



AGENDA ITEM MEMORADUM

Item No. 126

Town Manager's Office

Department

Bud Bentley

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM
<input checked="" type="checkbox"/> March 27, 2012

*Subject to Change

- | | | | |
|---------------------------------------|---|---------------------------------------|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Renewal of the Solid Waste Collection Contract – Second Reading of Ordinance 2012-03

EXPLANATION: The 2009 Solid Waste Franchise Agreement was approved by Ordinance 2009-13 and the proposed Renewal Agreement (**Exhibit A to Ordinance 2012-03, Exhibit 1**) requires the same approval process.

The first reading of Ordinance 2012-03 (**Exhibit 1**) was approved at the February 28, 2012 Commission meeting. A copy of the February 28th agenda memorandum is attached (**Exhibit 2**).

RECOMMENDATION: We recommend Ordinance 2012-03 (**Exhibit 1**), which approves the Renewal Solid Waste Collection Agreement (**Exhibit "A"** to Exhibit 1) be approved on second reading.

- EXHIBITS:**
1. Ordinance 2012-03. The Renewal Agreement is Exhibit A.
 2. February 28 2012 Agenda Memorandum (without attachments)

Reviewed by Outside Counsel
 Yes No

Action
 Town Manager Initials

Exhibit 1

ORDINANCE 2012-03

1
2
3 **AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF**
4 **LAUDERDALE-BY-THE-SEA, FLORIDA, RENEWING AN EXCLUSIVE**
5 **RIGHT, PRIVILEGE AND FRANCHISE TO CHOICE**
6 **ENVIRONMENTAL SYSTEMS, INC. TO OPERATE THE ONLY SOLID**
7 **WASTE AND RECYCLABLE COLLECTION SYSTEM IN THE TOWN**
8 **OF LAUDERDALE-BY-THE-SEA, FLORIDA; PROVIDING FOR THE**
9 **TERMS, CONDITIONS, AND STANDARDS FOR SAID FRANCHISE;**
10 **PROVIDING FOR CONFLICTS, AMENDMENTS, SEVERABILITY, AND**
11 **FOR AN EFFECTIVE DATE.**

12 **WHEREAS**, in 2009, the Town of Lauderdale-By-The-Sea issued a Request for
13 Proposals for solid waste and recycling services for the residences and businesses within the
14 corporate limits of the Town; and

15 **WHEREAS**, five (5) companies responded to said Request for Proposals #09-02-01,
16 whose submittals were reviewed by the Town staff, as well as the Town Commission, who
17 provided an independent evaluation; and

18 **WHEREAS**, Choice Environmental Systems, Inc. (CHOICE) was the top-ranked firm
19 approved by the Town Commission for negotiation by the Town Manager; and

20 **WHEREAS**, after negotiations, the “Solid Waste, Bulk Waste and Recycling Collection
21 Services Agreement Between the Town of Lauderdale-By-The-Sea, Florida and Choice
22 Environmental Services Of Broward, Inc.” (the “Franchise Agreement”) was accepted by the
23 Town Commission, and CHOICE has successfully provided services pursuant to such Franchise
24 Agreement, as amended, for three years; and

Exhibit 1

ORDINANCE 2012-03

25 **WHEREAS**, Section 1.4 of the Franchise Agreement provides for up to three renewals;
26 and

27 **WHEREAS**, pursuant to Section 1.4 of the Franchise Agreement, the parties entered into
28 negotiations for a renewal of the Franchise Agreement;

29 **WHEREAS**, the Town Commission desires, during the term of the current renewal, to
30 make amendments to the renewed Franchise Agreement by resolution, but any future renewal of
31 the Franchise Agreement shall be adopted by ordinance; and

32 **WHEREAS**, the attached Franchise Agreement is the result of said negotiations and the
33 three year renewal, with modifications, is found to be in the best interests of the Town;

34 **NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
35 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:**

36 **SECTION 1. Recitals.** The foregoing “Whereas” clauses are ratified and confirmed as
37 being true, correct and reflective of the legislative intent underlying this Ordinance and are
38 hereby made a specific part of this Ordinance.

39 **SECTION 2. Adoption of Agreement.** The Agreement between the Town of
40 Lauderdale-By-The-Sea and Choice Environmental Systems, Inc., as attached hereto as Exhibit
41 “A” and made a part hereof by the reference, is hereby approved and adopted.

42 **SECTION 3. Conflicts.** All sections or parts of sections of the Code of Ordinances, all
43 ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith,
44 be and the same, are hereby repealed to the extent of such conflict.

Exhibit 1

ORDINANCE 2012-03

45 **SECTION 4. Adoption of Future Amendments and Renewals.** Any future
46 amendments to the Agreement during the term of this Renewal may be accomplished by the
47 adoption of a resolution, and shall not require an ordinance. Any future renewals of this
48 Agreement shall be accomplished by ordinance.

49 **SECTION 5. Severability.** Should any section or provision of this Ordinance, or any
50 paragraph, sentence or word, be declared by a Court of competent jurisdiction to be invalid,
51 such decision shall not affect the validity of the remainder hereof, as a whole or a part hereof,
52 other than the part declared to be invalid.

53 **SECTION 6. Effective Date.** This Ordinance shall be in full force and take effect upon
54 _____, 2012.

55 PASSED 1ST READING ON THIS 28th DAY OF February 2012.

56 PASSED 2ND READING ON THIS _____ DAY OF March 2012.

57
58
59
60 _____
61 Mayor Roseann Minnet

First Reading

Second Reading

62 Mayor Roseann Minnet

NAY

63 Vice Mayor Scot Sasser

AYE

64 Commissioner Mark Brown

AYE

65 Commissioner Stuart Dodd

AYE

66 Commissioner Chris Vincent

AYE

67 Attest:

68

69

70

71 _____
Town Clerk, June White, CMC

72

73 Approved as to form and legality:

74

75

76

77 _____
Andrew S. Maurodis, Special Counsel

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

Between

The Town of Lauderdale By-The-Sea, Florida

and

Choice Environmental Services of Broward, Inc.



RFP No. 09-02-01 - Effective July 1, 2009 -

First Amendment September 10, 2009

Second Amendment January 11, 2011

Third Amendment September 30, 2011

First Renewal Period: June 21, 2012 - June 30, 2015

This document: 2012 Renewal LBTS Solid Waste Collection Agreement

Printed: March 19, 2012 at 1:07 PM

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

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Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

This Agreement and amendments thereto (hereinafter referred to as “Agreement”) made and first entered into the 1st day of July, 2009, with amendments approved on September 10, 2009, January 11, 2011, September 30, 2011 and this Restated Agreement for the first renewal period approved on _____, 2012 by and between the Town of Lauderdale By-The-Sea, a municipal corporation of the State of Florida (hereinafter referred to as “TOWN”), acting by and through its duly authorized Town Commission, and Choice Environmental Services of Broward, Inc., (hereinafter referred to as “CONTRACTOR).

WITNESSETH:

WHEREAS, the CONTRACTOR and the TOWN wish to set forth the terms and conditions of this Agreement for the provision of a Solid Waste, Bulk Waste, and Recycling Collection Services.

NOW THEREFORE, for the mutual benefits and other considerations recited herein, the parties agree as follows:

SECTION 1: AGREEMENT

1.1 FRANCHISE

For the term of this agreement, the town hereby grants the CONTRACTOR the exclusive franchise and the sole obligation to operate and maintain comprehensive solid waste, bulk waste, and recycling collection services for Residential Collection Service Units and solid waste for Commercial Collection Service Units in and for the TOWN, except as specifically excluded in this agreement. The franchise specifically excludes the exclusive collection of construction and demolition debris. The CONTRACTOR is authorized by the TOWN to enter in and upon private property, in, upon, over, and across the present and future streets, alleys, bridges, easements, and other public places of the TOWN for the purposes of fulfilling CONTRACTORS’ obligations under this Agreement within the municipal corporate limits of the TOWN, or as directed in conformance with the Charter and Ordinances of the TOWN and other applicable law. The CONTRACTOR’S sole consideration from the TOWN shall be the right to provide the services specified herein at the rates specifically authorized herein.

1.2 TERM OF AGREEMENT

The initial term of this Solid Waste, Bulk Waste, and Recycling Collection Services Agreement (“Agreement”) was for a period of three (3) consecutive years, commencing on July 1, 2009 at 12:00 a.m., local time, through June 20, 2012 at 11:59 p.m., local time. The first renewal period commences on June 21, 2012 at 12:00 a.m., local time, through June 30, 2015 at 11:59 p.m., local time.

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1.3 EXPIRATION OF AGREEMENT PROVISIONS

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

1.4 OPTION TO RENEW

- (a) *Renewal Periods.* After the initial three (3) year period, this Agreement may be renewed for three (3) additional periods, each lasting between three (3) and five (5) years as shown in the following table.

Table 1 – Renewal Periods

Initial Term:	July 1, 2009 to June 20, 2012
First Renewal Term:	June 21, 2012 to June 30, 2015
Second Renewal Term	Three (3) to Five (5) Years
Third Renewal Term	Three (3) to Five (5) Years
Renegotiate Terms and Conditions or Request Bids from Qualified Contractors	To be determined

- (b) *Renewal Process.* Prior to making a recommendation to the Town Commission on whether to renew the Agreement, the Town Manager or designee will meet and confer with the CONTRACTOR regarding changes in terms and conditions that either the TOWN or the CONTRACTOR would like to see reflected in an amendment to the Agreement covering the next renewal period. The TOWN shall thereafter notify the CONTRACTOR of its decision to exercise a renewal option or allow the Contract to terminate. Said notice shall be in writing and delivered not less than one hundred eighty (180) calendar days prior to the expiration date.

In the event the TOWN notifies the CONTRACTOR of its decision to exercise a renewal option, the CONTRACTOR shall notify the TOWN in writing of its intent to accept or decline the renewal option offer within twenty (20) calendar days of receipt of the TOWN’s offer.

- (c) *Final Renewal Term.* In the event the Agreement is renewed for three (3) Renewal Terms, the TOWN may, at the end of the final renewal term, either renegotiate the term and conditions of the Agreement with the current CONTRACTOR or request bids from qualified contractors to provide Solid Waste Collection, Bulk Waste Collection, and Recycling Services.
- (d) *No Limits on Right of Termination.* This section in no way limits the TOWN’S right to terminate this Agreement for cause at any time during the initial term or any extension thereof, pursuant to Section 9 of this Agreement.

(Second Amendment 1-11-2011)

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

SECTION 2: DEFINITIONS

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

1. **Advertising** shall mean any written communication for the purpose of promoting a product or service. No advertising shall be permitted on Collection vehicles or any other vehicles, Recycling Bins, Recycling Containers, Containers, Roll-offs or other equipment used for the purpose of administering this Agreement. The CONTRACTOR’S name in which it is doing business and non-toll telephone service number, written communication as specified in the Agreement or written communication as directed by the Town Manager, shall not be considered Advertising.
2. **Agreement** shall mean this Agreement.
3. **Bags** shall mean non-dissolvable plastic bags.
4. **Biological Waste** shall mean, as defined in Chapter 403, Florida Statutes, Solid Waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals.
5. **Biomedical Waste** shall mean, as defined in Chapter 403, Florida Statutes, any Solid Waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility.
6. **Brown Goods** shall mean discarded computers, televisions, stereos, cabinets, furniture, and other similar domestic goods. Brown Goods must be generated by the customer and at the Residential Service Unit or Commercial Service Unit wherein the Brown Goods are collected. Anytime White Goods are referenced in this Agreement, it will include the servicing of Brown Goods.
7. **Bulk Waste** shall mean those wastes that may require special handling and management including, but not limited to: White Goods, Brown Goods, furniture, equipment, and other similar items including materials resulting from minor home repairs. Bulk Waste shall include all types of vegetative matter resulting from normal yard and landscaping maintenance that exceeds six inches (6”) in diameter, six (6) feet in length, and fifty (50) pounds or more. The customer for whom the Bulk Waste is collected must generate bulk Waste. Bulk Waste does not include items herein defined as Garbage, Contractor-Generated Waste, or Exempt Waste. Compacting of Bulk Waste containing refrigerants or other potentially harmful fluids or gases is prohibited.
8. **Bulk Waste Collection Service** shall mean Bulk Waste Collection from Residential Service Units and Commercial Service Units and delivery of the Bulk Waste to the Designated Disposal Facility.

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9. **Business Day** shall mean any day, Monday through Friday, from 8 a.m., local time until 4 p.m., local time.
10. **Collection** shall mean the process whereby Solid Waste, Bulk Waste, and Recyclable Materials are removed and transported to the appropriate Designated Disposal Facility. Collection shall exclude the process of picking up, transporting, and dropping off Exempt Waste.
11. **Collection Rates** shall mean the rates approved pursuant to the terms of this Agreement that are to be charged by the CONTRACTOR for collection services.
12. **Commercial Establishment** shall mean all retail, professional, wholesale, institutional, lodging, and industrial facilities, and any other commercial enterprises, offering goods or services to the public located in the Service Area.
13. **Commercial Services** shall mean Commercial Solid Waste Collection Services performed in the Service Area.
14. **Commercial Service Unit** shall mean any Commercial Establishment in the Service Area.
15. **Commercial Solid Waste** shall mean any Garbage or Trash that is usual to the normal operations of a Commercial Service Unit. A customer driven activity at the Commercial Service Unit wherein the Commercial Solid Waste is collected and does not include items defined herein as Yard Waste, Bulk Waste, Contractor-Generated Waste, or Exempt Waste must generate commercial Solid Waste. Recyclable Materials are not Commercial Solid Waste.
16. **Commercial Solid Waste Collection Service** shall mean the Collection and disposal of Commercial Solid Waste from Commercial Service. Commercial Solid Waste Collection Service shall be provided via Containers or Dumpsters.
17. **Commercial Recycling Collection Service Unit** shall mean the Collection of Recyclable Materials from Commercial Service Units utilizing Recycling Bins and/or Containers, and the delivery of the Recyclable Materials to the Designated Recycling Facility.
18. **Compactor** shall mean a mechanism, whether stationary or mobile, with a minimum compaction ratio of 2.5 to 1.0 used for the densification of Solid Waste in Containers or Roll-offs. The CONTRACTOR shall clearly mark all Dumpsters and Roll-offs and Compactors as to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste, or Sludge if hauler is to provide as opposed to Inter Local Agreement (ILA).
19. **Construction and Demolition Debris** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean discarded materials generally considered to be not water-soluble and non-hazardous in nature, including, but not limited to, steel, fence, screen, metal, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project. This includes non-vegetative construction and demolition debris as a result of a fire, and manmade or natural disaster, to include hurricane debris.
20. **Container or Cart** shall mean a metal or plastic receptacle on wheels, with a capacity of ninety-six (96) gallons or an alternative sized specified by TOWN, intended to be manually or

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

mechanically dumped into a loader-packer type garbage truck. A Container is commonly referred to as a “Cart.”

21. **CONTRACTOR** shall mean the person or entity that has entered into this Agreement to provide the services described herein for the Service Area.
22. **Contractor-Generated Waste** shall mean Bulk Waste generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, and lawn or yard maintenance services and nurseries.
23. **County** shall mean Broward County, Florida.
24. **Designated Disposal Facility** shall mean the facility designated in the Plan of Operations included in the Interlocal Agreement between Broward County and the TOWN, as long as the TOWN remains a part of the Interlocal Agreement. If the TOWN elects to withdraw from the Interlocal Agreement, the TOWN reserves the right to designate an alternative Designated Disposal Facility. .
25. **Designated Recycling Facility** shall mean the Recovered Materials Processing Facility designated in the Plan of Operations included in the Interlocal Agreement between Broward County and the TOWN, as long as the TOWN remains a part of the Interlocal Agreement. If the TOWN elects to withdraw from the Interlocal Agreement, the TOWN reserves the right to designate an alternative Designated Recycling Facility.
26. **Disposal Charges** shall mean the prevailing per-ton rate charged at the Designated Disposal Facility for the acceptance and disposal of Residential Waste, Commercial Solid Waste, and other waste materials.
27. **Disposal Fee** shall mean the amount within the Collection Rate paid by the customer that is charged for the disposal of Solid Waste, Bulk Waste and Yard Waste.
28. **Dumpster** shall mean a metal or plastic receptacle, with a capacity of up to and including eight (8) cubic yards designed or intended to be mechanically dumped into a loader-packer type garbage truck.
29. **Dwelling Unit** shall mean an individual living unit in a single-family dwelling, duplex dwelling, multi-family dwelling, or mixed-used dwelling within a structure or building intended for, or capable of being utilized for residential living, other than those structures or building units included within the definition of Commercial Service Unit herein.
30. **Exempt Waste** shall mean Biological Waste, Biomedical Waste, Construction and Demolition Debris, Hazardous Waste, Sludge, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, those wastes under the control of the Nuclear Regulatory Commission, and those other materials whose size, weight, or both are in excess of that allowed for Bulk Waste as defined herein.
31. **Franchise Fee** shall mean the charge to CONTRACTOR for the use of present and future streets, alleys, bridges, easements, and other public places of the TOWN. The Franchise Fee shall be calculated by multiplying the Gross Revenues as defined herein by the assigned franchise fee percentage. For example, commercial franchise fee shall be ten percent (10%) of Gross Revenues for Commercial Services and three point seven six percent (3.76%) of Gross Revenues for Residential/Multi Family Services.

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

32. **Garbage** shall mean all waste that is generated from normal residential activities. These materials generally include, but are not limited to, kitchen and food waste, animal and produce waste, or any organic waste that is a result of storage, preparation, cooking, or handling of food materials. Also included in this category are household waste items such as food packaging materials; non-recyclable cans, plastics, paper, cardboard, and bottles; rags and cleaning supplies, and other items usual to housekeeping.
33. **Gross Revenues** shall mean all charges invoiced by the CONTRACTOR arising from, attributable to or in any way derived from the services it provides pursuant to this Agreement, exclusive of franchise fees.
34. **Hazardous Waste** shall mean Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under Chapter 470, Florida Statutes.
35. **Non-Collection Notice** shall mean a sticker, tag, or door hanger used by the CONTRACTOR to notify customers of the reason for non-collection of materials set out by the customer for Collection by the CONTRACTOR pursuant to the Agreement, developed and provided by the CONTRACTOR and approved by the TOWN. CONTRACTOR is required to provide a Non-Collection Notice anytime Solid Waste, Bulk Waste, or Recycling Materials are not picked up for any reason.
36. **Ordinance** shall mean those parts of the Code of the TOWN governing Solid Waste Collection, Disposal, and Recycling activities within the TOWN.
37. **Recovered Materials Processing Facility** shall mean a facility engaged solely in the storage, processing, resale, or reuse of Recyclable Materials, and that meets the requirements of Section 403.7046, Florida Statutes.
38. **Recyclable Materials** shall mean those materials that are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste. Recyclable Materials to be collected shall include all materials that are accepted by the Designated Recycling Facility.
39. **Recycling** shall mean any process by which materials that would otherwise have been Residential Solid Waste or Commercial Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
40. **Recycling Bin** shall mean a rigid rectangular receptacle stenciled with the TOWN logo. Recycling Bins shall not contain the name or logo of the CONTRACTOR. Recycling Bins shall be made of plastic or other suitable substance of no less than fourteen (14) gallons.
41. **Recycling Container or Recycling Cart** shall mean a wheeled metal or plastic receptacle, with a capacity of ninety six (96) gallons or an alternative sized specified by TOWN, intended to be manually or mechanically dumped into a loader-packer type recycling truck. Recycling Containers shall be stenciled with the Town logo and shall not contain the name or logo of the CONTRACTOR. A Recycling Container is commonly referred to as a “Recycling Cart.”

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

42. **Residential Collection Service Unit – Single Family, Duplex** shall mean one single family home or one duplex unit that uses containers that are placed at curbside for collection.
43. **Residential Collection Service Unit – Multi Family Container Service** shall mean a Multi Family property that uses containers that are placed at curbside for collections.
44. **Residential Recycling Collection Service Unit** shall mean all types of Residential Collection Service Units utilizing Recycling Bins, Dumpsters and/or Containers, and the delivery of the Recyclable Materials to the Designated Recycling Facility.
45. **Residential Collection Service Unit – Multi Family Dumpster Service** shall mean the Collection of Garbage and Trash from multi-family residential units that utilize dumpsters for the Collection Service. Recycling Collection Service and Bulk Waste Collection Service are at curbside or at a designated location on the property.
46. **Residential Solid Waste** shall mean Garbage and Trash resulting from the normal household activities of a Residential Service Unit. The customer at the Residential Service Unit wherein the waste is collected must generate the Solid Waste. It does not include items defined herein as Contractor-Generated Waste or Exempt Waste. Recyclable Materials and Bulk Waste are not Residential Solid Waste.
47. **Roll-Off Collection Service** shall mean the Collection and disposal of Roll-Off Containers containing Construction and Demolition Debris. Collection of Construction and Demolition Debris is not considered exclusive to the CONTRACTOR under the terms and conditions of the Agreement.
48. **Roll-Off Containers** shall mean any metal receptacle with a capacity of more than eight (8) cubic yards, which is normally loaded onto a motor vehicle. Roll-off Containers utilized for services covered under this Agreement shall be owned by the CONTRACTOR.
49. **Scheduled Collection Day** shall mean any day in which Collection activities take place.
50. **Service Area** shall mean the municipal limits of the TOWN.
51. **Sludge** shall mean the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances, or any other such waste having similar characteristics or effects.
52. **Solid Waste** shall mean Garbage and Trash. Bulk Waste and Recyclable Materials are not considered Solid Waste.
53. **Special Waste** shall mean Solid Waste that can require special handling and management, including, but not limited to used tires, used oil, lead-acid batteries, ash residue, and biological wastes.
54. **TOWN** shall mean the Town of Lauderdale By-The-Sea, Broward County, Florida.
55. **Town Commission** shall mean the Town Commission of the TOWN.
56. **Town Manager** shall mean the Town Manager of the TOWN, or his/her designated representative(s).

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57. **Town Sponsored Special Events** shall mean events sponsored or co-sponsored by the TOWN.
58. **Trash** shall mean plastic bags, wood, bundles, toys, Yard Waste, and other similar waste materials in cans or similar receptacles. Trash does not include items that are Contractor-Generated Waste or Exempt Waste.
59. **Yard Waste (or Yard Trash)** shall mean vegetative materials from normal yard and landscaping maintenance that is from the serviced property.
60. **Yard Waste Collection Service** shall mean the once per week collection of Yard Waste utilizing carts from cart customers (single family, duplex and multifamily).
61. **White Goods** shall mean discarded refrigerators, ranges, water heaters, freezers, and other similar domestic appliances. White Goods must be generated by the customer and at the Residential Service Unit or Commercial Service Unit wherein the White Goods are collected. Any time White Goods are referenced in this Agreement, it will include the servicing of Brown Goods.
62. **Work Day** shall mean any day, Monday through Saturday.
63. **Undefined Amount of Garbage and Trash** shall mean shall be the quantity of Garbage and Trash that can be placed in the container by the residential unit and still allow proper collection. Lid of container must be in closed position.

SECTION 3: COLLECTION SERVICES TO BE PROVIDED BY CONTRACTOR

The CONTRACTOR shall provide all Residential Services and Commercial Services, as defined in Section 3 herein, within the corporate limits of the TOWN, except as provided herein. CONTRACTOR will meet all disposal requirements of the Broward County Resource Recovery Board’s rules and regulations. Said service shall include:

3.1 RESIDENTIAL SOLID WASTE – GARBAGE AND TRASH

- (a) All Residential Solid Waste. The CONTRACTOR is responsible to collect all Solid Waste, Bulk Trash, and Recycling Materials in the Service Area. In the event the CONTRACTOR is not able to collect, CONTRACTOR is required to provide a Non-Collection Notice with the contractual reason for non-collection.
- (b) Christmas Trees. The CONTRACTOR shall collect Christmas Trees from all Residential Service Units at curbside at no additional cost to the Residential Service Unit or the TOWN on normal pickup days when the tree is placed in the cart or on any Bulk Trash pickup day.
- (c) Containers provided by the CONTRACTOR shall meet accepted industry standards. TOWN will select the color of the Container; however, once the color is selected, all Containers shall be the same color. Containers shall have a capacity of not greater than ninety-six (96) gallons. The CONTRACTOR is not required to empty any Container that exceeds 150 pounds in weight.

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- (c) *Container Replacement.* Upon notification from any Residential Service Unit to the CONTRACTOR of damaged to the customer’s Container, the CONTRACTOR upon verification shall repair or replace the Container with the same item or an equivalent (i.e. capacity, wheels, lid, etc.), at the CONTRACTOR’S own expense, within two (2) Work Days.
- (d) *Collection Rates.* As of the effective date of this Agreement, the CONTRACTOR shall provide Collection Service for each type of service according to the Collection Rates shown in the corresponding Exhibits to this Contract, which are incorporated herein; unless specifically and expressly authorized by this agreement, CONTRACTOR shall not impose any other charges or assessments of any kind whatsoever to the customer or the TOWN.
- (e) *Yard Waste Collection Service.* The Town has the option of implementing Yard Waste Collection Service for residential customers utilizing containers under the following terms and conditions:
 - (1) Upon receipt of written notice from TOWN of its decision to implement yard waste service, the CONTRACTOR shall begin providing once a week residential and Multifamily (with carts service) yard waste collection service within one hundred and twenty (120) days of such notice.
 - (2) The fee for once a week yard waste collection service paid to CONTRACTOR shall be equal to the fee for once a week recycling collection. CONTRACTOR shall provide necessary containers or carts at no additional cost or charge to the customer or the TOWN. Should this Agreement terminate before the end of a three year amortization period following the purchase of carts provide for in this Section, the TOWN shall reimburse the CONTRACTOR the unamortized capital cost of these carts. Example: One thousand Recycling Carts are purchased at a cost of \$50 per cart and \$1.39 is amortized each month. If the Agreement terminates 30 months after the purchase of the cart, the TOWN will reimburse the CONTRACTOR \$8,333 [1000 carts x \$1.39 per month x 6 month].
 - (3) For the first year of Yard Waste Collection Service, the Disposal Fee component of the monthly Collection Rate collected by the CONTRACTOR for Residential Waste Collection Service shall be considered sufficient to cover the actual cost of disposal of Yard Waste and there shall be no change to the rates charged. In the second year after implementation and subsequent years, the Disposal Fee component of the monthly charge to each customer for Yard Waste Collection Service shall be based on the prior year’s actual cost of disposal of Yard Waste from July 1st to June 31st, averaged over the number of total number of residential container customers plus any applicable CPI adjustment provided for in Section 6.8.1.2. This amount shall become the new disposal fee in the monthly Collection Rate.
 - (4) The Solid Waste Disposal Fee for Residential Collection Services shall be adjusted as provided for in Section 6.8.1.2.

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- (5) An example of how subsection (2) and (3) would work is shown in the Table 3.1.

Table 3.1 – Calculating the Collection and Disposal Rate
for Yard Waste Collection Service.

Monthly Rate for Single Family and Duplex				
	Service Components	11-1-11 Monthly Rates	If Yard Waste Implemented in 2012	11-1-13 Monthly Rate (1)
1.	Solid Waste collection	\$4.15	\$4.15	\$4.15
2.	Recycling collection	\$2.08	\$2.08	\$2.08
3.	Yard Waste collection		\$2.08	\$2.08
4.	Bulk Trash Collection	\$1.10	\$1.10	\$1.10
5.	Disposal Fee -Solid Waste	\$8.03	\$8.03	\$6.42 (2)
6.	Disposal Fee-Yard Waste			\$1.11 (2)
	Total	\$15.35	\$17.44	\$16.94

Footnotes:

- (1) For the purpose of this example, the assumption is of the Resource Recovery Board’s disposal fee remains the same and there is no change in CPI.
- (2) The example is calculated on a Yard Waste Disposal Rate of \$50 per ton with twenty percent of the waste stream being diverted to Yard Waste Containers.

Calculation: RRB disposal fee of \$72.57 per ton; 1065 single family accounts; $\$8.03 * 1065 = \$8,551.95$ monthly disposal fee; $\$8,551.95 / \$72.57 = 117.8$ tons per month; 80% of 117.8 = 94.3 tons of household waste per month; 20% = 23.6 tons of yard waste per month,

3.1.1 Residential Collection Service Units – Single Family, Duplex

- (a) *Frequency.* The CONTRACTOR shall pick up, twice per week, at least three (3) days apart, an undefined amount of Garbage and Trash from each residential unit.
- (b) *Suspension of Service.* Single Family or Duplex Residential Service Units may suspend service in accordance with the requirements of the Town Code of Ordinances.
- (d) *Placement of Containers.* CONTRACTOR shall pick up all Containers placed within three (3) feet of the street. Containers, after being emptied by CONTRACTOR, will be returned by CONTRACTOR as close as reasonably possible to its original location. Containers shall not be placed in front of the garage doors or behind vehicles blocking vehicular movement unless originally placed in those locations by the resident.

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- (f) *Number of Containers.* CONTRACTOR will provide one (1) ninety-six (96) gallon wheeled container to each Residential Service Unit, unless a smaller size Container is requested by the Residential Service Unit and agreed upon by CONTRACTOR. In accordance with Town Code, Duplexes may share a common Container, provided it is sufficient to accommodate the joint usage without spillover.
- (g) *Residential Handicapped Collection Service.* The CONTRACTOR shall provide off-street Collection for Solid Waste from Residential Service Units if (a) all adult occupants residing therein are handicapped, (b) a written request for off-street service has been made to the CONTRACTOR by the Residential Service Unit, and (c) the request is approved by the Town Manager, in the manner required by the TOWN. No additional monies shall be due to the CONTRACTOR for the provisions of off-street service to handicapped customers. The point of Collection for off-street service shall be the back or side-yard or such other location as designated in writing by the CONTRACTOR to the Residential Service Unit. The CONTRACTOR shall provide off-street service on the same scheduled Collection day that Residential Solid Waste Collection Service would otherwise be provided to the Residential Service Unit.

3.1.2 Residential Collection Service Units – Multi Family with Containers

- (a) *Frequency.* The CONTRACTOR shall pick up twice per week, at least three (3) days apart, an undefined amount of Garbage and Trash from each Residential Collection Service Unit at curbside or a designated location.
- (b) *Placement of Containers.* CONTRACTOR shall pick up all Containers placed within three (3) feet of the street. Containers, after being emptied by CONTRACTOR, will be returned by CONTRACTOR as close as reasonable possible to its original location. Containers shall not be placed in front of the garage doors or behind vehicles blocking vehicular movement unless originally placed in those locations by the resident.
- (c) *Number of Containers.* CONTRACTOR shall provide one (1) ninety-six (96) gallon Container for each Residential Collection Service Unit if requested, to accommodate the Solid Waste Collection needs of the Residential Collection Service Units. CONTRACTOR may reduce total numbers of Containers if collection is easily contained in a lesser number of Containers. The CONTRACTOR shall provide the number of Containers necessary for efficient and sanitary services based on the reasonable request of an authorized representative of the Residential Service Units, in accordance with the following:
 - (i) A “reasonable request” shall be made at least thirty (30) days prior to the desired date of pick-up or delivery of Containers.
 - (ii) A “reasonable request” shall be defined as any request for a number of Containers sufficient for efficient and sanitary services. Regardless of the actual number of Containers sufficient for efficient and sanitary services, the Residential Service Units must pay the rate for the number of Containers equaling at least fifty percent (50%) of the number of

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residential dwelling units. If fifty percent (50%) is not a whole number, the minimum number of Containers will be rounded down; for example, eleven (11) residential dwelling units may request no fewer than five (5) Containers.

- (iii) A reasonable request may be made up to two (2) times per fiscal year for free. Additional requests to have Containers picked up or delivered may be made, but shall require payment of a fee. The fee shall be twenty-five dollars (\$25) for the first four (4) Containers to be picked up or delivered; additional Containers may be requested to be picked up or delivered for a fee of fifteen dollars (\$15) each.
- (iv) In the event of disagreement about the reasonable number of containers, the TOWN shall make the final determination.

3.1.3. Residential Collection Service Units – Multi Family Dumpster Service

- (a) *Number and Size; Frequency of Pickup.* The CONTRACTOR shall provide the sizes and numbers of Dumpsters necessary for efficient and sanitary services based on the reasonable request of an authorized representative of Residential Service Units. Dumpsters shall be picked up as frequently as volume demands, but not less than twice per week, at least three (3) days apart. The customer and the CONTRACTOR shall mutually agree upon the size and frequency of pick-up of Dumpsters. The CONTRACTOR shall notify customer if it is deemed necessary to increase service, and notify the TOWN of their intention to do so. Any dispute between customer and CONTRACTOR shall be resolved by TOWN and the decision of the Town shall be final and binding.
- (b) *Dumpsters.* Dumpsters provided by the CONTRACTOR shall meet accepted industry standards. The CONTRACTOR shall maintain dumpsters as necessary to maintain efficient and sanitary services.

(Second Amendment 1-11-2011)

3.2 RESIDENTIAL BULK WASTE

3.2.1 Bulk Waste Collection for Residential Service Unit – Single Family, Duplex

The CONTRACTOR shall pick up, once a month, an undefined amount of Bulk Waste from each Residential Service Unit on the same day and in conjunction with one of the regular Solid Waste Residential Collection Service. The CONTRACTOR shall pick up Bulk Waste on the normal Solid Waste Collection day, but in no instance more than twenty-four (24) hours after the regularly scheduled day. Bulk Waste must be generated by the customer and placed curbside.

3.2.2 Bulk Waste Collection for Residential Service Unit – Multi Family with Containers

The CONTRACTOR shall pick up, once per month, the equivalent of up to one (1) cubic yard of Bulk Waste multiplied by the number of Containers from the Residential Service Units. For example, if an 11 unit Multi Family property has five (5) Containers, the CONTRACTOR shall collect up to five (5) cubic yards of Bulk Waste.

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The CONTRACTOR shall pick up Bulk Waste on one of the normal Solid Waste Collection days, but in no instance more than twenty-four (24) hours after the regularly scheduled pick up day. Bulk Waste must be generated by the customer and placed at curbside or a designated location.

3.2.3 Bulk Waste Collection Service for Residential Collection Service Units – Multi Family Dumpster Service

The CONTRACTOR shall pick up, once per month, an undefined amount of Bulk Waste from each Residential Service Unit on the same day and in conjunction with one of the regular Solid Waste Residential Collection Service. The CONTRACTOR shall pick up Bulk Waste on the normal Solid Waste Collection day, but in no instance more than twenty-four (24) hours after the regularly scheduled pick up day. Bulk Waste must be generated by the customer and placed at curbside or a designated location.

(Second Amendment 1-11-2011)

3.3 COMMERCIAL SOLID WASTE

3.3.1 **Commercial Solid Waste Collection Service** – The CONTRACTOR shall provide Commercial Solid Waste Collection Service as deemed necessary and as determined between the CONTRACTOR and the customer. However, frequency shall be no less than two (2) times per week with no exception for Holiday(s) as set forth herein, except that Collection service scheduled to fall on a Holiday may be rescheduled as determined between the customer and the CONTRACTOR as long as the minimum frequency requirement is met. The size of the Container or Dumpster and the frequency of Collection (meeting minimum requirements) shall be determined between the customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Solid Waste shall be placed outside the Container or Dumpster. Dumpster(s) and Container(s) shall be accessible to the CONTRACTOR’S crew and vehicles. In the event of disagreement about the size of dumpster or frequency of collection, the TOWN shall make the final determination.

3.3.2 **Rates** - The CONTRACTOR shall provide Container(s) and Dumpster(s) at the approved rates as identified in Exhibit 4 and Exhibit 5 Compacted Dumpster Service, which are incorporated herein, and, unless specifically authorized by this agreement, CONTRACTOR shall not impose any other charges or assessments of any kind whatsoever to the customer or the TOWN unless specifically and expressly set forth herein. Customers may own their Dumpsters and/or Container(s) provided that the customer shall be completely responsible for its proper maintenance and such Container(s) shall be of a type that can be serviced by the CONTRACTOR’S equipment.

3.3.3 **TOWN Facilities Service** – The CONTRACTOR shall provide Solid Waste Collection, Bulk Waste Collection, Roll-Off Collection and Recycling Collection and disposal to all current and future TOWN owned and/or operated facilities without charge to the TOWN. Containers, Dumpsters, and Roll-Offs shall be furnished and maintained by the CONTRACTOR at no charge to the TOWN. The size of the Containers, Dumpsters, and Roll-Offs and the frequency of pick-up service for said facilities shall be at such intervals as determined by the TOWN.

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- 3.3.4 **Service Levels not Designated** – For service levels not designated, the CONTRACTOR shall provide the level and type of service negotiated and mutually agreed upon between the CONTRACTOR and customer at the rates negotiated and mutually agreed upon between the CONTRACTOR and the customer. All said service levels, types, and rates shall be approved by the TOWN.
- 3.3.5 **Town Sponsored Special Events** – The CONTRACTOR shall provide Containers, Dumpsters, portable toilets and/or Roll-offs, as well as Collection of Solid Waste from such receptacles, for up to a maximum of twelve (12) Town Sponsored Special Events per year for the term of the Agreement at no cost to the TOWN or Special Event co-sponsors. The CONTRACTOR shall collect said receptacles on an on-call basis. The TOWN shall determine the size and number of said receptacles to be provided by the CONTRACTOR. The CONTRACTOR shall be responsible for the expenses of Containers, Dumpsters, portable toilets and/or Roll-offs rental and maintenance, Collection, Disposal Charges, and all other expenses incurred for the Town Sponsored Special Events.

3.4 RECYCLING

The CONTRACTOR shall provide Recycling Services to all Residential Service Units and TOWN facilities in the Service Area, as well as Town Sponsored Special Events as described in Section 3.4.7 below.

- (a) CONTRACTOR shall provide Recycling Services to all Residential Collection Units one (1) day per week, on a regular scheduled Solid Waste pick up day. The services to be performed by the CONTRACTOR shall consist of Collection of all designated Recyclable Materials and transportation to the Designated Recycling Facility.
- (b) The CONTRACTOR shall offer recycling Services to all Commercial Service Units; the fees for those services shall be agreed upon by the Commercial Service Unit and the CONTRACTOR.
- (c) Should unanticipated events, circumstances, or changes in law arise that necessitate any additions or deletions to work described in this Section, including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications and any compensation to CONTRACTOR before undertaking any changes or revisions to such work.
- (d) **Purchase and Distribution:** CONTRACTOR shall provide one (1) Recycling Cart to each Residential Collection Service Unit – Single Family and Duplex and one (1) Recycling Cart for every Garbage Container required in Section 3.1.2 for Residential Collection Service Units – Multi Family with Containers. TOWN will select the color of the Container; however, once the color is selected, all Containers shall be the same color. The TOWN may select one alternative sized CART that the Residential Collection Service Unit may request from CONTRACTOR and CONTRACTOR shall promptly provide said carts to the customers as directed by the Town at no charge to either the customer or the Town. All Recycling Carts shall be capable of being emptied by mechanical equipment.

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- a. Within one hundred and twenty (120) days of receiving notice to proceed from TOWN, CONTRACTOR shall, at its sole cost and expense, purchase and distribute Recycling Carts to all Residential Collection Service Units subject to the limits noted in this subsection. As part of the distribution process, CONTRACTOR shall collect all the current Recycling Bins. In the event, the TOWN purchases Recycling Carts, the CONTRACTOR will pay to the TOWN what the CONTRACTOR would have spent for the same number of Recycling Carts, or what the TOWN paid, whichever is less, up to a maximum of a thousand carts. This payment is subject to the amortization and unamortized reimbursement described herein. The CONTRACTOR shall prepare and distribute TOWN purchased Recycling Carts at no cost to the TOWN or customers.
- b. The CONTRACTOR shall maintain sufficient Recycling Carts to ensure that extra or replacement Recycling Carts can be provided to customers or properties in accordance with the terms and conditions of the Agreement. The CONTRACTOR'S employees shall take care to prevent damage to Recycling Carts by unnecessary rough treatment.
- c. The CONTRACTOR shall purchase and distribute new Recycling Carts as requested by TOWN to existing Residential Collection Service Units for the term of this Agreement.
- d. The CONTRACTOR shall purchase and distribute Recycling Carts to new Residential Collection Service Units that are added to the Service Area during the term of the Agreement.
- e. **Amortization of Recycling Carts.** Should this Agreement terminate before the end of a three year amortization period following the initial purchase of Recycling Carts by the CONTRACTOR, the TOWN shall reimburse the CONTRACTOR the unamortized capital cost of those Recycling Carts. Example: One thousand Recycling Carts are purchased by the CONTRACTOR at a cost of \$50 per cart and \$1.39 is amortized each month. If the Agreement terminates 30 months after the purchase of the Carts, the TOWN will reimburse the CONTRACTOR \$8,333 [1000 carts x \$1.39 per month x 6 month].
- (e) **Replacement** – Upon notification to CONTRACTOR by the TOWN or a customer that the Residential Service Unit's Recycling Cart has been stolen or that it has been damaged beyond repair, the CONTRACTOR upon verification shall deliver a replacement Recycling Cart to such Residential Service Unit within two (2) Work Days. Each Residential Service Unit shall be entitled to two replacements of lost, destroyed, or stolen Recycling Carts during the current term of the Agreement at no cost to the TOWN or the Residential Collection Service Unit. Additional replacement Recycling Carts shall be provided according to the schedule in Exhibit 5, Special Services.
- (f) **Ownership** – Ownership of Recycling Carts purchased by the CONTRACTOR shall rest with the CONTRACTOR, except that ownership of Recycling Carts in the possession of a Residential Collection Service Unit or TOWN at the end of the Agreement shall rest with the TOWN.

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- 3.4.1 **Recyclable Materials to be Collected** – The CONTRACTOR shall collect all Recyclable Materials that are accepted by the Designated Recycling Facility and that are placed in a Recycling Container.
- 3.4.2 **Contaminated Recyclable Materials** – The CONTRACTOR shall not be required to collect Recyclable Materials from Residential Service Units if the customer does not segregate the Recyclable Materials from Residential Solid Waste. If Recyclable Materials are contaminated through commingling with Residential Solid Waste, the CONTRACTOR shall, if practical, separate the Residential Solid Waste from the Recyclable Materials. The Recyclable Materials shall then be collected and the Residential Solid Waste shall be left in the Recycling Bin or Recycling Container along with a Non-Collection Notice of why the Residential Solid Waste is not considered a Recyclable Material. However, in the event the Recyclable Materials and Residential Solid Waste are commingled to the extent that they cannot easily be separated by the CONTRACTOR, or the nature of the Residential Solid Waste renders the entire Recycling Bin or Recycling container contaminated, the CONTRACTOR shall leave the Recycling Bin or Recycling Container un-emptied and issue a Non-Collection Notice to the customer containing instructions on the proper procedures for setting out Recyclable Materials. The TOWN shall approve the design of said notice, and the cost of printing said notice shall be borne by the CONTRACTOR. The CONTRACTOR shall not collect the Recyclable Materials until the Residential Service Unit segregates the Recyclable Materials from Residential Solid Waste. The CONTRACTOR shall maintain a record of the address of any Residential Service Unit where Recyclable Materials were not collected, the date of non-collection, and the reason they were not collected, to be provided to the TOWN upon request.
- 3.4.3 **Recycling Containers for Residential Units Utilizing Dumpsters** – The CONTRACTOR shall provide the same level of Residential Recycling Service to Residential Units using Dumpsters as provided to the Residential Units – Multi Family as identified in Section 3.4.4. If the recycling volume is sufficient, upon request of the Properties, CONTRACTOR shall provide a recycling dumpster instead of Recycling Carts.
- 3.4.4 **Residential Handicapped Recycling Service** – The CONTRACTOR shall provide off-street Collection of Recyclable Materials from Residential Service Units if all adult occupants residing therein are handicapped and if a request for off-street service has been made to the CONTRACTOR, and approved by the TOWN, in the manner required by the TOWN. The TOWN shall notify the CONTRACTOR in writing of any customers requiring off-street service. No additional monies shall be due to the CONTRACTOR for the provisions of off-street service to handicapped customers. The point of Collection for off-street service shall be the back or side-yard or such other location as designated in writing by the Town Manager. The CONTRACTOR shall provide off-street service on the same scheduled Collection day that Residential Service would otherwise be provided.
- 3.4.5 **TOWN Facilities Recycling Service** – The CONTRACTOR shall provide Recycling Service to all current and future TOWN owned and/or operated facilities without charge to the TOWN, provided Recyclable Materials are properly containerized in Recycling Containers and/or Recycling Bins. The TOWN shall specify the location of Recycling

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Bins and/or Recycling Containers. It shall be the responsibility of the CONTRACTOR to collect the Recyclable Materials and return such receptacles to their specified location. The CONTRACTOR shall provide, at the CONTRACTOR’S sole expense, the number of Recycling Bins and/or Recycling Containers required by the TOWN to prevent overflow based on one (1) time per week Collection.

- 3.4.6 **Town Sponsored Special Events** – The CONTRACTOR shall provide Recycling Bins and/or Recycling Containers for up to a maximum of twelve (12) Town Sponsored Special Events per year for the term of the Agreement. The CONTRACTOR shall provide Recycling Services for Town Sponsored Special Events at no cost to the TOWN or Special Event co-sponsors. The CONTRACTOR, on an on-call basis, shall collect such Recycling Bins and/or Recycling Containers. The TOWN shall determine the size and number of said Containers. The CONTRACTOR will be responsible for the expenses of Container rental and maintenance, collection, processing charges, and all other Recycling expenses incurred for the Town Sponsored Events.

3.5 DESIGNATED DISPOSAL FACILITY

All Solid Waste, Bulk Waste, Residential Recyclable Materials, and Recyclable Materials from TOWN facilities collected pursuant to this Agreement shall be delivered to facilities designated (“Designated Disposal Facilities”) by the TOWN, with the exception of waste which is shown by affidavit to be destined for transportation to any destination outside of the State of Florida.

CONTRACTOR shall be responsible for complying with all terms of the TOWN’S Interlocal Agreement with Broward County for Solid Waste Services, as amended (“Interlocal Agreement”), which specifically state that a contractor for any party to the Interlocal Agreement must comply with such term.

Should CONTRACTOR direct waste to a location outside the State of Florida, it shall indemnify and hold harmless the TOWN for any action resulting from such disposal. CONTRACTOR specifically acknowledges that the prices in this Agreement include this indemnification and hold harmless obligation as a part of its cost for out of state delivery, and such cost is not to be interpreted as a penalty for, or barrier to, delivery of the waste by CONTRACTOR out of state.

The handling of all solid waste and recycling materials will be in accordance with the Broward Solid Waste Disposal District Plan of Operation or the direction of the TOWN if Town determines to use a different plan of operation. The TOWN shall retain ownership of all Solid Waste, Bulk Waste, Residential Recyclable Materials, and Recyclable Materials from TOWN facilities until delivery to the Designated Disposal Facility. In the event that CONTRACTOR commingles any solid waste, bulk waste, recyclables, or other materials collected under the terms and conditions of this Agreement with solid waste or other materials from other jurisdictions, CONTRACTOR shall indemnify and hold TOWN harmless from any and all losses, claims, or liability associated with the quantities of solid waste or other materials that were commingled.

3.5.1 **Municipal Option**

In the event the TOWN considers not participating in the Broward County Solid Waste Plan and it considers participating in a disposal contract or plan developed or offered by another municipality or group of municipalities, (hereinafter referred to as the Municipal

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Option) TOWN will provide the Contractor the opportunity to make a proposal to TOWN that meets or is better than the bona fide contract price, benefits and terms of the Municipal Option.

The CONTRACTOR has thirty (30) days to provide TOWN a written proposal from the date the TOWN provides written notice to CONTRACTOR that it is considering participating in the Municipal Option and a copy of disposal contract, proposal or plan that the TOWN has in its possession. Upon receipt of the CONTRACTOR’S proposal, the TOWN shall have 30 days to review the proposal and meet with the CONTRACTOR (the Review Period). The Town Manager shall meet with the CONTRACTOR on at least one occasion to discuss the proposal during the Review Period. By written extension, the CONTRACTOR AND Town Manager may extend the Review Period for one additional 30 day period.

If the parties have not executed a signed agreement based on the proposal within the Review Period, then the TOWN shall be free to pursue the Municipal Option. CONTRACTOR understands and agrees that TOWN shall be under no obligation to accept any proposal from CONTRACTOR.

The CONTRACTOR understands and agrees that TOWN shall be under no obligation to accept any proposal from CONTRACTOR. The sole purpose of this provision is to offer the CONTRACTOR and TOWN a means to explore opportunities for the TOWN to consider other options, in the event it chooses to terminate its participation in the present Broward County Solid Waste Plan and is solely intended for the benefit of the TOWN. In no event shall the CONTRACTOR have a claim against the TOWN based on the failure of the TOWN and the CONTRACTOR to reach an agreement on the CONTRACTOR’S proposal or the failure of the TOWN to accept any such proposal by CONTRACTOR as the parties recognize that any decision in this regard rests in the sole discretion of the TOWN.

This right of proposal does not apply if the TOWN bids its own contract(s) for disposal or participates with other municipalities in a joint or cooperative bidding or request for proposal process or if the TOWN chooses to participate in a successor plan to the Broward County Solid Waste Plan or some amended version of the Broward County Solid Waste Plan.

3.5.2 **Change in Designated Disposal Facility**

In the event the TOWN changes the Designated Disposal Facility, TOWN shall give CONTRACTOR at least sixty (60) days notice to CONTRACTOR of the date the change is to go into effect.

- (a) In such case, TOWN and the CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement that may be required in order to implement changes in the interest of the public welfare or due to change in law.
- (b) When such modifications to this Agreement are necessary, the TOWN and the CONTRACTOR shall negotiate in good faith, a reasonable and appropriate

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compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Agreement under this Section.

- (c) The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment. In the event the parties cannot reach agreement within 30 days of the notice, then either party has the right to terminate this agreement on 180 days written notice. During any such 180 day period, CONTRACTOR shall cooperate with TOWN in assuring a smooth transition to the new disposal facility or arrangement.

3.6 SPECIAL WASTE COLLECTION SERVICES

CONTRACTOR shall not be required to collect and/or dispose of Special Waste, Hazardous Waste, Biohazardous or Biomedical Waste, or Sludge, but may offer such service in the Service Area. All collection and disposal for those types of waste 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.

3.7 TOWN’S RIGHT TO DESIGNATE CONTAINER SIZE AND FREQUENCY OF PICK UP

The TOWN reserves the right to determine the frequency of pick up and size of Containers needed at all Residential Service Units and Commercial Service Units within the TOWN’S corporate limits. If the TOWN determines that a change in frequency of service or Container size is necessary, the CONTRACTOR shall adjust Containers and Dumpsters and frequency of service accordingly. The customer shall be responsible to pay for the adjusted service levels, whether increased or decreased.

3.8 MIXED USE PROPERTIES

3.8.1 **Defined** - The following terms are defined for purposes of this subsection 3.9 only:

- (a) *Mixed-use property* is defined as a property, which may contain more than one parcel or premises, containing both residential and non-residential uses. For the purposes of solid waste collection under this section, the non-residential uses shall not involve food sales or service.

- (b) *Small mixed-use property* is defined as a mixed-use property with a total area of 6,000 square feet or less.

- (c) *Large mixed-use property* is defined as a mixed-use property with a total area of greater than 6,000 square feet.

3.8.2 **Solid Waste and Bulk Waste Container Service** - As an alternative to the use of Dumpsters, property owners and tenants of mixed use properties may arrange for Solid Waste and Bulk Waste Collection as follows:

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(a) *Small mixed-use property option.* The property owner or the single tenant of a small mixed-use property may arrange for a residential container that will also serve the non-residential use(s). Such owner or tenant shall be charged the residential container rate in Exhibit 1 in those cases where the Garbage from the entire property can be accommodated in one residential container, without spillover. In the event an additional container(s) is (are) required, it (they) shall be provided at the commercial container rate applicable to similar volumes of Garbage. Bulk waste pickup shall be provided for the residential use only, which shall not exceed two (2) cubic yards monthly, upon request at the next regularly scheduled pickup.

(b) *Large mixed-use property option.*

i. *Property owners.* The property owner of a mixed-use property in excess of a total area of 6,000 square feet may arrange for a single or multiple commercial containers that will also serve the residential use of the property, if the container(s) is (are) of sufficient size to accommodate the joint usage without spillover. Such owner shall be charged the commercial container rate. Bulk waste pickup shall be provided for the residential use only, which shall not exceed two (2) cubic yards monthly upon request at the next regularly scheduled pickup.

ii. *Tenants.* The tenant of a mixed-use property in excess of a total area of 6,000 square feet, who leases both non-residential space and a residential dwelling on the property, may arrange for a single or multiple commercial containers to serve both his or her residential and non-residential Garbage disposal needs, if the container is of sufficient size to accommodate the joint usage without spillover. Such Tenants shall be charged the commercial container rate. Bulk waste pickup shall be provided for the residential use only, which shall not exceed two (2) cubic yards monthly upon request at the next regularly scheduled pickup.

3.8.3 **Other Requirements.** Mixed Use Properties opting to use Containers shall be governed by the following:

(a) *Christmas Trees.* The CONTRACTOR shall collect Christmas Trees from mixed use properties at no additional cost to the properties or the TOWN when the tree is placed in the Cart or on any Bulk Trash pickup day.

(b) *Container Replacement.* Upon notification from any mixed use property to the CONTRACTOR that the CONTRACTOR damaged the customer’s Container, the CONTRACTOR upon verification shall repair or replace the Container with the same item or an equivalent (i.e. capacity, wheels, lid, etc.), at the CONTRACTOR’S own expense, within two (2) Work Days.

(c) *Containers.* Containers shall have a capacity of not greater than ninety-six (96) gallons. Containers provided by the CONTRACTOR shall meet accepted industry standards. CONTRACTOR will select the color of the Container. The CONTRACTOR is not required to empty any Container that exceeds 150 pounds in weight.

(d) *Placement of Containers.* CONTRACTOR shall pick up all Containers placed within three (3) feet of the street. Containers, after being emptied by CONTRACTOR, will be

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returned by CONTRACTOR as close as reasonable possible to its original location. Containers shall not be placed in front of the garage doors or behind vehicles blocking vehicular movement unless originally placed in those locations by the resident.

(Second Amendment 1-11-2011)

SECTION 4: EDUCATION SERVICES

The CONTRACTOR shall provide the following public education services about the TOWN’S Solid Waste, Bulk Waste, and Recycling Services. The CONTRACTOR shall be responsible for all expenses associated with the notices and educational services required herein. All notices, educational materials, and educational services shall be approved by the Town Manager prior to being printed and used by the CONTRACTOR.

4.1 ANNUAL NOTICE TO CUSTOMERS

The CONTRACTOR shall design, print, and distribute an annual notice to all Residential and Commercial customers within the Service Area. At a minimum, the notice shall identify the scheduled Collection days, summarize the applicable set-out requirements, provide an overview of current issues affecting the service, provide information on how to register complaints, and how to contact Customer Service.

4.2 NOTICES TO NEW CUSTOMERS

The CONTRACTOR shall design, print, and distribute a notice to new Residential and Commercial customers within the Service Area. At a minimum, the notice shall identify the scheduled Collection days, summarize the applicable set-out requirements, provide an overview of current issues affecting the service, provide information on how to register complaints, and how to contact Customer Service. The notice shall be sent out not later than thirty (30) days after service begins.

4.3 NON-COLLECTION NOTICE

The CONTRACTOR shall not be required to collect any Solid Waste, Bulk Waste, or Recyclable Materials, within reason, which does not meet the requirements in this Agreement. The CONTRACTOR shall collect that portion of Solid Waste, Bulk Waste, or Recyclable Materials that meets the set-out requirement, and shall affix to the improper Garbage Can, Container, Bag, or other material a Non-Collection Notice explaining why Collection was not made. The TOWN shall approve the design of said notice and the cost of printing said notice shall be borne by the CONTRACTOR. The CONTRACTOR shall maintain a record of the address of any customer where Solid Waste, Bulk Waste, or Recyclable Materials were not collected, the date of non-collection, and the reason they were not collected, to be provided to the TOWN upon request.

SECTION 5: HOURS OF COLLECTION

5.1 RESIDENTIAL SERVICES

Residential Services shall be made with a minimum of noise and disturbance commencing no earlier than 7:00 a.m., local time, and terminating no later than 6:00 p.m., local time, Monday

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through Saturday, with no service on Sunday. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the TOWN.

5.2 COMMERCIAL SERVICES

Commercial Services shall be made with a minimum of noise and disturbance and shall be provided between the hours of 7:00 a.m., local time, and 6:00 p.m., local time, Monday through Saturday and between the hours of 8:00 a.m., local time, and 6:00 p.m., local time, on Sunday. The receipt by the TOWN of a continued complaint pattern referencing noise or disturbances that occurred during the operating hours set forth in this Section shall be prima facie evidence of “disturbances” and the CONTRACTOR shall adjust the Commercial Service hours at such identified locations as the TOWN shall direct the CONTRACTOR in writing. The adjustment of such hours shall not result in a rate change for the CONTRACTOR. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the TOWN.

SECTION 6: CHARGES AND RATES

6.1 COLLECTION SERVICES

The CONTRACTOR shall be responsible for the establishment of all collection service accounts, billing and collection of payments for all accounts in accordance with the Collection Rates as they may subsequently be adjusted pursuant to this Agreement. Town shall bear no responsibility for unpaid accounts and CONTRACTOR may not terminate, suspend, or interrupt service based upon non-payment. In the event of non-payment by a customer, CONTRACTOR, as its sole and exclusive remedy from the TOWN, shall (in writing) provide the name, address and amount of nonpayment to the TOWN and TOWN shall use its code enforcement prosecution process to attempt to collect the amount of the non-payment. Any amounts so collected by the Town, representing the amount of the nonpayment, shall be provided to the CONTRACTOR upon receipt by the TOWN. The TOWN shall not be responsible or liable in any way whatsoever, for any unpaid bills or for its inability to collect unpaid accounts and the TOWN shall not be required to foreclose on any code enforcement liens for unpaid service, though it may, at its sole option, undertake such action. CONTRACTOR shall be responsible for all costs incurred in the collection of Solid Waste and other materials as required herein, including but not limited to, cost of equipment, employees and related costs, disposal fees, fuel and maintenance, administration, and all other costs incurred in the provision of the required services. The TOWN shall bear no responsibility for any costs unless specifically and expressly provided for herein. The customer’s only obligation shall be to pay the charges set forth in the appropriate Exhibits setting forth charges or as otherwise specifically and expressly set forth herein.

6.2 SPECIAL COLLECTION SERVICES

The CONTRACTOR shall be responsible for the billing and collection of payments for Special Collection Services. Rates for Special Collection Services are set in Exhibit 6 for the term of the Agreement and are not subject to annual rate increases. Special Collection Services for current

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and future TOWN facilities shall be provided at the request of the TOWN facilities and at the expense of the CONTRACTOR.

6.3 CHANGE IN BILLING PRACTICES; DISPOSAL FEES

6.3.1 The TOWN reserves the right at any time to change billing and collections responsibilities for Residential and Commercial accounts. To the extent that TOWN elects to assume billing and collections responsibilities for Residential and or Commercial accounts, the CONTRACTOR will compensate TOWN for providing such service in the form of a monthly administrative fee equal to ten percent (10%) of the Collection element of the Rates shown in the then current Collection Rates.

6.3.2 The TOWN reserves the right at any time to elect to pay Disposal Charges directly for solid waste disposed through Cart Service, Dumpster Service, or both. Upon written notice to the Contractor of the Town’s intent to pay for Disposal Charges for a particular class of customer and on the date set forth in the notice, the CONTRACTOR shall be responsible for reimbursement to the Town as set forth below.

6.3.2.1 Cart Service. CONTRACTOR shall submit to TOWN all revenues collected from the Disposal Fee component of the Collection Rates within thirty days of collection.

6.3.2.2 Dumpster Service. Since there is no Disposal Fee component in the dumpster Collection Rate, the amount submitted to TOWN shall be calculated based on the percentage of the Disposal Charge to the total Collection Rate for the previous twelve months.

6.4 APPROVED COLLECTION RATES

The rates shown in the Collection Rate Exhibits shall apply to all Residential Service Units and Commercial Service Units within the corporate limits of the TOWN.

6.5 FRANCHISE FEES AND ADMINISTRATIVE FEE

6.5.1 In consideration of the privilege granted to the CONTRACTOR to use and occupy the streets, alleys, bridges, easements, and other public places of the TOWN, pursuant to this Agreement and the right to charge the fees set forth herein, the CONTRACTOR shall pay to the TOWN a Franchise Fee for all services CONTRACTOR provides under this Agreement within the TOWN’S municipal corporate limits. Franchise Fees for Residential Collection Services shall be established equal to three point seventy six percent (3.76%) of gross revenues. Franchise Fees for Commercial Collection Services shall be established at ten percent (10%) of gross revenues. CONTRACTOR shall submit payment to the TOWN monthly for the duration of this Agreement, as amended from time to time. Franchise fees are included in the Collection Rates set forth in the Exhibits but CONTRACTOR may show the Franchise Fee separately on the customer’s bill.

6.5.1.1 CONTRACTOR shall submit to the TOWN on a monthly basis, with the payment of the Franchise Fee, a financial statement setting forth the computation

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of Gross Revenues used to calculate the Franchise Fee for the preceding month and a detailed explanation of the method of computation. The CONTRACTOR’S chief Financial Officer shall certify the statement financial or other duly authorized officer. The CONTRACTOR will bear the cost of the preparation of such financial statements.

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

6.5.2 In addition to the Franchise Fee provided for in Section 6.5.1, an Administrative Fee equal to three point seventy six percent (3.76%) of the monthly Collection Rate for single family/duplex residential collection services, less Franchise Fee, shall be paid TOWN upon collection of residential accounts. The Administrative Fee shall not be billed to the customer.

6.6 ADDITIONAL SERVICES

6.6.1 As determined by the Town Commission, the TOWN may provide additional solid waste services such as, but not limited to, recycling incentive programs and related education services. At the TOWN’S option, it may increase the monthly Collection Rate for various classes of customers to fund these additional services. For as long as CONTRACTOR does the solid waste billing, upon receipt, CONTRACTOR shall pay to the TOWN at the end of each month, the increased amount collected for these additional services.

6.6.2 CONTRACTOR shall provide once per month electronic waste collection from residents at no additional cost to TOWN or residents.

6.7 RECYCLING REVENUES

The TOWN shall retain all sums received from the sale of Recyclable Materials as a result of the CONTRACTOR’S provision of Recycling services for all Residential Service Units, Community Events, and TOWN facilities. CONTRACTOR shall take all steps necessary to ensure that payments from the Designated Recycling Facility resulting from the sale of Recyclable Materials are paid directly to the TOWN and not the CONTRACTOR. The CONTRACTOR shall maintain proper and accurate records to reflect the weight, by sort category, of the Recyclable Materials recovered each month, including copies of receipts from the Designated Recycling Facility.

6.8 CHANGES TO EXHIBITS TO REFLECT CHANGES IN RATES

The Collection Rates provided herein are subject to change as set forth below. The Exhibits to this Agreement stating the rates to be charged hereunder shall be amended to reflect changes in the Disposal Charge and in the Consumer Price Index, as provided in this Section. The amended Exhibits shall be filed with the City Clerk, with a copy provided the Contractor, and shall be deemed effective as if fully set forth in this Agreement until subsequently amended as provided hereunder without the necessity of a formal amendment to this Agreement

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(Second Amendment 1-11-2011)

6.8.1 Disposal Fee Adjustment

6.8.1.1 Upon the written request of either the CONTRACTOR or TOWN, and after documentation has been submitted acceptable to the Town Manager demonstrating the basis for a Disposal Fee adjustment, the Disposal Fee component of the Monthly Collection Rate (as set forth in the Exhibits to this Agreement) shall be adjusted, on the first of the month closest to the effective date of such change in Disposal Rate(s). The change shall reflect the percentage change (either an increase or decrease) in the Disposal Rate. If a proposed change in the Disposal component is approved by the Town Manager, then such change shall be reflected on an amended exhibit as set forth in this subsection.

6.8.1.2 The parties understand that the volumes in the waste stream is expected to change in the future as customers increase their recycling and use alternative services such as yard waste collection and therefore wish to provide a mechanism to adjust the Monthly Collection Rate to reflect the adjustment in disposal costs, In order to effectuate this intent, the Disposal component for each class of customers receiving cart service shall be adjusted on October 1st of each year based on the previous tonnage of solid waste collected from period from June 1 to May 31 prior to the October 1 adjustment date; that amount shall be divided by the number of customer accounts to yield the amended Disposal Fee component of the monthly Collection Rate. The monthly Collection Rate (and the Exhibit providing for same) shall be amended to reflect such change as provided for in this subsection. An example of how this would work is shown in Table 6.8.1

Table 6.8.1- Example of Calculating the Annual Disposal Cost for Single Family and Duplex Customers

Type of Disposal	Oct 2012 Cost Per Ton (1)	Tons Collected 6/11 to 6/12	Monthly Disposal Cost Per User (2)	Previous Year True-up (3)	Oct 1, 2012 Monthly Rate
Solid Waste	\$72.57	1060.5	\$6.02		\$6.02
Recycling					
Yard Waste	\$50.00	282.8	\$1.11		\$1.11
Bulk Waste	\$50.00	70.7	\$0.28		\$0.28
Total		1,414	\$7.41		\$7.41

(1) Actual cost of disposal

(2) Based on the number of single family and duplex customers in June 2012, which in this example is 1,065.

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- (3) True-up is the difference between the actual cost of disposal in the previous year and the disposal fee paid to the CONTRACTOR divided by the number of customer accounts divided by 12 months to get a monthly amount. In the example, there is no true-up in first year of calculating Disposal Fee

6.8.2 CPI Increase.

Upon the written request of either the CONTRACTOR or TOWN, and once documentation, demonstrating the basis for a CPI adjustment, has been submitted acceptable to the Town Manager, the Collection component of the monthly collection rate shall be adjusted, effective October 1 of each year, to account for the change in the annual Consumer Price Index, from the previous period from June 1 to May 31 prior to the October 1 adjustment date, based on the All Urban Consumers, Miami/Fort Lauderdale Region. No CPI adjustment shall be greater than five percent (5%) If a proposed change in the Collection component is approved by the Town Manager, the appropriate Exhibit to this Agreement shall be amended as provided for in this subsection.

SECTION 7: SCHEDULES AND ROUTES

7.1 SCHEDULES AND ROUTES TO TOWN

The CONTRACTOR shall submit proposed changes to routes and schedules to be approved by the Town Manager no later than ninety (90) calendar days prior to the proposed effective date of the change.

In the event of a temporary change in residential routes or schedules that will alter the day of Collection, the CONTRACTOR shall have said changes approved by the Town Manager at the earliest practical date. The CONTRACTOR shall bear all expenses for public education in the event of a change in residential routes (i.e. preparation of news releases, postage, copies, etc.).

The TOWN reserves the right to deny the CONTRACTOR’S vehicles access to certain streets, bridges, and public ways, inside the TOWN or outside the TOWN in route to Designated Disposal Facilities where it is in the best interest of the general public to do so due to conditions of streets and bridges. The CONTRACTOR shall use best efforts to not interrupt the regular schedule and quality of service because of such street closures.

7.2 HOLIDAY PICK-UP SCHEDULE

Christmas and New Year’s Day are designated Holidays. The CONTRACTOR is not required to provide solid waste cart, Bulk Waste, or cart/bin recycling collection or maintain office hours on Holidays. Solid Waste cart and recycling collection shall be collected on the customer’s next regularly scheduled pick-up day after the Holiday. If Bulk Waste collection falls on a Holiday, the CONTRACTOR shall schedule Bulk Waste collection one week after the Holiday.

Dumpster collection shall not be affected by Holidays; however, nothing herein prevents the CONTRACTOR for making alternative arrangements for Holiday collection of dumpsters.

The TOWN reserves the right to add or delete designated holidays for the duration of this Agreement.

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SECTION 8: EMERGENCY SERVICE PROVISIONS

8.1 SUSPENSION OF COLLECTION SERVICES.

In an emergency event such as a hurricane, tornado, major storm, natural or manmade disaster, or other such event, the TOWN may grant the CONTRACTOR a variance from regular routes and schedules. As soon as practicable after such event, the CONTRACTOR shall advise the TOWN when it is anticipated that normal routes and schedules can be resumed.

8.2 EMERGENCY EVENTS CLEAN-UP.

The clean-up from emergency events is not exclusive to this Agreement. The TOWN reserves the right to select the CONTRACTOR and/or another agency and/or company to perform the clean-up from emergency event(s). The CONTRACTOR shall, by request of the TOWN, work jointly with other agencies and/or companies during emergency events. The clean-up from some events may require that the CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event. The CONTRACTOR shall receive additional compensation, above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours, and other documented expenses.

8.3 EMERGENCY PREPAREDNESS PLAN

The CONTRACTOR shall submit to the TOWN by April 15th of each year an Emergency Preparedness Plan and a price list and rate information to perform such services, if plans or rates change. The rates and fee schedule in the Plan must be reasonable and within market rates. In no event shall the rates change by more than the CPI adjustment provided for in Section 6.8. The CONTRACTOR shall perform debris removal services when requested by the TOWN. The CONTRACTOR shall begin to assist the TOWN to clear roads and remove storm debris with heavy equipment within twenty-four (24) hours after the event passes provided the CONTRACTOR has first secured written authorization and approval from the Town Manager. The CONTRACTOR shall begin a significant effort to remove vegetative and construction and demolition materials debris within seventy-two (72) hours after the event passes, provided the CONTRACTOR has first secured written authorization and approval from the Town Manager. The equipment and manpower resources and other particulars will be identified in the Emergency Preparedness Plan. CONTRACTOR shall be responsible for the preparation of all documents and forms and support information required by Federal Emergency Management Agency (FEMA). The CONTRACTOR within the time limits established by FEMA for such filings shall submit such documents, forms and information to the TOWN. CONTRACTOR shall refund to TOWN any payment to CONTRACTOR that is otherwise qualified for reimbursement but is rejected by FEMA due to the CONTRACTOR provided documentation.

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SECTION 9: CONTRACTOR’S RELATION TO TOWN

9.1 CONTRACTOR REPRESENTATIVE AVAILABILITY

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

9.2 INDEPENDENT CONTRACTOR

It is expressly agreed and understood that CONTRACTOR is in all respects an independent CONTRACTOR as to the work. Even though in certain respects, CONTRACTOR may be required to follow the direction of the Town Manager or the TOWN’S designated representative, the CONTRACTOR is in no respect an agent, servant, or employee of the TOWN.

9.3 SUPERVISION OF AGREEMENT PERFORMANCE

The Town Manager, or the TOWN’S designated representative, is hereby designated as the public official responsible for the administration of this Agreement by the TOWN, and, in such capacity, they are charged with the overall, general supervision of CONTRACTOR’S performance hereunder. CONTRACTOR shall diligently work with the Town Manager or the TOWN’S designated representative, to formulate and to adopt guidelines and procedures to facilitate the supervision and review of its performance.

9.4 WEIGHT TICKETS

The CONTRACTOR shall retain the weight ticket from the Designated Disposal Facility for the Collection of Solid Waste, Bulk Waste, or other materials from Residential Service Units or Commercial Service Units delivered from the TOWN and the weight tickets from the Designated Recycling Facility for the Recyclable Materials delivered from the TOWN for review by the TOWN upon reasonable notice. Said data shall be reviewed at CONTRACTOR’S offices. If the CONTRACTOR fails to provide the above data or additional data requested by the TOWN, the TOWN reserves the right to impose a penalty or withhold payment for services as provided in the Agreement or to terminate this Agreement.

9.5 REPORTS

9.5.1 **Monthly Complaints and Missed Collection.** CONTRACTOR will maintain an accurate and up-to-date log of date, time, and address of all complaints received and missed Collections, the disposition thereof, actions taken to resolve the complaints or missed Collections, and the date and time the complaints or missed Collections were resolved. The CONTRACTOR shall provide the complaint log to the TOWN in the form of a monthly report in Microsoft Excel or an alternative computer program selected by the TOWN, no later than the fifteenth (15th) day of each month, or upon request by the

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TOWN. The TOWN reserves the right to correct a complaint if the complaint is not corrected within twenty-four (24) hours of notification to the CONTRACTOR. The TOWN reserves the right to impose a penalty in these cases. If the CONTRACTOR fails to provide the above data, or additional data requested by the TOWN, the TOWN reserves the right to withhold payment for services or impose the penalty provided in Sections 11 and 12.

9.5.2 The CONTRACTOR shall provide TOWN semi-annual fiscal year reports (submitted by April 30 and October 31st) that includes, but not limited to, tonnage collected per week by customer type for the different types of services provided and the number of accounts by type.

9.5.3 TOWN may require other reports that may be reasonable necessary for the management of the TOWN solid waste system.

9.6 RECORDS, AUDIT AND INSPECTION OF WORK RIGHTS

The CONTRACTOR shall keep books and records utilizing a computerized record-keeping program and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to services provided and fees charged pursuant to this Agreement. Such records shall include complete and legible daily attendance and enrollment records.

Upon providing reasonable notice, such books and records will be available at all reasonable times for examination and audit by the TOWN and its representatives, and shall be kept for a period of six (6) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records may be grounds for disallowance by the TOWN of any fees or expenses based upon such entries.

9.7 FACILITY INSPECTION RIGHTS

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

9.8 LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO UNUSUAL CIRCUMSTANCES

It is expressly agreed that in no event shall the TOWN be liable or responsible to the CONTRACTOR, or to any other person, on account of any stoppage or delay in the work herein provided for, by injunction or other legal or equitable proceedings brought against the TOWN or the CONTRACTOR, or on account of any delay from any cause over which the TOWN has no control. The CONTRACTOR shall not be responsible for delays or non-performance of the terms and provisions of this Agreement where such delays or non-performance are caused by events or circumstances beyond the control of the CONTRACTOR. The CONTRACTOR shall not be entitled to compensation for such period of time as the delay or non-performance shall

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continue, but will be entitled to pro-rata compensation once said work has been completed. In the event of a strike of the employees of CONTRACTOR, or any other similar labor dispute which makes performance of this Agreement by the CONTRACTOR substantially impossible, CONTRACTOR agrees that the TOWN shall have the right to call the bond hereinafter described within one (1) week of such action and engage another person, firm, town attorney or corporation to provide necessary services with the bond proceeds applied to pay any difference between the Agreement price in effect and the costs charged by the successor company. In the event the bond is called, the TOWN will first call and use the cash/surety bond posted by the CONTRACTOR.

9.9 BREACH OF AGREEMENT

If, in the opinion of the Town Manager, or the designated TOWN representative, there has been a material breach of Agreement, the Town Manager, or designated TOWN representative, shall notify the CONTRACTOR, in writing, specifying the basis and reason in which there has been a breach of Agreement. If, within a period of ten (10) calendar days from the date of CONTRACTOR’S receipt of the notice, the CONTRACTOR has not eliminated or otherwise cured the conditions considered to be a breach of Agreement, the Town Manager shall so notify the Town Commission in writing, and a public hearing shall be set for a date within fifteen (15) calendar days of such notice to the Town Commission. On the date of the hearing, the Town Commission shall hear from the CONTRACTOR and the Town Commission shall make a final determination as to whether or not there has been a breach of Agreement and direct what further action shall be taken by the TOWN, as hereinafter provided. Pending resolution of the alleged breach, the provisions of Section 20 shall govern the CONTRACTOR.

9.10 TERMINATION

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

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9.11 DELIQUENT PAYMENTS

The TOWN is entitled to a late fee for any payment due the TOWN that is delinquent more than 10-days. The late fee shall be charged at the rate of .0005 per day for each calendar day the payment is delayed up to the day the payment is postmarked (example: \$10,000 payment X .0005 = \$5.00 per day late fee.)

SECTION 10: CUSTOMER RELATIONS

10.1 CUSTOMER OFFICE HOURS

The CONTRACTOR shall take all reasonable steps and do all things necessary to ensure good and harmonious customer relations in the TOWN. The CONTRACTOR agrees that it shall have telephone service via a non-toll call from the TOWN. The non-toll telephone service shall be listed in the name in which the company is doing business as the CONTRACTOR. The CONTRACTOR’S employee(s), whom shall be familiar with the TOWN, shall staff the telephone service from 7:00 a.m., local time, till 5:00 p.m., local time, Monday through Friday and Saturday 7 a.m. until 12:00 p.m., and Saturday Emergency Contact 12:00 p.m. to 6:00 p.m. Answering machines, pagers, or other devices that do not provide for immediate contact with the CONTRACTOR’S employee(s) shall not meet the requirements of this Section.

10.2 MISSED COLLECTIONS

If the Collection of any Residential Service Unit or Commercial Service Unit is missed during the regular route Collection, the CONTRACTOR shall ensure that the missed Collection shall be picked up on the same day if notification was received by the CONTRACTOR from the TOWN or customer before 12:00 p.m., local time, otherwise the missed Collection shall be picked up before 12:00 p.m., local time, on the next Work Day after such notification from TOWN or customer. Any deviation from the requirements of this provision must be approved by the Town Manager, or the TOWN’S designated representative. If the CONTRACTOR fails to comply with this provision, or any of the terms and conditions of the Agreement, the TOWN reserves the right to ensure that the Collection is made, either with its own workforce or an outside source, and to charge all costs, plus reasonable overhead, to the CONTRACTOR. The CONTRACTOR shall not be required to collect Solid Waste or Bulk Waste material from curbside that is non-conforming; however, in each such case, the CONTRACTOR shall notify each resident by using a Non-Collection Notice which can be a sticker, tag, or door hanger, in a form approved by the TOWN, notifying the resident of the problem and how the customer needs to correct the problem. The CONTRACTOR shall then notify the TOWN of the location every time a non-conforming location is noticed.

10.3 SPILLAGE AND LITTER

The CONTRACTOR shall not be responsible for cleaning up sanitary conditions around Containers, Dumpsters, Roll-off Containers, Recycling Bins, and Recycling Containers caused by the carelessness of the customer; however, the CONTRACTOR shall clean up any, and all, Solid Waste, Bulk Waste, Recyclable Materials, or other refuse materials including leakage of fluids spilled from Containers, Dumpsters, Roll-off Containers, Recycling Bins, Recycling

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Containers, and Collection vehicles by the CONTRACTOR, CONTRACTOR’S vehicles, or the CONTRACTOR’S employees. During transport, all Solid Waste, Bulk Waste, and Recyclable Materials shall be contained, covered, or enclosed so that leaking, spilling, and blowing of the Solid Waste, Bulk Waste, and Recyclable Materials is prevented. The CONTRACTOR shall be responsible for the cleanup of any spillage or leakage caused by the CONTRACTOR, CONTRACTOR’S vehicles, or the CONTRACTOR’S employees. Said cleanup shall be done at the CONTRACTOR(s) expense within four (4) hours of the spillage or leakage.

SECTION 11: PENALTIES

Based upon an investigation, the Town Manager shall determine whether penalties shall be assessed against the CONTRACTOR for failure to comply with provisions described in the Agreement. Factors to be considered include, but are not limited to, acts of God, repeated occurrences of similar types, witnesses, and documentation of the incident.

The CONTRACTOR shall have five (5) Calendar Days from the date of the written notice to CONTRACTOR to file a written letter of protest with the Town Manager. If the protest is filed within five (5) Calendar Days excluding Saturday and Sunday, the Town Manager, or individuals appointed by the Town Manager, shall conduct a formal review of each filed protest. The determination of the Town Manager and/or her designated representative shall be final.

Failure by the CONTRACTOR to remedy the cause of any complaint within the time indicated, failure to comply with Agreement provisions, or performance failures shall result in the Town Manager imposing penalties, or any other legal means available. Verified complaints of sloppy service provided by CONTRACTOR, including, but not limited to Solid Waste, Bulk Waste, and Recyclable Materials being left in the roadway or Garbage Cans not being returned to the point of Collection shall be resolved by the CONTRACTOR on the day of the verified complaint. Penalties are as set forth below:

- 11.1 **Spillage and Litter** – Failure to clean up spilled material from loading and/or transporting. Each failure shall result in the imposition of a penalty in the amount of Two Hundred Fifty Dollars (\$250.00).
- 11.2 **Collection Misses** – Failure or neglect to collect properly prepared Solid Waste, Yard Waste, Bulk Waste, or properly prepared Recyclable Materials from any customer on the regular scheduled Collection day. Each failure shall result in the imposition of a One Hundred Dollar (\$100.00) penalty. Each additional twenty-four (24) hours of failure to collect after previous notification shall result in the imposition of a penalty in the amount of Two Hundred Fifty Dollars (\$250.00) each day.
- 11.3 **Route Completion** – Failure or neglect to complete each route (including missing whole streets) on the regularly scheduled Collection day. Each failure shall result in the imposition of a Five Hundred Dollar (\$500.00) penalty each day, in addition to the penalty assessed for the individual Collection misses.
- 11.4 **Mixing Materials** – Mixing Recyclables with Solid Waste, or any other material intended to be collected separately, during Collection shall result in the imposition of a penalty in the amount of One Thousand Dollars (\$1,000.00) for each instance.
- 11.5 **Mixing Commercial and Residential Program Recyclables** – Mixing Commercial Program Recyclables and Residential Program Recyclables during Collection or tipping at the

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Designated Recycling Facility shall result in the imposition of a penalty in the amount of One Thousand Dollars (\$1,000.00).

- 11.6 **Customer Complaints other than Collection Misses** – Failure to resolve complaints other than Collection misses within the time provided in the Agreement or for all other complaints within five (5) Work Days from the day of notification shall result in the imposition of a penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for each instance.
- 11.7 **Disposing at Non-Designated Disposal Facility** – Failure to dispose of Solid Waste, Yard Waste, Bulk Trash or Recyclable Materials collected in the TOWN as required by Section 3.6 of this Agreement or as directed by TOWN shall result in the imposition of a Two Thousand Dollar (\$2,000.00) penalty for each instance; each instance shall mean each day of collected Waste or Recyclable Materials that is not disposed of pursuant to Section 3.6 or as directed by TOWN.
- 11.8 **Chronic Complaint Problems** – Failure or neglect to correct chronic problems (chronic shall mean three (3) or more similar complaints at the same premises within a twelve (12) month period) in any category of service shall result in the imposition of a Two Hundred Fifty Dollars (\$250.00) penalty.
- 11.9 **Chronic Equipment Problems** – Failure or neglect to correct chronic equipment problems (chronic shall mean three (3) instances of the same or similar problem with the same equipment/trucks within a twelve (12) month period) shall result in the imposition of a penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for each occurrence after the second.
- 11.11 **Miscellaneous Deficiencies and Infractions** – A penalty in the amount of One Hundred Dollars (\$100.00) may be levied by the Town Manager for the following deficiencies and infractions: failure to maintain equipment in a clean, safe, and sanitary manner; failure to have vehicle operators properly licensed; failure to maintain office hours as identified in the Agreement; failure to properly cover materials in Collection Vehicles; and failure to comply with the hours of operation as identified in the Agreement.
- 11.12 **CONTRACTOR Reports** – Failure to provide the reports required by the Agreement as provided in Section 9 subsequent to the Transition Period. For each day of delay, a penalty in the amount of Two Hundred Fifty Dollars (\$250.00) shall be assessed. In addition, the TOWN shall withhold payment for services until receipt of reports.
- 11.13 **Emergency Preparedness Plan** – Failure to provide the TOWN with an Emergency Preparedness Plan by April 15th of each year for the upcoming hurricane season, if plan or rates change. An initial penalty in the amount of Five Thousand Dollars (\$5,000.00) will be assessed and Five Hundred Dollars (\$500.00) will be assessed each day thereafter until the issue is resolved. In addition, Town will pay rates based on rates on file with the TOWN as submitted by CONTRACTOR prior to April 15th.
- 11.14 **Post Disaster/Storm Cleanup** – Unless waived by the TOWN MANAGER, failure of the CONTRACTOR to begin an effort to remove vegetative materials and construction and demolition debris within twenty-four (24) hours after the storm event passes and failure to begin a significant effort to remove vegetative materials and construction and demolition debris within seventy-two (72) hours after the storm event, provided the CONTRACTOR has

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first secured written authorization and approval from the Town Manager. A penalty in the amount of Five Thousand Dollars (\$5,000.00) will be assessed each day for each infraction.

SECTION 12: RESERVED

SECTION 13: PERFORMANCE BOND AND CORPORATE GUARANTY

- 13.1 The CONTRACTOR shall furnish at its own cost, to the TOWN, an irrevocable Performance Bond, in form and content approved by the TOWN Attorney for the faithful performance of this Agreement and all of its obligations arising hereunder in the amount of One Million Dollars (\$1,000,000.00). Said bond shall be rated "A+" or better as to management and "FSC XV" or better as to the strength by Best's Insurance Guide or Surety; shall be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds or bonding limits shall not exceed twenty percent (20%) of its policy surplus (capital & surplus) as listed in Best's Insurance Guide; and, Surety shall have been in business and have a record of successful and continuous operation for at least five (5) years; further, all bonds shall contain all provisions required by §255.05, Florida Statutes, guarantee the performance of the Agreement, and serve as security for the payment of all persons performing labor and furnishing materials in connection with the Agreement. The policy or bond may not be canceled or altered without at least thirty (30) calendar days prior notice to the TOWN and upon agreement of the TOWN.

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

The TOWN reserves the right to increase the Performance Bond amount in the event of a change in the Designated Disposal Facility or due to the duration of the renewal periods.

- 13.2 The CONTRACTOR shall cause to be obtained a corporate guaranty of PARENT COMPANY ("Guarantor"), whereby the Guarantor shall guarantee all of the obligations of the CONTRACTOR under this Agreement. The guarantee shall be in a form and content approved by the TOWN Attorney.

SECTION 14: EQUIPMENT AND PERSONNEL

14.1 VEHICLES AND COLLECTION EQUIPMENT

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

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14.2 EQUIPMENT IN GOOD REPAIR

The CONTRACTOR shall use Collection vehicles within the TOWN that are freshly painted, with bodies that are watertight to a depth of not less than eighteen inches (18”), with solid sides, without body damage, solid tires/as approved by the Florida Department of Transportation. The average age of the CONTRACTOR'S Collection vehicles that are used within the TOWN shall not exceed four (4) years, with no vehicle over seven (7) years. All vehicles shall be equipped with operational radio transceiver capable of communicating with the CONTRACTOR'S dispatch from anywhere in the TOWN and cell phone. The CONTRACTOR shall provide sufficient equipment, in proper operating condition so regular schedules and routes of Collection can be maintained. Equipment is to be maintained in reasonable, safe, working condition.

Collection vehicles shall be painted uniformly in color, with the name of the CONTRACTOR and the number of the vehicle printed in letters not less than four inches (4”) high, on each side of the vehicle, and vehicles shall be numbered and a record kept of the vehicle to which each number is assigned. No advertising shall be permitted on Vehicles, Recycling Bins, Recycling Containers, Waste Containers, Dumpsters, and Roll-offs or any other equipment servicing the TOWN. The CONTRACTOR is required to keep Collection vehicles and Dumpsters cleaned and painted to present a pleasing appearance. The CONTRACTOR shall make available for approval by the TOWN a schedule showing the frequency of the cleaning and painting of the vehicles, the age, and miles of the vehicle.

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

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

14.3 CONTRACTOR'S PERSONNEL

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

- 14.3.1 Each driver shall, at all times, carry a valid Florida driver's license for the type of vehicle they are driving.
- 14.3.2 All employees and subcontractors of the CONTRACTOR shall be considered to be, at all times, the sole employees or subcontractors of the CONTRACTOR under its sole discretion and not an employee, subcontractor, or agent of the TOWN. The CONTRACTOR shall supply competent and physically capable employees and

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subcontractors. The TOWN may require the CONTRACTOR to remove any employee or subcontractor it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the TOWN.

- 14.3.3. The direction and supervision of Collection and disposal and salvage recycling operations shall be by competent, qualified, and sober personnel, and the CONTRACTOR shall devote sufficient personnel, time, and attention to the direction of the operation to assure performance satisfactory to the TOWN. All employees, subcontractors, superintendents, and workmen employed by the CONTRACTOR shall be careful and competent. The CONTRACTOR shall also provide uniforms that are clearly identified with the company name. Employees and subcontractors of the CONTRACTOR shall have and wear proper dress attire at all times. Proper dress attire shall consist of industrial style work pants, a button front shirt or T-shirt with the CONTRACTOR’S company name or logo, and appropriate footwear.
- 14.3.4. All employees or subcontractors used by the CONTRACTOR during the term of the Agreement shall be of a standing or affiliation that will permit the CONTRACTOR’S performance herein to be carried on harmoniously and without delay, and in no case, or in any circumstance, will such employee or subcontractor cause any disturbance, interference or delay to any work or service rendered to the TOWN or by the TOWN. In no case or in any circumstances will the employee or subcontractor conduct himself/herself negligently, disorderly, or dishonestly in the due and proper performance of the employee’s duties. The CONTRACTOR shall see to it that his employees and subcontractors serve the public in a courteous, helpful, and impartial manner.
- 14.3.5. The CONTRACTOR’S employees shall follow the regular walk for pedestrians while on private property. No employee shall meddle with property that does not concern him. Care shall be taken to prevent damage to property, including flowers, shrubs, and other plantings. Anything spilled shall be picked up immediately by such employee. Any damages incurred shall be paid by CONTRACTOR.

SECTION 15: WORKING CONDITIONS

15.1 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS

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

15.2 EEO STATEMENT

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

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15.3 AMERICANS WITH DISABILITIES ACT COMPLIANCE

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

15.4 FAIR LABOR STANDARDS ACT

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

SECTION 16: INSURANCE

The CONTRACTOR shall furnish to the TOWN, Office of the Town Clerk, Town of Lauderdale By-The-Sea, 4501 Ocean Drive, Lauderdale By-The-Sea, Florida 33308-3610, Certificates of Insurance, by June 15, 2009 and thereafter annually on the anniversary date of the Agreement, which indicate that insurance coverage has been obtained that meets the following requirements.

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

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

- (1) Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable Federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident, Part A.
 - (b) Employers' Liability with a limit of One Million Dollars (\$1,000,000.00), Part B.
- (2) Comprehensive General Liability with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property

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Damage Liability with respect to CONTRACTOR. CONTRACTOR shall provide Ten Million Dollar (\$10,000,000.00) annual aggregate Comprehensive General Liability coverage. TOWN shall be named as an additional insured. Certificates evidencing the required limits will be provided to the TOWN annually on the anniversary date of the Agreement. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- (a) Premises and/or Operations;
 - (b) Independent Contractors;
 - (c) Products and/or Completed Operations;
 - (d) Explosion, Collapse, and Underground Coverages;
 - (e) Broad Form Property Damage;
 - (f) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement;
 - (g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
 - (h) TOWN and CONTRACTOR are to be expressly included as “Additional Insured” with respect to liability arising out of operations performed for TOWN and CONTRACTOR by or on behalf of CONTRACTOR and Emergency Service Provisions Subcontractors or acts or omissions of owner or CONTRACTOR in connection with general supervision of such operation.
- (3) Umbrella Liability, general aggregate of Ten Million Dollars (\$10,000,000.00). The TOWN shall be named as an additional insured in respect to this Agreement. Certificates evidencing the required limits will be provided to the TOWN annually on the anniversary date of the Agreement.
- (4) Business Automobile Liability with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. The TOWN shall be named as an additional insured in respect to this Agreement. Certificates evidencing the required limits will be provided to the TOWN annually on the anniversary date of the Agreement. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
- (a) Owned Vehicles; and
 - (b) Hired and Non-Owned Vehicles.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the TOWN. The CONTRACTOR shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel

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or materially alter the same without thirty (30) calendar days prior written notice to TOWN except in the case of non-payment by the CONTRACTOR for which ten (10) calendar days' prior written notice will be provided to TOWN; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the TOWN; and (iv) be effective for a period from the date of this Agreement through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this Agreement through at least five (5) years after completion of the work provided hereunder. Insurance shall be provided to the TOWN at the times required by this Section at which time the CONTRACTOR shall deliver to TOWN a Certificate of Insurance naming TOWN as an additional insured as required hereunder for each policy required.

The minimum coverages and time periods specified above are not intended, and shall not be construed, to limit any liability of the CONTRACTOR to TOWN under this Agreement. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). CONTRACTOR is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by this Agreement. The cost of deductibles paid by CONTRACTOR shall be included in the cost of the service.

SECTION 17: PROPERTY DAMAGE

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

SECTION 18: INDEMNIFICATION

The CONTRACTOR shall indemnify, defend, and hold harmless the TOWN and its officials, employees, and agents (collectively referred to as “Indemnities”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney’s fees), or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property, or any such other claims arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the CONTRACTOR or its employees, agents or subcontractors (collectively referred to as “CONTRACTOR”), regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent or contributing) by any act, omission, default, or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of the CONTRACTOR to comply with any of the paragraphs herein or the failure of the CONTRACTOR to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, Federal or State, in connection with the performance of this Agreement. The CONTRACTOR expressly agrees to indemnify and hold harmless the Indemnities, or any of them, from and against all liabilities which may be asserted by an employee or former employee of the CONTRACTOR, or any of its subcontractors, as provided above, for which the CONTRACTOR'S liability to such employee would otherwise be limited to payments under state Worker’s Compensation or similar laws.

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SECTION 19: ASSIGNMENT OF AGREEMENT; NON-TRANSFERABILITY

- 19.1 This Agreement, or any portion or interest herein, shall not, under any circumstances, be sublet, assigned, transferred, or otherwise encumbered by CONTRACTOR without the advance express, written consent of the TOWN, which may or may not be granted at the sole discretion of the TOWN.
- 19.2 In the event that the CONTRACTOR sells or otherwise disposes of any assets during the term of this Agreement, or CONTRACTOR is purchased by, or merged with, another corporate entity, it shall provide written notice of such to the TOWN. The TOWN has the sole discretion to determine whether the CONTRACTOR’S ability to perform its obligations under this Agreement has been affected or impaired by such sale or disposition of assets.

SECTION 20: OPERATIONS DURING DISPUTE

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

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

Notwithstanding the other provisions in this Section, the TOWN reserves the right to terminate this Agreement at any time whenever the service provided by the CONTRACTOR fails to meet reasonable standards of the trade, after TOWN provides written notice to the CONTRACTOR pursuant to Section 9 of this Agreement. Upon termination, the TOWN may call the bond and apply the cash and surety bond for the cost of service in excess of that charged to the TOWN by the firm engaged for the balance of the Agreement period.

SECTION 21: ORDINANCE

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

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SECTION 22: MODIFICATIONS TO THE CONTRACT

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

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

The TOWN and the CONTRACTOR understand and agree that the TOWN may in the future alter its relationship, obligations or procedures as relates to the present Broward County Resource Recovery System and Broward Solid Waste Disposal District Plan of Operation of which it is now a participant or that it may enter into an entirely different relationship with another entity or provider, the CONTRACTOR agrees that the terms and provisions of this Agreement will require amendment which may include revisions to obligations, benefits, costs and charges to reflect any new arrangements. In the event any future change in the Town Code materially alters the obligations of the either party, then this Agreement shall be revised. The TOWN and the CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes. When such modifications are made to this Agreement, the TOWN and the CONTRACTOR shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Agreement under this Section. The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

In the event the parties cannot reach agreement to a modification to the contract provided for in this Section, then either party has the right to terminate this agreement on one hundred and eighty (180) days written notice. This provision shall be liberally interpreted to achieve its expressed intent.

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SECTION 23: RIGHT TO REQUIRE PERFORMANCE

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

SECTION 24: LAW GOVERNING

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

SECTION 25: COMPLIANCE WITH LAWS AND REGULATIONS

The CONTRACTOR hereby agrees to abide by and comply with all applicable Federal, State, County, Special District, and TOWN laws, statutes, codes, rules, and regulations. The CONTRACTOR and its cash/surety shall indemnify, defend, and hold harmless the TOWN, its Town Commissioners, its officers, representatives, agents, and employees against any claim or liability arising from or based on the violation of any such laws, regulations, ordinances, orders, or decrees, whether by itself or its employees. The CONTRACTOR shall obtain at its own expense all permits and licenses required by law or ordinance and maintain same in full force and effect.

SECTION 26: SAVINGS CLAUSE

Should any provision, paragraph, sentence, word, or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida or the TOWN, such provisions, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

SECTION 27: GENERAL

27.1 NO CONTINGENT FEES

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

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27.2 NO WAIVER

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

SECTION 28: LEGAL REPRESENTATION

It is acknowledged that each party to this Agreement had the opportunity to be represented by legal counsel in the preparation of this Agreement and, accordingly, the rule that an Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

SECTION 29: MISCELLANEOUS

29.1 RESERVED FOR FUTURE USE

29.2 MODIFICATION

This Agreement constitutes the entire Agreement and understanding between the parties hereto, and, subject to Section 22, it shall not be considered amended, modified, altered, or changed in any respect unless approved by the parties with the same formalities as the Original, and is set forth in writing and signed by the parties hereto.

29.3 TRADE SECRET INFORMATION

Documents, records, routing, charges, and pricing of the CONTRACTOR that the CONTRACTOR advises the TOWN are trade secret information of the CONTRACTOR, are exempt from disclosure pursuant to Section 815.045, Florida Statutes, as may be amended from time to time, unless in the sole opinion and judgment of the Town Attorney such documents and records are not within said statutory exemption.

29.4 NOTICE

Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by facsimile transmission with certification of transmission and verbal confirmation of receipt of facsimile by the receiving party, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this Section. For the present, the CONTRACTOR and the TOWN designate the following as the respective places for giving of notice:

Exhibit "A" to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

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

Attest:

TOWN OF LAUDERDALE BY-THE-SEA

June White, Town Clerk

By: _____
Roseann Minnet, Mayor

Approved as to form and legality:

____ day of _____, 2012

By: _____
Andrew Maurodis, Esquire

(Town Seal)

CONTRACTOR
Choice Environmental Services of Broward, Inc.

WITNESSES:

Signature

BY: _____
Signature

Print Name and Title

Print Name and Title

____ day of _____, 2012

____ day of _____, 2012

ATTEST:

SECRETARY

Exhibit "A" to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

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

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2012.

My Commission Expires:

Signature of Notary Public

Printed Name of Notary Public

Exhibit “A” to Ordinance 2012-03

Solid Waste, Bulk Waste, and Recycling Collection Services Agreement

List of Exhibits

- EXHIBIT 1 Residential Collection Rate for Single Family/Duplex
- EXHIBIT 2 Residential Collection Rate for Multi Family With Carts
- EXHIBIT 3.x Multifamily Utilizing Dumpsters Collection Services
- EXHIBIT 4.x Commercial Dumpster Collection Services
- EXHIBIT 5.x 2010 Commercial Compacted Dumpster Collection Services
- EXHIBIT 6 Special Collection Service Rates
- EXHIBIT 7 Emergency Preparedness Plan and Service Rates
- EXHIBIT 8 Franchise Ordinance 2012-03

Exhibit 1

SINGLE FAMILY AND DUPLEX RESIDENTIAL COLLECTION SERVICES

Collection Rate Per Unit Per Month

Single Family and Duplex		Effective October 1st						
Service Components		2009	2010	2011	2012	2013	2014	2015
1.	Solid Waste Collection (unlimited volume, twice a week pickup)	\$3.98	\$3.99	4.15				
2.	Solid Waste Disposal Fee	\$10.90	\$10.98	8.03				
3.	Bulk Collection (unlimited volume, once per month pickup)	\$1.05	\$1.05	1.10				
4.	Recycling (unlimited volume, once per week pickup)	\$1.99	\$2.00	2.08				
Monthly Collection Rate		\$17.92	\$18.02	\$15.35				
History of Changes								
	Collection (CPI):		0.3%	4.0%				
	Disposal (Tipping):		0.7%	-26.8%				
	Total Change		0.5%	-14.8%				

Exhibit 2

MULTIFAMILY CART COLLECTION SERVICES

Multifamily Cart Service		Collection Fee Per Unit Per Month						
		Effective October 1 st						
Service		2009	2010	2011	2012	2013	2014	2015
1.	Solid Waste Collection (unlimited volume, twice a week pickup)	\$4.65	\$4.66	\$4.85				
2.	Solid Waste Disposal Fee	\$10.90	\$10.98	\$8.03				
3.	Bulk Collection (unlimited volume, once per month pickup)	\$0.50	\$0.50	\$0.52				
4.	Recycling (unlimited volume, once per week pickup)	\$2.32	\$2.33	\$2.42				
Monthly Service Rate		\$18.37	\$18.47	\$15.82				
History of Annual Change								
	Collection (CPI):		0.3%	4.0%				
	Disposal (Tipping):		0.7%	-26.8%				
	Total Change		0.5%	-14.8%				

EXHIBIT 3

RESIDENTIAL DUMPSTER COLLECTION SERVICES

Effective July 1, 2009

The following rates are for Residential Collection Services Utilizing Dumpsters.

Residential Dumpster Service Monthly Rates

Pick-Ups Per Week	1 Cubic Yard	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$199.80	\$246.81	\$370.22	\$485.39	\$542.98	\$658.16
3	\$313.75	\$370.22	\$555.32	\$703.41	\$777.45	\$913.20
4	\$418.32	\$493.62	\$715.75	\$888.52	\$987.24	\$1,118.87
5	\$522.91	\$617.03	\$848.41	\$1,069.51	\$1,141.50	\$1,316.32
6	\$606.57	\$715.75	\$981.07	\$1,184.69	\$1,258.73	\$1,579.58
7	\$683.26	\$806.25	\$1,101.39	\$1,324.55	\$1,425.33	\$1,785.26

Rate includes dumpster rental, maintenance, rollout, and disposal.

Exhibit 3.1

RESIDENTIAL DUMPSTER COLLECTION SERVICES

Effective October 1, 2010

Monthly Rates for Multifamily Utilizing Dumpsters						
Pick-Ups Per Week	1 Cubic Yard	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$200.64	\$247.92	\$371.77	\$487.43	\$545.26	\$660.92
3	315.07	371.77	557.65	706.36	780.72	917.04
4	420.08	495.69	718.76	892.25	991.39	1,123.57
5	525.11	619.62	851.97	1,074.00	1,146.29	1,321.85
6	609.12	718.76	985.19	1,189.67	1,264.02	1,586.21
7	686.13	809.64	1,106.02	1,330.11	1,431.32	1,792.76

Rate includes dumpster rental, maintenance, rollout, and disposal.

The above rates reflect the increase in accordance with the 2009 Agreement by the amount of the June-June CPI and 2010 increase in the Tipping Fee as shown in Table 2.

Table 2 - Increases to 2009 Rates		
	Applies to % of Total	% Increase
CPI =	70%	0.3%
Disposal =	30%	0.7%
Total Change		0.42%

Exhibit 3.2

RESIDENTIAL DUMPSTER COLLECTION SERVICES

Effective October 1, 2011

Monthly Rates for Multifamily Utilizing Dumpsters						
Pick-Ups Per Week	1 Cubic Yard	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$190.13	\$234.93	\$352.29	\$461.89	\$516.69	\$626.29
3	298.56	352.29	528.43	669.35	739.81	868.98
4	398.06	469.72	681.09	845.50	939.44	1,064.69
5	497.59	587.15	807.33	1,017.72	1,086.23	1,252.58
6	577.20	681.09	933.57	1,127.33	1,197.78	1,503.10
7	650.18	767.21	1,048.06	1,260.42	1,356.32	1,698.82

Rate includes dumpster rental, maintenance, rollout, and disposal.

The above rates reflect the increase in accordance with the 2009 Agreement by the amount of the June-June CPI and 2011 change in the Disposal Charge as shown in Table 2.

Table 2 – Changes to Rates		
	Applies to % of Total	% Increase
CPI = Collection Services	70%	4.0%
Disposal = only disposal charge	30%	-26.8%
Total Change	100%	-5.24%

EXHIBIT 4

COMMERCIAL DUMPSTER COLLECTION SERVICES Monthly Rates

Effective July 1, 2009

The following rates are for Commercial Collection Services Utilizing Containers and Dumpsters.

Pick-Ups Per Week	96 Gallons Each	1 Cubic Yard	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$74.23	\$220.17	\$259.80	\$389.70	\$510.94	\$571.56	\$692.80
3	\$111.34	\$330.25	\$389.70	\$584.55	\$740.43	\$818.37	\$961.26
4	\$148.46	\$440.34	\$519.60	\$753.42	\$935.28	\$1,039.20	\$1,177.76
5	\$185.57	\$550.42	\$649.50	\$893.06	\$1,125.80	\$1,201.58	\$1,385.60
6	\$215.26	\$638.49	\$753.42	\$1,032.71	\$1,247.04	\$1,324.98	\$1,662.72
7	\$242.48	\$719.22	\$848.68	\$1,159.36	\$1,394.26	\$1,500.35	\$1,879.22

Rate includes dumpster rental, maintenance, rollout, and disposal.

Exhibit 4.1

COMMERCIAL DUMPSTER COLLECTION SERVICES

Effective October 1, 2010

Monthly Rates Commercial Dumpster Service							
Pick-Ups Per Week	96 Gallons Each	1 Cubic Yard	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$74.54	\$221.09	\$260.89	\$391.34	\$513.09	\$519.73	\$695.71
3	111.81	331.64	391.34	587.01	743.54	821.81	965.30
4	149.08	442.19	521.78	756.58	939.21	1,043.56	1,182.71
5	186.35	552.73	652.23	896.81	1,130.53	1,206.63	1,391.42
6	216.16	641.17	756.58	1,037.05	1,252.28	1,330.54	1,669.70
7	243.50	722.24	852.24	1,164.23	1,400.12	1,506.65	1,887.11

Rate includes dumpster rental, maintenance, rollout, and disposal.

The above rates reflect the increase in accordance with the 2009 Agreement by the amount of the June-June CPI and 2010 increase in the Tipping Fee as shown in Table 2.

Table 2 - Increases to 2009 Rates		
	Applies to % of Total	% Increase
CPI =	70%	0.3%
Disposal =	30%	0.7%
Total Change		0.42%

Exhibit 4.2

COMMERCIAL DUMPSTER COLLECTION SERVICES

Effective October 1, 2011

Monthly Rates Commercial Dumpster Service							
Pick-Ups Per Week	96 Gallons Each	1 Cubic Yard	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$70.64	\$209.51	\$247.22	\$370.83	\$486.20	\$492.50	\$659.25
3	\$105.95	\$314.26	\$370.83	\$556.25	\$704.58	\$778.74	\$914.72
4	\$141.27	\$419.02	\$494.44	\$716.94	\$889.99	\$988.88	\$1,120.73
5	\$176.58	\$523.77	\$618.05	\$849.82	\$1,071.29	\$1,143.40	\$1,318.51
6	\$204.84	\$607.57	\$716.94	\$982.71	\$1,186.66	\$1,260.82	\$1,582.21
7	\$230.74	\$684.40	\$807.59	\$1,103.22	\$1,326.75	\$1,427.70	\$1,788.23

Rate includes dumpster rental, maintenance, rollout, and disposal.

The above rates reflect the increase in accordance with the 2009 Agreement by the amount of the June-June CPI and change in the Disposal Charge shown in Table 2.

Table 2 – Changes to Rates		
	Applies to % of Total	% Increase
CPI = Collection Services	70%	4.0%
Disposal = only disposal charge	30%	-26.8%
Total Change	100%	-5.42%

EXHIBIT 5

COMMERCIAL COMPACTED DUMPSTER COLLECTION SERVICES

Effective July 1, 2009

The following rates are for Commercial Collection Services Utilizing Compacted Dumpsters.

Pick-Ups Per Week	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$519.60	\$779.40	\$510.94	\$1,143.12	\$692.80
3	\$779.40	\$1,169.10	\$740.43	\$1,636.74	\$961.26
4	\$1,039.20	\$1,506.84	\$935.28	\$2,078.40	\$1,177.76
5	\$1,299.00	\$1,786.13	\$1,125.80	\$2,403.15	\$1,385.60
6	\$1,506.84	\$2,065.41	\$1,247.04	\$2,649.96	\$1,662.72
7	\$1,697.36	\$2,318.72	\$1,394.26	\$3,000.69	\$1,879.22

Rate includes dumpster rental, maintenance, rollout, and disposal.

Compactors may be obtained from any source provided that the compactor must be of the type that can be serviced by the CONTRACTOR'S equipment.

Residential Units utilizing compacted Dumpster Collection Services will be charged the monthly rates identified above.

Exhibit 5.1

COMMERCIAL COMPACTED DUMPSTER COLLECTION SERVICES

Effective October 1, 2010

Monthly Rates for Commercial Compacted Dumpster Service					
Pick-Ups Per Week	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$521.78	\$782.67	\$513.09	\$1,147.92	\$695.71
3	\$782.67	\$1,174.01	\$743.54	\$1,643.61	\$965.30
4	\$1,043.56	\$1,513.17	\$939.21	\$2,087.13	\$1,182.71
5	\$1,304.46	\$1,793.63	\$1,130.53	\$2,413.24	\$1,391.42
6	\$1,513.17	\$2,074.08	\$1,252.28	\$2,661.09	\$1,669.70
7	\$1,704.49	\$2,328.46	\$1,400.12	\$3,013.29	\$1,887.11

Rate includes dumpster rental, maintenance, rollout, and disposal.

Compactors may be obtained from any source provided that the compactor must be of the type that can be serviced by the CONTRACTOR'S equipment.

Residential Units utilizing compacted Dumpster Collection Services will be charged the monthly rates identified above.

The above rates reflect the increase in accordance with the 2009 Agreement by the amount of the June-June CPI and 2010 increase in the Tipping Fee as shown in Table 2.

Table 2 - Increases to 2009 Rates			
	Applies to % of Total	% Increase	
CPI =	70%	0.3%	
Disposal =	30%	0.7%	
Total Change		0.42%	

Exhibit 5.2

COMMERCIAL COMPACTED DUMPSTER COLLECTION SERVICES

Effective October 1, 2011

Monthly Rates for Commercial Compacted Dumpster Service					
Pick-Ups Per Week	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards	6 Cubic Yards	8 Cubic Yards
2	\$494.44	\$741.66	\$486.20	\$1,087.77	\$659.25
3	\$741.66	\$1,112.49	\$704.58	\$1,557.49	\$914.72
4	\$988.88	\$1,433.88	\$889.99	\$1,977.76	\$1,120.73
5	\$1,236.10	\$1,699.65	\$1,071.29	\$2,286.79	\$1,318.51
6	\$1,433.88	\$1,965.40	\$1,186.66	\$2,521.65	\$1,582.21
7	\$1,615.17	\$2,206.45	\$1,326.75	\$2,855.40	\$1,788.23

Rate includes dumpster rental, maintenance, rollout, and disposal.

Compactors may be obtained from any source provided that the compactor must be of the type that can be serviced by the CONTRACTOR'S equipment.

Residential Units utilizing compacted Dumpster Collection Services will be charged the monthly rates identified above.

The above rates reflect the increase in accordance with the 2009 Agreement by the amount of the June-June CPI and change in the Disposal Charge as shown in Table 2.

Table 2 – Changes to Rates		
	Applies to % of Total	% Increase
CPI = Collection Services	70%	4.0%
Disposal = only disposal charge	30%	-26.8%
Total Change	100%	-5.24%

EXHIBIT 6

Special Collection Service Rates Determined by the Town

1	Adding lids to or changing lids	No Charge
2	Adding wheels to or changing wheels	No Charge
3	Additional Bulk Waste Collection for Residential Service Units with carts	No Charge for one special pickup per year
4	Additional Unscheduled (Not Including "On Call") Solid Waste Pick-Ups For Commercial Service Units And Residential Containerized Service Units	2X (Applicable 1X Week Solid Waste Collection Cost) + Regular Disposal Charges
5	Changing out the size of a dumpster (above twice per year)	\$25.00
6	Locks	\$20.00
7	Moving Container Location Per Customer Request	\$18.00
8	Opening (and Closing) Doors or Gates	No Charge
9	Residential Off-Street Collection Service (Handicapped)	No Charge
10	Return Container After Service Was Stopped	\$25.00
11	Rolling out Container (and returning it to original location)	No Charge
12	Supplying (and retrofitting) locking mechanism	\$55.00
13	Swap-out dumpster (extra on site dumpster used on collection day)	Up to \$35 per month, which includes a limited number of special pick-ups as determined by customer and CONTRACTOR
14	Unlocking and Locking	\$2.00

EXHIBIT 7

Emergency Preparedness Plan and Service Rates

The South Florida Area possibility for a natural disaster exists each and every day. The opportunity for significant amounts of damage due to natural causes is great within our area. Because of the major risks from hurricanes, severe storms, or such other natural and man-made disaster that may occur that the CONTRACTOR will assist the TOWN with emergency debris clearance. The CONTRACTOR has experience and is capable of mobilizing into a disaster area within 12 hours following a devastating storm such as a hurricane.

The CONTRACTOR's executives and managers will work with the TOWN, County, State, Federal and all other governmental entities in which the CONTRACTOR provides service to provide comprehensive relief services to include:

Pre-Disaster Services:

1. Stand-by-Contact
2. Pre-Event Planning
3. Plans Review
4. Exercise Participation
5. Employee Training

Post-Disaster Operations:

6. Emergency Road Clearance and Trimming of Damaged Vegetation
7. Removal of Debris from Public Rights-of-Way
8. Removal of Debris from Private Property (When Authorized)
9. Temporary Debris Staging and Reduction Site Management
10. Final Debris Staging and Reduction Site Management
11. Final Debris Disposal
12. Hazardous Materials Handling
13. Site Redemption
14. Inspections and Documentation
15. Assistance with FEMA and State Reimbursements

Exhibit 7 (continued)

Emergency Preparedness Plan and Service Rates

Effective June 1, 2010

The following rates are for services to be provided under the Emergency Preparedness Plan. All service rates shall be fixed until changed as provided for in this Agreement.

EQUIPMENT/TOOL/VEHICLE TYPE (INCLUDE OPERATOR AND LABOR COST)	HOURLY RATE	DAILY RATE (8 HOURS)
Boom Truck (Self Loader) & Operator with CDL Driver	\$250	\$2,000
Roll Off Truck & Operator with CDL Driver	\$198	\$1,500
Rear Load Truck & Operator with CDL Driver and Helper	\$250	\$2,000
Wheel Loader 644 or equivalent & Operator	\$250	\$2,000
D-6 Dozers or equivalent & Operator	\$250	\$2,000
Bobcat Loader or equivalent & Operator	\$200	\$1,500
Rubber Tired Backhoe	\$200	\$1,500
Project Manager with Truck	\$125	\$950
Safety Superintendent with Truck	\$125	\$950
Service Truck & Maintenance Technician	\$125	\$950
Laborers	\$50	\$380

Cost for Vegetative cleanup and transport to disposal site. \$20.00 cubic yard
Include equipment, tools, vehicles, and operator and labor costs.

Cost for C&D debris cleanup and transport to disposal site. \$25.00 cubic yard
Include equipment, tools, vehicles, and operator and labor costs.

EXHIBIT 8

Adopting Ordinance 2012-03



AGENDA ITEM MEMORANDUM

Exhibit 2

Town Manager's Office

Department

Bud Bentley

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM

February 28, 2012

*Subject to Change

Presentation Reports Consent **Ordinance**
 Resolution Quasi-Judicial Old Business New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Renewal of the Solid Waste Collection Contract

EXPLANATION: The 2009 Solid Waste Franchise Agreement was approved by Ordinance 2009-__ and the proposed Renewal Agreement (**Exhibit "A" to Ordinance 2012-03 - Exhibit 1**) requires the same approval process.

At the November 29, 2011 meeting, the Commission accepted the staff's recommendation to renew the Solid Waste Collection Agreement with Choice Environmental, if the renewal agreement was modified to address the Commission's priorities. Because of the number of issues, the Commission directed us to meet with Choice and prepare an amended and restated agreement for its review before making a final decision.

At the January 24, 2012 meeting, the Commission reviewed the draft Renewal Agreement to ensure that we had appropriately addressed all of the priority renewal issues. At that time, the Commission approved having first reading of the adopting ordinance.

The Renewal Agreement (**Exhibit "A" to Exhibit 1**) is in final form and ready for Commission consideration. The Renewal Agreement is a "restated agreement" in that it replaces the 2009 Agreement rather than amending it. This is the most efficient format because of the number of changes we made to the agreement, which we more fully explain below. You will note that Exhibit "A" is not an executed copy of the Agreement. Choice will provide the executed originals prior to the Tuesday Commission meeting. Our outside counsel, Andrew Maurodis, has reviewed the Renewal Agreement for legal sufficiency and has approved it to form.

Exhibit 2 lists the renewal issues identified by the Commission as necessary to be addressed in the renewal agreement and those sections of the Renewal Agreement that we have modified to reflect future conditions such as the possibility that we would not participate in the Resource Recovery Board disposal system. Almost every Section of the Agreement was modified to some extent to integrate the Commission's priority issues; to improve the readability of the document; to make changes recommended by our counsel, and to restructure parts of the document so like topics were together. We included a Redlined (overstrikes and underlines) version of the agreement (**Exhibit 3**) that compares the proposed Renewal Agreement with the 2009 Agreement. It is difficult to read Exhibit 3 since there are many changes and the document does not indicate if deleted text has been moved to a new location. To assist in the Commission's and public review of the proposed Renewal Agreement, we have summarized the priority issues and the most pertinent changes in Table 1.

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Exhibit 2



Table 1 – Summary of Changes

Section No.	Topic	Change
1.2	Term	This is a 3 year agreement.
3.1	Residential Collection	This Section has been reorganized to move the provisions that apply to all of the types of residential services thus reducing the repetitive text in each subsection. Christmas Tree pick-up was clarified so residents know that they can dispose of their tree on any bulk trash day or on any normal pick-up day when the tree is in the cart. This Section includes the option for Yard Waste Collection.
3.1.1.(b)	Suspension of Service	Duplexes are now allowed to suspend collection services (same as single family).
3.1.2 & 3.1.3	Number and Frequency of Pickup	When there is a dispute between a customer and the Contractor, the Town will decide the reasonable number of containers, the size of a dumpster or the frequency of pickup.
3.4.(d)	Recycling Carts	Contractor will provide recycling carts and implement service within 120 days of receiving notice to proceed from Town. (previously it said within 120 days of execution of the agreement). <i>NOTE: The Town is responsible for picking the color and two sizes of recycling carts. We also have to get approval of our recycling grant application from the Resource Recovery Board.</i> Multi-Family Properties with Containers get one recycling container for each garbage container.
3.4.3	Recycling / Condos with dumpsters	All collection fees have to be approved by the Town. During negotiations, we learned that some condos use a dumpster for recycling rather than recycling carts and a rental fee was charged for the dumpster. We have changed this subsection to clarify that recycling dumpsters are provided without charge.
3.1.(c).(2) & 3.4.(d).(e)	Amortization	Yard Waste and Recycling Carts purchased by the Contractor are amortized over 3 years. If the agreement terminates before the amortization period ends, the Contractor is due the unamortized cost of the carts.
3.4.(e)	Repair or Replacement	Contractor to repair or replace cart for any reason. Replacement limited to 2 carts during the current term of the agreement.
3.5	Designated Disposal Facility	This Section was reworked so the Town designates the Disposal Facility rather than the Resource Recovery Board.
3.5.1	Municipal Option	This subsection clarifies the "Contractor has first right of refusal" text in the 2009 Agreement.
3.5.2	Change in Disposal Facility	This subsection was created to establish a process for the parties to follow if the Town changes disposal facilities.
6.1	Collection Services	The old 6.1 & 6.2 were combined and then expanded to clarify that collection may not be suspended for non-payment. Town will pursue code violation.
6.3	Billing	Subsection expanded to allow Town option to pay disposal fees directly.
6.5	Franchise Fees and Admin Fee	The late fee for all payments was moved to subsection 9.11. The Admin Fee that was in subsection 12.5 was transferred here. Text added to clarify that Contractor can show



Section No.	Topic	Change
		collection and franchise fee separately on bill.
6.6.1	Additional Services	Town may provide additional services and may increase the Collection Rate to pay for such services. Choice will bill customer and pay Town the amount over their payment for collections.
6.6.2		Subsection 12.2, electronic waste collection was transferred here.
6.8	Changes in Rates	This subsection was extensively changed to address priority issues: 1) cap of CPI increase, 2) disposal fee adjustment based on changes in direct expense, and 3) to account for yard waste collection service.
7.2	Holiday Schedule	Added text from Commercial Collection subsection 3.3.1 that commercial accounts are picked up on holidays.
8.3	Emergency Prep Plan	Added: "CONTRACTOR shall refund to TOWN any payment to CONTRACTOR that is otherwise qualified for reimbursement but is rejected by FEMA due to the CONTRACTOR provided documentation." Rates cannot go up more than CPI.
9.5	Reports	This Section was restructured to include a requirement for semi-annual reports and that the Town may require other reports.
9.6	Records & Audit	Subsection 26.1 Records was transferred to subsection 9.6 and the two subsections integrated.
11.1	Penalties /Transition	This subsection was deleted as it only applied to the start of the services in 2009.
12	Corporate Goodwill	Several subsections were transferred to more appropriate locations and the rest was deleted as no longer necessary.
13	Bond & Corporate Guaranty	Minor edits to improved text – deleted the requirement for a sample of the bond to be included as an Exhibit.
18	Indemnification	Added "Nothing herein shall sever to waive the TOWN's sovereign immunity or any other legal protection from suit."
22	Modifications to Contract	Text added to provide process if the Town does not participate in the County / Resource Recovery Board Solid Waste Disposal District Plan.
Exhibit 1	Single Family & Duplex Rates	The rates for different years was combined to one page.
Exhibit 2	Multi-family Rates	The rates for different years was combined to one page.
Exhibit 5	Compacted Dumpster	Moved from Exhibit 10.
Exhibit 6	Special Collection Services	During negotiations, we learned about 6 condos have swap-out dumpsters for which they pay a monthly fee -- so we evaluated the service fee and included it here as it is a special service. Additional Bulk Waste pickups were defined to mean one special pickup per year without cost to the customer.
Old Exh 7	Emerg Rates	Combined with Exhibit 6.
Old Exh 8	Performance Bond	Deleted



Section No.	Topic	Change
Old Exh 9	Suspension of Service	Deleted
Old Exh 10	Compacted	Moved to Exhibit 5
Old Exh 11	Roll-Off Rates	Deleted
Old Exh 12	Chapter 10	Deleted
Old Ex 13	Franchise Ordinance	Moved to Exhibit 8

As the Commission already knows, the Renewal Agreement is a significant reworking of the 2009 Collection Agreement. Since it is a complex document, we encourage Commissioners and members of the public that have questions about the Renewal Agreement to contact the Assistant Town Manager at 954-640-4212 or atm@lbs-fl.gov.

RECOMMENDATION: We recommend Ordinance 2012-03 (Exhibit 1), which approved the Renewal Solid Waste Collection Agreement (Exhibit "A" to Exhibit 1) be approved and second reading be scheduled for March 27, 2012.

EXHIBITS:

1. Ordinance 2012-03. The Renewal Agreement is Exhibit "A".
2. Renewal Issues.
3. Redlined Agreement

Reviewed by Outside Counsel
 Yes No

Town Manager Initials 