide a written list of such Dwelling Units to the Contract Administrator within 90 days receipt of the detailed list. Upon receipt of such written list by the Town, the Contract Administrator will verify the customer address and that service to the unit is proper within 30 days, and if proper,

shall remit monthly payments to the Contractor for such service effective as of October 1 of that Fiscal Year or the date service began, whichever is later. If the Town has not received notification within 90 days by the Contractor, no adjustments to payment will be made until the next Fiscal Year. However, the Town reserves the right to correct any errors of omission or commission per the laws and rules that govern the Town. In the event the Town pays the Contractor for a residential unit in error for whatever reason, the Contractor shall notify the Contract Administrator. Upon determination of any overpayment, the Contract Administrator will verify the error and make appropriate adjustment to the Contractor's payment to correct the error.

3. The Town will be responsible for the billing and collection of payments for Commercial Solid Waste Collection Services. The Town shall make monthly payments in arrears to the Contractor for the Commercial Solid Waste Collection services provided pursuant to this contract.

C. **Solid Waste Disposal Costs:** Collection service costs and Solid Waste disposal costs shall be treated separately for the Solid Waste Collection services being provided pursuant to this Contract. Residential and commercial Solid Waste disposal costs shall be separated from residential and commercial collection service costs as shown in Exhibit I. Residential disposal costs will be billed by the Town except as otherwise provided in this Agreement. The Contractor will be given a disposal credit for each residential unit as calculated in Exhibit I. The non-assessed portion of the commercial disposal costs will be part of the service charge billed by the Contractor. The Contractor shall pay the Authority for all Solid Waste disposal costs incurred for disposing of all Solid Waste at the Authority's Disposal Facilities except for the portion of disposal costs which have been separately credited by the Authority.

D. **Extraordinary Rate Adjustment:** The Contractor may petition the Town at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the cost of operations that could not reasonably be foreseen by a prudent operator. The Contractor's request shall contain substantial proof and justification, as determined by the Contract Administrator, to support the need for the rate adjustment. The Town may request from the Contractor, and the Contractor shall provide, such further information as may be reasonably necessary in making its determination. The Town, in its sole discretion, may approve or deny the request, in whole or in part, within 120 days of receipt

of the request and all other additional information required by the Town.

- E. **Exclusive Franchise:** Town agrees to assist the Contractor in taking timely action against any entity violating, and/or in defense of, the Contractor's exclusive franchise rights granted under this Agreement.

7. HOLIDAYS:

The Contractor shall not be required to perform collection on Thanksgiving Day and Christmas Day. Residential Solid Waste, Recovered Material and Vegetative Waste not collected from curbside service customers on Thanksgiving Day and Christmas Day shall be collected on the next business day. Residential Solid Waste and residential Recovered Material not collected from container service shall be collected on the next Business Day. The Contractor shall not be required to maintain office hours on Thanksgiving Day and Christmas Day. However, on all holidays except Thanksgiving Day and Christmas Day, the Contractor shall provide collection of Commercial Solid Waste, Commercial Recovered Material, Residential Solid Waste, Vegetative Waste and Residential Recovered Material and provide for operations personnel to accept calls from the Town and the Contractor's customers.

8. SPECIAL SERVICES:

Rates charged for Special Services may not exceed the special service rates as listed in Exhibit I. In the event the requested special service is not included within Exhibit I, the Contractor may negotiate with the customer for the rate. Upon failure of the parties to reach an agreement on the rate, the Contract Administrator shall establish the rate. The Contractor shall be responsible for billing and collection of payment for all Special Services.

9. PUBLIC AWARENESS PROGRAM:

The Contractor shall assist the Town with a Public Awareness Program by distributing door hangers, stickers, flyers or other medium to residential and commercial customers as requested by the Town. Additionally, it is the Contractor's responsibility to provide information about those customers who repeatedly do not prepare or set out their Recovered Material or solid waste as specified within this Contract to the Town.

The Commercial Recycling customer will also be notified, by the Town through the Contractor, about special commercial recycling events, workshops, educational forums and symposiums and other activities, as needed.

10. TREATMENT OF CONTAINERS:

The Contractor shall collect Residential Solid Waste, Vegetative Waste and

Recovered Materials and Commercial Solid Waste and Recovered Materials with as little disturbance as possible and shall leave any receptacle at the same point it was collected. Unless otherwise specified in this Agreement, any Container, Compactor or Recycling Container requiring repair, replacement or delivery for whatever reason shall be repaired and/or replaced or delivered within five (5) Business Days of the request of the customer or the Town. Unless otherwise specified in the Agreement, any Container, Compactor or Recycling Container damaged by the Contractor or reported in poor condition by the customer or the Town shall be repaired or replaced at the Contractor's expense. Unless otherwise specified in the Agreement, for Recycling Containers provided to the Contractor by the Town, the cost of Recycling Containers provided to replace those damaged by the Contractor or reported in poor condition by the customer or the Town shall be deducted from the Contractor's monthly fees. Garbage Cans shall be replaced as provided for in this Agreement. Throwing of any Garbage Can, Container or Recycling Container is prohibited. The Contractor shall neatly replace the Container, Recycling Container and Garbage Can to the point of collection.

11. PERSONNEL OF THE CONTRACTOR:

- A. The Contractor shall assign a qualified person or persons to be in charge of the operations within the service area and shall give the name(s), office and cellular telephone numbers and, if applicable, email address of the person(s) to the Contract Administrator.
- B. Supervisory personnel must be present on all routes to direct operations in a safe and satisfactory manner. All supervisory personnel shall operate a non-collection vehicle that is clearly marked with Contractor's name and office telephone number.
- C. Contractor shall provide personnel sufficient to complete all routes. (See Section 4(A)(1) regarding the requirement to have 3 men on a collection vehicle.) Supervisory personnel may temporarily operate collection vehicles in an emergency situation.
- D. The Contractor shall keep all contact information provided to the Town current at all times.
- E. The Contractor's collection employees shall wear a uniform or shirt bearing the company's name during operations.
- F. The Contractor's name and office telephone number shall be properly displayed on all Solid Waste and recycling collection vehicles and Containers provided by the Contractor. All vehicles utilized for the collection of Recovered Material shall be clearly identified for that purpose.
- G. The Contractor shall provide operating and safety training for all personnel.

- H. The Contractors employees shall treat all customers in a polite and courteous manner.
- I. The Contractor shall provide emergency contact name(s), office, home and cellular telephone numbers and email address for all key personnel.
- J. In the event of a dispute between customer and Contractor, key personnel of the Contractor shall be available to meet with Contract Administrator or his designee as requested by the Town.
- K. Any employee of the Contractor who removes or diverts Solid Waste or Recovered Materials from the Town's system without authorization shall be prohibited from providing solid waste or Recovered Materials collection services under this Agreement.

12. SPILLAGE:

The Contractor shall not litter or cause any spillage to occur upon the premises., roadway or the right-of-way wherein the collection shall occur. During hauling, all solid waste, vegetative waste and recovered materials shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. In the event of any spillage or leakage, including but not limited to, hydraulic and other fluids from the collection vehicle or materials such as paint, by the Contractor, for any reason or source, the Contractor shall clean up all spillage and leakage at no cost to the Town or the customer within two (2) Business Days unless otherwise specified within this Agreement.

13. COLLECTION EQUIPMENT:

The contractor shall have on hand at all times and in good working order such equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Agreement. Upon execution of this Agreement and semi-annually thereafter, the Contractor shall provide in a format specified by the Contract Administrator a list of the equipment to be used by the Contractor to provide services relating to this Agreement. Solid Waste collection equipment shall be of the enclosed loader packer type, or other equipment that meets industry standards and is approved by the Contract Administrator, unless otherwise provided within this Agreement. All Equipment shall be kept in good repair, appearance and in a sanitary, clean condition at all times. Recovered Materials collection equipment shall be of a dual compartment type (one compartment for paper products; one compartment for other Recovered Material), separate trucks or other equipment that meets industry standards and are approved by the Contract Administrator, and must be compatible for unloading at the designated RMPF or transfer station. In the event a compacting vehicle is used for the collection of Recovered Materials, compaction pressure may not exceed 50 pounds per square inch for the commingled non-paper Recovered Materials to avoid glass breakage. Equipment utilized for the collection of Recovered Materials shall be clearly identified for that purpose. The

Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. Contractor shall notify the Contract Administrator or his designee by phone within two hours of any equipment breakdown. If the public road or public right-of way in the Service Area is substandard, as specifically designated by the Contract Administrator, in writing, the Contractor must provide lightweight equipment to service these roads.

14. VEGETATIVE WASTE:

All Vegetative Waste shall be collected separately from Residential Solid Waste and Recovered Materials. All grass clippings, leaves, pine needles, palm seeds, or other loose waste shall be bagged or containerized, otherwise, Vegetative Waste must be no more than six (6) feet in length, with the exception of palm fronds and Christmas trees, and under 50 pounds per piece and placed neatly at the curb. The Contractor is not responsible for sweeping or raking loose vegetative waste that remains after collection. The Contractor is not responsible for collecting vegetative waste produced by lawn maintenance landscapers or tree maintenance firms. In accordance with Town ordinances tree surgeons, lawn maintenance and landscape companies that are paid a fee for services shall remove from the Town all vegetative waste they generate the same day they generate the waste. These firms shall not pile vegetative waste for collection by the Contractor. Contractor is not required to collect debris generated by Land Clearing activity which includes but is not limited to stumps, tree trunks and logs.

15. SPECIAL WASTE, HAZARDOUS WASTE, BIOHAZARDOUS OR BIOMEDICAL WASTE AND SLUDGE:

The Contractor shall not be required to collect and dispose of Hazardous Waste, Biohazardous or Biomedical Waste, or Sludge, but may offer such service in the Town. All such collection and disposal for those types of waste in this Section are not regulated or exclusive under this Agreement, but if provided by the Contractor shall be in strict compliance with all federal, state and local laws and regulations.

16. OFFICE AND EQUIPMENT YARD:

The Contractor shall maintain an office and equipment yard within Palm Beach County where complaints from the Town and commercial customer inquiries shall be received. It shall be equipped with sufficient telephones, with no less than two phone lines, and shall be open during normal business hours and shall have local customer service and sales representatives sufficient to provide adequate phone coverage and assistance to customers within the Service Area from 8:00 a.m. to 5:00 p.m., Monday through Friday and from 8:00 a.m. to 2:00 p.m. on Saturday, with the exception of Thanksgiving Day and Christmas Day. The Contractor shall provide an answering machine during non-office hours for customer requests and questions to be responded to during the following

Business Day. The Contractor shall provide a contact person for the Town to reach during all non-office hours. The contact person must have the ability to authorize Contractor operation in the case of Town direction or situations requiring immediate attention. An equipment yard must be established within Palm Beach County no later than one month after the start of collection services. Failure to establish an office and equipment yard may result in loss of franchise, pending the Contract Administrator's review of whether the Contractor is using his best efforts to establish an equipment yard in a timely manner. Equipment yard means a real property location that shall be utilized by the Contractor for the storage and keeping of all equipment needed by the Contractor to provide all services under this Agreement in the Service Area.

17. COMPLAINTS:

All service complaints shall be directed to the Contractor. Any complaints received by the Town will be forwarded to the Contractor by telephone, computer or electronic media not less than twice daily where it shall be recorded on a complaint log by the Contractor. The complaint shall be resolved no later than 3:00 p.m. the next Business Day after it is received by the Contractor. When the complaint is received on a Saturday or the day preceding Thanksgiving Day and Christmas Day, it shall be resolved by the Contractor no later than the next regular working day.

When the Contract Administrator or his designee notifies the Contractor of a complaint, the Contractor shall take the appropriate steps that may be necessary to resolve the complaint by 3:00 pm. on the next Business Day after its receipt. If a complaint cannot be resolved by 3:00 p.m. on the next Business Day following the scheduled Collection day, the Contract Administrator shall be notified in writing of the reason for non-resolution of the complaint.

Non-conforming solid waste, Recovered Materials and Vegetative Waste not properly tagged by the Contractor shall be collected by the Contractor by 3:00 p.m. on the next Business Day following scheduled Collection day. Complaints of sloppy service provided by Contractor, including, but not limited to solid waste, Recovered Materials or Vegetative Waste being left in the roadway or Garbage Cans not being returned to the point of collection on the scheduled Collection day shall be resolved by 5:00 p.m. on the same day.

The Contractor shall investigate and provide the Contract Administrator or his designee with a full written explanation of the disposition of any complaint involving a claim of damage to private or public property as a result of actions of the Contractors employees, agent, or sub-contractors within 24 hours of receipt. The Contract Administrator will consider all documentation provided and make final determination of party responsibility. If the Contractor fails to provide a written explanation of the disposition of such complaints within 24 hours of receipt, determination of responsibility shall be in favor of the customer and Contractor shall be held liable for all necessary repairs. Any damage shall be repaired within five (5) Business Days, with the exception of mailboxes and

Garbage Cans, which shall be repaired or replaced within three (3) Business Days. Contractor shall be responsible for replacing, at its expense, any Garbage Can(s) determined to be damaged or missing through negligence of Contractor's personnel (including agents, employees or subcontractors) however Contractor shall not be required to replace Garbage Cans which exhibit signs of normal wear and tear. In the case of an unresolved dispute, the Contract Administrator's or his designee's decision shall be final.

18. QUALITY OF PERFORMANCE OF CONTRACTOR:

It is the intent of this Agreement to ensure that the Contractor provides high quality services.

A. Complaints: All complaints received by the Contract Administrator, or his designee, and reported to the Contractor shall be promptly resolved pursuant to the provisions of Section 17 of this Agreement. Complaints shall not include customer informational requests or Recycling Container requests. A complaint not resolved by 3:00 p.m. on the next Business Day, unless otherwise provided in this Agreement, shall count as two complaints. In the event complaints received from curbside and container customers exceed any of the following percentage(s), which reflect the percentage of the residential curbside and container customers within the Service Area served by the Contractor during any Fiscal Year, the Contract Administrator shall levy as liquidated damages in the amount of \$200.00 per incident to reimburse the Town for the cost of receiving, logging, investigating, and following up on the complaint.

<u>Complaint Type</u>	<u>Annual%</u>	<u>Monthly%</u>
Garbage, Trash and Damage	4%	0.5%
Recycling	2%	0.25%
Vegetation	2.5%	0.35%

B. Other Administrative Charges: In addition to the liquidated damages provided for in Subsection 18A related to customer complaints, the Contract Administrator may, without regard to the percentage of customer complaints, also levy liquidated damages at the rate of \$200.00 per day per incident for any other infraction of this Agreement to reimburse the Town for the cost of receiving, logging, investigating and following up on the complaint and or failure to perform, and additional costs that cannot be reasonably quantified. Such infractions include but are not limited to:

1. Failure to provide clean, safe, sanitary equipment;
2. Failure to maintain office hours as required;
3. failure to provide documents and reports in a timely and accurate manner;
4. Failure to repair or replace and/or deliver a Container, Compactor, Recycling Container, Garbage Can, or mailbox within the

- required time period;
- 5. Failure to clean spillage;
- 6. Failure to cover and or secure materials on collection vehicles;
- 7. Collection employees out of uniform;
- 8. Name and phone number, and if applicable, size not displayed on Collection vehicles or Containers;
- 9. Failure to provide schedule and route maps;
- 10. Using an improper truck for the specific service provided
- 11. Failure to submit a disclosure notice to either a customer or the Contract Administrator;
- 12. Failure to report recycling activity monthly (on or before the 10th day of the following month), in the format determined by the Town, for the purpose of tracking and verifying countrywide recycling activity;
- 13. Failure to collect Recovered Materials, Solid Waste or Vegetative Waste on schedule for any customer who has been missed more than three times within a 12-month period;
- 14. Failure to respond to customer calls, including all residential and commercial customers, in a timely and appropriate manner;
- 15. Failure to place a contamination sticker in Recycling Containers, as required;
- 16. Failure to repair damage to property resulting from Contractors (including agents, employees or subcontractors) equipment failure or negligence within five (5) Business Days.

C. Major Prohibitions and Liquidated Damages: The following constitute serious violations of this Agreement that have negative impacts on the Town the costs of which are not reasonably quantifiable, and are subject to liquidated damages and potentially loss of Franchise.

- 1. Changing routes, including the starting point of a route without approval from the Town or notification to the Town and the customer is prohibited and will result in liquidated damages of \$2,000.00 per incident to reimburse the Town for the costs of managing the service disruption, including the cost of (receiving, logging, investigating and following up on customer complaints, communicating with the Contractor and coordinating the return to normal service. Additionally, the Contractor shall be required to return to the previous route(s) and schedule and properly notify customers in accordance with the requirements of this Agreement at no cost to the Town or customer.
- 2. Failure to clean up spillage of any substance required to be cleaned up by and in accordance with the Palm Beach County Health Department will result in the assessment of liquidated damages in the amount of \$2,500.00 per day, per incident to compensate the Town for the cost of receiving, logging, investigating and following up on customer complaints, assessing

the extent of the damage, and communicating with the Contractor, the Health Department and the customer(s). Additionally, in the event of such failure to clean up spillage, the Town retains the right to perform or contract for the performance of such clean-up and assess the Contractor for all costs incurred.

3. The Contractor, providing Collection service on behalf of the Town, excepting as provided for in Section 5, is required to deliver all Commercial and Residential Solid Waste, Vegetative Waste and Recovered Materials collected pursuant to this Agreement to disposal facilities and/or Recovered Materials Processing Facilities, designated by the Town. Diversion of these materials to any facility not designated by the Town without the written consent of the Contract Administrator, whether within or outside Palm Beach County, is prohibited and will result in the following assessments:
 1. First offense, \$1,000.00 fine
 2. Second offense, \$2,500.00 fine
 3. Third offense, loss of Agreement
4. Failure to complete, defined as failing to provide scheduled service to a minimum of 95% of the households, a route or community on the regular scheduled pick-up day shall result in the assessment of liquidated damages in the amount of \$1,000.00 for each route/community per day not completed to reimburse the Town for the value of services not rendered, costs of managing the service disruption, including the cost of receiving, logging, investigating and following up on customer complaints, communicating with the Contractor and coordinating the return to normal service. Each missed route/community shall be completed by 10:00 a.m. of the next Business Day following regular scheduled collection day. Failure to collect missed route/communities by 10:00 a.m. the next Business Day as required will result in an additional \$1,000.00 assessment for each route/community not completed.

For the purpose of this Section, the Contract Administrator may deduct any charges from payments due or to become due to the Contractor. In the event the Contractor fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided within this Agreement, the Contract Administrator may manage for the repairs and assess the Contractor for the cost of the repairs and any applicable administrative charges. The Contract Administrator may assess administrative charges and liquidated damages pursuant to this Section on a monthly basis (*i.e.*, within 30 days of the incident giving rise to the assessment) and shall at the end of each month

during the term of this Agreement notify the Contractor in writing of the charges assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment it shall, within five (5) Business Days after receiving such monthly notice, request in writing an opportunity to be heard by the Town Commission and present its defense to such assessment. Notwithstanding the foregoing, any individual assessment of liquidated damages in an amount greater than or equal to \$10,000, or loss of Franchise, shall be imposed only upon the prior approval of the Town Commission.

The Town shall notify the Contractor in writing of any action taken with respect to Contractor's claims and the decision of the Town Commission will be final. Any aggrieved party that wishes to appeal may apply in the Circuit Court of Palm Beach County, Florida, within thirty (30) days of the rendition of such decision, for review by Writ of Certiorari, in accordance with the applicable Florida Appellate Rules.

D. Filing of Requested Information and Documents:

1. In addition to any other requirements of this Agreement, the Contractor shall be required to file pertinent statistical and aggregate cost information pertaining to solid waste Collection and recycling Collection services that is requested by the Town. The results of all recycling activity conducted by the Contractor in the Service Area during each month, whether residential or commercial, shall be reported accurately to the Town, in a format and with such dates as specified by the Town, on or before the 10th day of the following month.
2. The Contractor shall file and keep current with the Town all documents and reports required by this Agreement. By September 1st of each year this Agreement is in effect, the Contractor shall ensure and certify to the Town, in a format acceptable to the Contract Administrator, that all required documents are current and on file with the Town.
3. The Contractor shall maintain a detailed list of collection vehicles and route schedules and maps for the term of this Agreement and each month shall file a written report of equipment and routes, or as requested by the Contract Administrator, in a format as provided by or acceptable to the Contract Administrator.
4. Annually, no later than the last Business Day of October, the Contractor shall provide the Town a list of all residential and commercial roll off compactors or permanent roll off containers within the Service Area. The list shall include at a minimum the customer's name, customer contact person, customer contact telephone number, service air address, compactor or container size, Town decal number, and level of service.

5. Failure to file any document or report within three (3) Business Days of the required filing date, except where granted an extension by the Contract Administrator, may result in the assessment of liquidated damages as authorized pursuant to this Section.

19. NATURAL DISASTERS:

In the event of a hurricane, tornado, major storm or other natural disaster, the Contractor's sole responsibility shall be to reestablish regular routes and schedules for the collection of Solid Waste, Recovered Materials, and Vegetative Waste as soon after the natural disaster as possible. The collection and disposal of Solid Waste shall be the highest priority. The collection and disposal of debris generated by a natural disaster shall not be the responsibility of the Contractor. Under a separate Agreement, the Town shall procure collection and disposal services for debris generated by a natural disaster. The Contractor agrees to provide full cooperation with the Town and the debris collection contractor in the aftermath of a natural disaster in an effort to return the Town to its pre-disaster state, and resume normal collection services.

20. FORCE MAJEURE:

Neither the Town nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by a Force Majeure event, give written notice to the other party describing the Force Majeure preventing continued performance of the obligations of this Agreement

21. PERMITS AND LICENSES:

The Contractor shall obtain, at their own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect throughout the Term of this Agreement. Any changes of the licenses or permits shall be reported to the Town within ten (10) Business Days of the change. Failure to obtain and maintain all permits and licenses, including but not limited to any permit or license which may in the future be required by the Town to engage in the business of Collection in Palm Beach County, shall constitute an event of default

22. INSURANCE:

The Contractor shall, at its sole expense, agrees to maintain in full force and effect at all times during the term of the Agreement and any renewal thereof, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein, as well as the Town's review or acceptance of insurance maintained by the Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

- (a) Commercial general liability in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate covering bodily injury and property damage resulting from the activities connected with this service. The Town shall be endorsed as an Additional Insured to the Commercial General Liability. The Additional Insured endorsement shall include The Town of Highland Beach, including all Officers, Employees, and Elected and Appointed Officials. The Additional Insured endorsement shall provide coverage on a primary basis.
- (b) Workers' Compensation and Employers Liability Insurance covering all employees engaged in the work under the Agreement, in accordance with the laws of the State of Florida. The amount of Employers Liability Insurance shall not be less than \$100,000 each accident, \$100,000 each employee for disease, and \$500,000 disease aggregate.
- (c) Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. This coverage shall be provided on a primary basis.
- (d) In addition to the above limits, the Contractor shall provide an umbrella or excess liability policy of at least \$5,000,000. During the life of the Agreement, the Contractor shall provide at its own cost and expense and maintain all insurance listed above. Proof of insurance is required before the Agreement is signed. It shall be the responsibility of the Contractor to ensure that all subcontractors comply with all of the insurance requirements. A 30-day written notice of cancellation, non-renewal or material modification of any stipulated insurance shall be mailed to the Clerk's Office by certified mail, return receipt requested mail. Note: 10-day Notice of Non-Payment is acceptable if the Certificate of Insurance indicates 30-day Notice for cancellation, non-renewal or modifications.
- (e) The Contractor agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waiver subrogation without an endorsement, then the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others or its equivalent.

- (f) The Contractor's liability insurance coverage shall extend to and include the Indemnification set forth in Section 24.
- (g) Should the Contractor fail to provide acceptable evidence of current insurance meeting the requirements of this section within seven (7) days after receiving a request from the Town for same, the Town shall have the right to consider this Agreement breached and shall the right to immediately terminate the Agreement.

23. INDEMNIFICATION:

The Contractor shall at all times defend, indemnify, protect, save harmless, and exempt the Town, its officers, agents, servants, employees, representatives, contractors, and subcontractors, from and against any and all penalties other charges, claims, suits, demands, actions, causes of action, awards of damages whether compensatory or punitive, injuries, liabilities, losses, or expenses, including attorney's fees and costs, at law or in equity, which might be claimed now or in the future, including any payments required by worker's compensation laws or any amounts for infringement of patent, trademark or copyright, which may arise out of or be caused by the operation of the business, or the construction, erection, location, products, performance, operation, maintenance, repair, installation, replacement or removal of any site, building, equipment, vehicle, bin or container within the Contractor's solid waste collection or the collection, transportation, processing, sorting or disposal of solid waste, recyclable materials, yard trash, white goods, used tires, special waste, construction and demolition debris, or other waste materials, or the performance of operations under this Agreement, and which is caused by a negligent or intentional act or omission of the Contractor, its officers, agents, servants, employees, representatives, contractors, or subcontractors, and which is not caused by a negligent or intentional act or omission of the Town.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or the Contractor. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the Town to be sued, nor shall this Agreement be construed as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

24. ACCESS AND AUDITS:

The Contractor shall maintain within Palm Beach County adequate records of the solid waste collection and/or recycling services for every year of the Agreement and for five (5) years following the end of the term of this Agreement. Upon request, the Town or its designee shall have the right to review all records maintained by the Contractor upon 48 hours' written notice. In the event that the Town exercises its right to review under this Section within the term of this Agreement or within the five (5) year period following the end of the term of this Agreement, Contractor must then continue to maintain all records until released

by the Town. If the Contractor fails to maintain records as required pursuant to this Section or infringes the Town's right to review said records at any time during the period beginning on the date of execution of this Agreement and ending on the date five (5) years after the end of the term of this Agreement, or in the event the Town has exercised its right to renew, the date beyond the date five (5) years after the end of the term of this Agreement that the records are released by the Town, the Town will suffer damage, the amount of which is difficult or impossible to ascertain. Therefore, as a consequence of the aforementioned failure, and in addition to the liquidated damages specifically provided for in this Agreement, the Contractor shall pay to the Town, as liquidated damages, the sum of \$100,000.

25. POINT OF CONTACT:

All dealings, contacts, notices, and payments between the Contractor and the Town shall be directed by the Contractor to the Contract Administrator or designee.

26. NOTICE:

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to THE TOWN:

Town of Highland Beach
c/o Town Manger
3614 South Ocean Boulevard
Highland Beach, FL 33487

Copy to:

Torcivia, Donlon, Goddeau & Rubin
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

As to THE CONTRACTOR:

Waste Management, Inc. of Florida
c/o David Myhan, President
1800 N. Military Trail, Suite 200
Boca Raton, FL 33431

Copy to:

Lisa Silva, Senior Legal Counsel (same address)

Notices shall be effective when received at the address as specified above.

Changes in the respective address to which such notice is to be directed may be made from time to time by written notice. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on -weekends or holidays will be deemed received on the next Business Day. The original of the notice must additionally be mailed as required herein.

27. DEFAULT OF CONTRACT:

A. The Town may cancel this Agreement, except as otherwise provided below in this section, by giving Contractor thirty (30) days advance written notice, to be served as hereafter provided, upon the happening of any one of the following events:

1. Contractor shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or state of the United States or any state thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
2. By order or decree of a Court, Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of cancellation shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or
3. By or pursuant to or under Town of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or
4. The Contractor has defaulted, by failing or refusing to perform or observe material terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by the Town pursuant thereto or has wrongfully failed or refused to comply with the reasonable instructions of the Contract Administrator relative thereto, whether such default is considered minor or major, and said default is not cured within thirty (30) days of receipt of written notice by Town to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30)

days following receipt by Contractor of written demand from Town to do so. Contractor fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with Contractor having the burden of proof to demonstrate [a] that the default cannot be cured within thirty [30] days, and [b] that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time).

- B. However, notwithstanding anything contained herein to the contrary, failure of Contractor to provide collection service for a period of two (2) consecutive scheduled Business Days (except in Force Majeure circumstances), the Town may secure the Contractor's billing records (at the request of the Town, the Contractor shall immediately provide such records). On the third Business Day, in order to provide interim collection services, the Town may hire an alternate service provider until such time as the matter is resolved and the Contractor is again able to perform pursuant to this Agreement; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) Business Days all liability of the Town under this Agreement to the Contractor shall cease and this Agreement may be deemed immediately terminated by the Town. The cost to provide interim collection service, including all of the Town's costs, shall be at the Contractor's expense, paid by the Town and deducted from Contractor's payment(s).
- C. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Section, in the event that Contractor's record of performance shows that Contractor has frequently, regularly or repetitively defaulted in the performance of any of the material covenants and conditions required herein to be kept and performed by Contractor, in the opinion of Town and regardless of whether Contractor has corrected each individual condition of default, Contractor may be deemed a "habitual violator", shall forfeit the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively, shall constitute a condition of irredeemable default. The Town shall thereupon issue Contractor final warning citing the circumstances therefore, and any single default by Contractor of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of this Agreement. In the event of any such subsequent default, Town may terminate this Agreement upon the giving of written Final Notice to Contractor, such cancellation to be effective upon the fifteenth consecutive calendar day following the date of Final Notice, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and Contractor shall have no further rights hereunder. Immediately upon receipt of said Final Notice, Contractor shall proceed to cease any further performance under this Agreement.
- D. In the event of any of the aforesaid events specified in paragraphs A, B, and

C above and except as otherwise provided in said paragraphs, termination shall be effective upon the date specified in Town's written notice to Contractor and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the Town under this Agreement to the Contractor shall cease, and the Town shall have the right to call the performance bond and shall be free to negotiate with other Contractors for the operation of the herein specified services. The Contractor for failure to perform shall reimburse the Town all direct and indirect costs of providing interim collection service.

28. PUBLIC WELFARE:

The Town shall have the power to make changes in or to impose new and reasonable rules and regulations on the Contractor under this Agreement relative to the method of collection and disposal of Garbage, Trash, Bulk Trash, Vegetative Waste or Recovered Materials as shall from time to time be necessary and desirable for the public welfare; provided, however, that any such rule or regulation shall be delivered to and receipted for by the Contractor, or if the Contractor is a corporation, by an officer thereof, The Town shall give the Contractor reasonable notice of any proposed change and an opportunity to be heard concerning those matters. The method of collection and disposal of Solid Waste and Recovered Materials set out herein shall also be liberally construed to include, but not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. The Contractor shall be reasonably and appropriately compensated as determined by negotiation and Agreement between the Town and the Contractor for any additional services or other obligations required of the Contractor due to any modification in the Agreement under this Section.

29. RIGHT TO REQUIRE PERFORMANCE:

The failure of the Town at any time to require performance by the Contractor of any provisions hereof shall in no way affect the right of the Town thereafter to enforce the same. Nor shall waiver by the Town of any breach of any provisions hereof be taken or held to be waived of any succeeding breach of such provisions or as a waiver of any provision itself.

30. TITLE TO WASTE:

The Town shall, at all times, hold title and ownership to all Commercial Solid Waste, Recovered Materials and Vegetative Waste and Residential Solid Waste, Vegetative Waste, and Recovered Materials and all other waste collected by the Contractor pursuant to this Agreement and the Contractor shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials without specific written authorization from the Contract Administrator.

31. GOVERNING LAW AND VENUE:

Any and all legal action necessary to enforce the Agreement will be held in a state court of competent jurisdiction located in Palm Beach County and the Agreement will be interpreted according to the laws of Florida.

32. COMPLIANCE WITH LAWS:

The Contractor shall conduct operations under this Agreement in compliance with all applicable laws, regulations and rules.

33. SEVERABILITY:

The invalidity, illegality, or non-enforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

34. ASSIGNMENT:

No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the Town, which shall not be unreasonably withheld. The Town shall have full discretion to approve or deny, with or without cause, any proposed assignment or assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written consent of the Town shall be null and void and shall be grounds for the Town to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Contractor, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the Town under this Agreement to the Contractor shall cease and Town shall have the right to call the performance bond and shall be free to negotiate with other contractors or any other person or company for the service of the franchise area which is the subject of this Agreement. In the event of any assignment, assignee shall fully assume all the liabilities of the Contractor.

35. MODIFICATION:

This Agreement 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. Such

modification shall be in the form of an Amendment executed by both parties.

36. INDEPENDENCE OF AGREEMENT:

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners between the parties hereto, or as constituting the Contractor as the agent, representative or employee of the Town for any purpose whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

37. ANNEXATIONS AND INCORPORATIONS:

Adjustments to Town boundaries and the rights of the parties to this Contract due to municipal annexation or contraction will be as provided by Section 171.062, Florida Statutes, as amended, or its successor. Adjustments to Town boundaries and the rights of the parties to this Agreement due to incorporation will be as provided by Section 165.061, Florida Statutes, as amended, or its successor.

38. CHANGE OF LAW:

The parties understand and agree that the Florida Legislature from time to time has made comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future, whether federal, state or local, which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law.

To the extent that any law effective after the opening and awarding of bids for this Agreement is in conflict with, or requires changes in, the provisions of collection service or exclusive rights set out in this Agreement, the parties agree to enter into good-faith negotiations for the resolution of any such changes in this Agreement as a result of change in law.

39. OTHER RATE ADJUSTMENTS:

The Town will strictly enforce all of the provisions of the Franchise Agreement including liquidated damages clauses for any performance quality problems. The Contractor shall not be allowed rate increases on the basis that the Contractor bid too low or agreed to do the work for a lower bidder's price. Non-performance of Franchise Agreement or a request for a rate increase, either of which are attributed to the Contractor accepting the Franchise Agreement award at an insufficiently low rate, may, at the Town's sole discretion, result in cancellation of the Solid Waste and Recycling Collection Franchise Agreement entered into with the Contractor.

40. PUBLIC ENTITY CRIMES:

No Contractor may be a person or affiliate identified on the Department of General Services "convicted vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from public contracting and purchasing process because they have been found guilty of a public entity crime. The Contractor is required to comply with Florida Statutes Section 287.133, as amended, or its successor.

41. SUBSTANTIAL COMPLIANCE:

The Contractor shall promptly collect all materials disposed of by the customer, provided the materials are prepared and placed within substantial compliance with the guidelines as set forth herein. Any dispute as to the standards of substantial compliance shall be determined by the Contract Administrator or his designee.

42. PERFORMANCE BOND:

Within thirty (30) days of execution of this Agreement, Contractor shall furnish a performance bond in the amount of \$100,000.00 as security for performance under this Agreement. The performance bond shall be in a form reasonably acceptable to the Town and shall remain in force for the duration of this Agreement and any extensions thereof. The Contractor shall be solely responsible for the payment of the premium of the performance bond, which shall be written by a surety company licensed to do business in the State of Florida with an A.M. Best Financial Rating of A Class VI or higher for the most current calendar year available.

43. OFFICE OF THE INSPECTOR GENERAL:

Palm Beach County has established the Office of the Inspector General, Ordinance (OIG) No. 2009-049, which is authorized and empowered to review past, present and proposed Town contracts, transactions, accounts and records. All parties doing business with the Town and receiving Town funds shall fully cooperate with the Inspector General including providing access to records relating to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the Contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with this Agreement and detect corruption and fraud. Failure to cooperate with the Inspector General or interference with or impeding any investigation shall be a violation of Ordinance 2009-049.

44. SCRUTINIZED COMPANIES:

As provided in Section 287.135, Florida Statutes, by entering into this Agreement with the Town, or performing any work in furtherance hereof, Contractor hereby

certifies that Contractor and Contractor's affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes. If the Town determines, using credible information available to the public, that a false certification has been submitted by Contractor, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes.

45. PUBLIC RECORDS:

The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes. As required by Section 119.0701, Florida Statutes, the Contractor shall:

- A. Keep and maintain all public records required by the Town to perform the service.
- B. Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the Town.
- D. Upon completion of the Agreement, and upon request of the Town, transfer, at no cost, to the Town all public records in possession of Contractor or keep and maintain public records required by the Town to perform the services. If the Contractor transfers all public records to the Town upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE

CUSTODIAN OF PUBLIC RECORDS, TOWN CLERK
LANELDA GASKINS AT (561) 561) 278-4548 OR
LGASKINS@HIGHLANDBEACH.US, 3614 SOUTH OCEAN
BOULEVARD, HIGHLAND BEACH, FL 33487,

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the
day and year first above written.

TOWN OF HIGHLAND BEACH

Attest:

Mayor

Town Clerk

Approved as to form and legal sufficiency:

Town Attorney

WASTE MANAGEMENT INC. OF
FLORIDA

Witnessed by:

By:

David M. Myhan
David M. Myhan, President

Alexis Alsina
Print Name: Alexis Alsina

Angelina Solis
Print Name: Angelina Solis

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 11 day of May,
2023 by DAVID M. MYHAN, President of WASTE MANAGEMENT INC. OF
FLORIDA, a Florida corporation, on behalf of the corporation. He is personally known
to me or has produced _____ (type of identification) as identification.

Coleen T. Houlihan
Notary Public, State of Florida

(SEAL)

My Commission: _____

