



Residential Solid Waste, Bulk Waste and Recycling Collection Services Agreement

Between

The City of West Park, Florida

And

Solid Waste, Bulk Waste and Recycling Collection Services Agreement City of West Park, Florida

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Residential Solid Waste, Bulk Waste and Recycling Collection Services Agreement

This Agreement (hereinafter referred to as "Agreement") made and entered into the _____ day of _____, 2020, by and between the City of West Park, a municipal corporation of the State of Florida (hereinafter referred to as "CITY"), acting by and through its duly authorized City Commission, and _____, (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

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

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

SECTION 1: AGREEMENT

1.1 FRANCHISE

For a period of five (5) years, the CITY hereby grants the CONTRACTOR the exclusive franchise and the sole obligation to operate and maintain a comprehensive Solid Waste, Bulk Waste and other refuse Collection Services including Recycling Collection systems for Residential Service Units in and for the CITY 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 CITY 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 CITY for the purposes of collecting the Solid Waste, Bulk Waste, Recyclable Materials, and other refuse of the residents, inhabitants, businesses within the municipal corporate limits of the CITY, or as directed in conformance with the Charter and Ordinances of the CITY and other applicable law.

1.2 TERM OF AGREEMENT

The term of this Solid Waste, Bulk Waste and Recycling Collection Services Agreement ("Agreement") shall be for a period of five (5) consecutive years, commencing on January 1, 2021 at 12:00 a.m., local time, through December 31, 2025 at 11:59 p.m., local time.

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 CITY for an additional ninety (90) calendar day period beyond the expiration of the Agreement at the then established rates, provided the CITY requests said services, in writing, at such time.

1.4 OPTION TO RENEW

After the initial five (5) year period, the CITY shall have the option to renew for an additional term of a minimum of one (1) year to a maximum of five (5) years, and upon completion of that period, the CITY shall again have the option to renew for an additional term of a minimum of one (1) year to a maximum of five (5) years. The parties hereto may extend this Agreement by mutual consent, in writing, prior to the expiration of the current term on December 31, 2025. This provision in no way limits the CITY'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.

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 CITY 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.

- A. **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 Carts, 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 City Manager, shall not be considered Advertising.
- B. **Agreement** shall mean this Agreement.
- C. **Bags** shall mean non-dissolvable plastic trash bags, each with a capacity of thirty-nine (39) gallons or less.
- D. **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.
- E. **Biomedical Waste** shall mean, as defined in Chapter 403, Florida Statutes, any Solid Waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility.
- F. **Bulk Waste** shall mean those wastes that may require special handling and management including, but not limited to: White Goods, furniture, equipment and other similar items including materials resulting from minor home repairs. Bulk Waste shall include all types of palm fronds and any vegetative matter resulting from normal yard and landscaping maintenance that exceeds six inches (6") in diameter. Bulk Waste must be

generated by the customer for whom the Bulk Waste is collected. Bulk Waste does not include items herein defined as Contractor-Generated Waste, or Exempt Waste. Compacting of Bulk Waste containing refrigerants or other potentially harmful fluids or gases is prohibited.

- G. **Bulk Waste Collection Service** shall mean Bulk Waste Collection from Residential Service Units and delivery of the Bulk Waste to the Designated Disposal Facility.
- H. **Business Day** shall mean any day, Monday through Friday, from 9 a.m. till 5 p.m., local time. For purposes of this Agreement, Eastern Standard Time shall also be considered Daylight Savings Time.
- I. **CITY** shall mean the City of West Park, Broward County, Florida.
- J. **City Commission** shall mean the City Commission of the CITY.
- K. **City Manager** shall mean the City Manager of the CITY, or his designated representative(s).
- L. **Collection** shall mean the process whereby Solid Waste and Bulk Waste are removed and transported to the Designated Disposal Facility and Recyclable Materials from Residential Service Units, CITY facilities and Community Events are removed and transported to the Designated Recycling Facility. In addition, Collection shall include the process of picking up, transporting, and dropping off Exempt Waste to an appropriate disposal site or recycling facility.
- M. **Compactor** shall mean a mechanism, whether stationary or mobile, with a minimum compaction ratio of 2.5 to 1.0 used for the densification of Solid Waste in Containers or Roll-offs. The CONTRACTOR shall clearly mark all Containers and Roll-offs with Compactors as to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste or Sludge.
- N. **Community Events** shall mean events sponsored or co-sponsored by the CITY.
- O. **Construction and Demolition Debris** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site.
- P. **Container** shall mean any metal or plastic receptacle, with a capacity of one cubic yard up to and including eight cubic yards designed or intended to be mechanically dumped into a loader-packer type garbage truck. All such Containers must be clearly marked in a manner so as to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste or Sludge.
- Q. **CONTRACTOR** shall mean the person or entity set out initially above that has entered into this Agreement to provide the services described herein for the Service Area.

- R. **Contractor-Generated Waste** shall mean Bulk Waste generated by builders, building contractors, privately employed tree trimmer and tree surgeons, landscape services and lawn or yard maintenance services and nurseries.
- S. **County** shall mean Broward County, Florida.
- T. **Designated Disposal Facility** shall mean the facility designated in the Plan of Operations included in the Inter-local Agreement between Broward County Disposal District and the CITY, as long as the CITY remains a part of the Inter-local Agreement. If the CITY elects to withdraw from the Inter-local Agreement, the CITY reserves the right to designate an alternative Designated Disposal Facility. CONTRACTOR shall be responsible for all Disposal Charges owed to the Designated Disposal Facility resulting from CONTRACTOR Collection services.
- U. **Designated Recycling Facility** shall mean the Recovered Materials Processing Facility designated in the Plan of Operations included in the Inter-local Agreement between Broward County and the CITY, as long as the CITY remains a part of the Inter-local Agreement. If the CITY elects to withdraw from the Inter-local Agreement, the CITY reserves the right to designate an alternative Designated Recycling Facility.
- V. **Disposal Charges** shall mean the prevailing per-ton rate charged at the Designated Disposal Facility for the acceptance and disposal of Residential Waste and other waste materials.
- W. **Dwelling Unit** shall mean any individual living unit in a single family dwelling, multi-family dwelling (less than 10 units) 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 known commonly known to the City as Commercial Service Unit herein.
- X. **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.
- Y. **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 CITY.
- Z. **Garbage** shall mean all putrescible waste which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials which is attributed to residential activities.
- AA. **Garbage Can** shall mean any commonly available light gauge steel, plastic or galvanized receptacle of a non-absorbent material, closed at one end and open at the other, and without any jagged or sharp edges, furnished with a closely fitted top or lid and handle. A Garbage Can shall be of a capacity of not less than thirty-two (32) gallons, and not greater than fifty (50) gallons and, including waste materials, such Garbage Can shall not exceed fifty (50) pounds in weight.

- BB. **Gross Revenues** shall mean all revenues collected by the CONTRACTOR, from any source whatsoever, arising from, attributable to or in any way derived from the services it provides pursuant to this Agreement, inclusive of revenues collected by the CONTRACTOR related to its obligations to pay Disposal Charges, and exclusive of franchise fees. Gross Revenues computations shall not be reduced by Disposal Charges or Franchise Fees, or amounts collected to offset such Disposal Charges or Franchise Fees.
- CC. **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.
- DD. **Holiday** shall mean Work Day(s) that Collection(s) shall not occur.
- EE. **Non-Collection Notice** shall mean a form used by the CONTRACTOR to notify customers of the reason for non-Collection of materials set out by the customer for Collection by the CONTRACTOR pursuant to the Agreement, developed by the CONTRACTOR and approved by the CITY.
- FF. **Ordinance** shall mean those parts of the Code of the CITY governing Solid Waste Collection, Disposal and Recycling activities within the CITY.
- GG. **Rate Structure** shall mean the rates approved by the CITY shown in Exhibits 1, 2, 3 and 4.
- HH. **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 Statute.
- II. **Recyclable Materials** shall mean those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste. Recyclable Materials to be collected shall include all materials that are accepted by the Designated Recycling Facility. These materials may be re-defined by the CITY from time-to-time, at the sole discretion of the CITY.
- JJ. **Recycling** shall mean any process by which materials which would otherwise have been Residential Solid Waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
- KK. **Recycling Bin** shall mean and blue rigid rectangular receptacles stenciled with the CITY logo and approved by the City Manager. 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.
- LL. **Recycling Cart** shall mean a receptacle authorized and approved by the City Manager for the Collection of Recyclable Materials and should have a capacity of 96-gallons and have wheels. Recycling Carts shall be stenciled with the City logo and shall not contain the name or logo of the CONTRACTOR.

- MM. **Residential Cart Recycling Collection Service** shall mean the Collection of Recyclable Materials from Residential Service Units within the CITY, utilizing Recycling Carts, and the delivery of the Recyclable Materials to the Designated Recycling Facility.
- NN. **Residential Containerized Bulk Waste Collection Service** shall mean Bulk Waste Collection from Residential Containerized Service Units and delivery of the Bulk Waste to the Designated Disposal Facility.
- OO. **Residential Containerized Collection Service** shall mean Residential Containerized Solid Waste Collection Service, Residential Cart Recycling Collection Service, and Residential Containerized Bulk Waste Collection Service.
- PP. **Residential Automated Cart Service** shall mean the collection of Solid Waste or Recycling Materials from 96 Gallon Carts with an Automated Vehicle.
- QQ. **Residential Containerized Solid Waste Collection Service** shall mean the Collection of Residential Solid Waste from Residential Containerized Service Units located within the Service Area and the delivery of the Residential Solid Waste to the Designated Disposal Facility.
- RR. **Residential Curbside Bulk Waste Collection Service** shall mean Bulk Waste Collection from Residential Curbside Service Units and the delivery of the Bulk Waste to the Designated Disposal Facility.
- SS. **Residential Curbside Collection Service** shall mean Residential Curbside Solid Waste Collection Service, Residential Curbside Recycling Collection Service, and Residential Curbside Bulk Waste Collection Service to be billed Residential Curbside Service rates established in the Rate Structure included in Exhibit 1.
- TT. **Residential Curbside Recycling Collection Service** shall mean the Collection of Recyclable Materials from Residential Curbside Service Units within the CITY, utilizing Recycling Bins, and the delivery of the Recyclable Materials to the Designated Recycling Facility.
- UU. **Residential Curbside Service Unit** shall mean any Residential Service Unit utilizing a Garbage Can, Bags or bundles for the accumulation and set-out of Residential Solid Waste.
- VV. **Residential Curbside Solid Waste Collection Service** shall mean the Collection of Residential Solid Waste from Residential Curbside Service Units in the Service Area and the delivery of that Residential Solid Waste to the Designated Disposal Facility.
- WW. **Residential Services** shall mean Residential Curbside Collection Service and Residential Containerized Collection Service.
- XX. **Residential Service Unit** shall mean Residential Curbside Service Units, located in the Service Area.
- YY. **Residential Solid Waste** shall mean Garbage, Yard Trash, and Rubbish resulting from the normal household activities of a Residential Service Unit. Residential Solid Waste must be generated by the customer and at the Residential Service Unit wherein the Residential Solid Waste is collected and does not include items defined herein as Contractor-Generated Waste or Exempt Waste. Recyclable Materials are not Residential Solid Waste.

- ZZ. **Residential Waste** shall mean Residential Solid Waste and Bulk Waste resulting from the normal household activities of a Residential Service Unit. Residential Waste must be generated by the customer and at the Residential Service Unit wherein the Residential Waste is collected and does not include items defined herein as Contractor-Generated Waste or Exempt Waste.
- AAA. **Roll-Off Collection Service** shall mean the Collection and disposal of Roll-Off Containers containing Solid Waste, excluding 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. All such Roll-Off Containers must be clearly marked to prohibit their use for the disposal of Biological Waste, Biomedical Waste, Hazardous Waste or Sludge.
- BBB. **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.
- CCC. **Rubbish** shall mean all refuse, accumulation of paper, excelsior, rags, wooden or paper boxes and containers, sweep-ups and all other accumulations of a nature other than Garbage and Yard Trash, resulting from the normal activities of a Residential Service Unit wherein the Rubbish is collected. Rubbish does not include items herein defined as Contractor-Generated Waste or Exempt Waste.
- DDD. **Scheduled Collection Day** shall mean any day in which Collection activities take place.
- EEE. **Service Area** shall mean the municipal limits of the CITY.
- FFF. **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.
- GGG. **Solid Waste** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean Sludge unregulated under the federal Clean Water Act or Clean Air Act, Sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or Garbage, Rubbish, refuse, Special Waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recyclable Materials are not Solid Waste.
- HHH. **Special Material Station** shall mean those locations designated by the CITY for the Collection of special household items excluding: paint containers, aerosol cans, pesticides, chemicals, batteries, lead acid batteries (including automotive), fluorescent light bulbs, automotive tires, used oil, etc. The CONTRACTOR shall set up the Collection station for this purpose on a schedule as requested by the CITY. These stations shall be set up on a temporary basis, with the hours and duration to be specified by the CITY. The frequency and number thereof shall be designated by the CITY.
- III. **Special Waste** as defined in Chapter 403, Florida Statutes, as may be amended from time to time, shall mean Solid Wastes that can require special handling and management,

including, but not limited to, White Goods, waste tires, used oil, lead-acid batteries, Construction and Demolition Debris, ash residue, Yard Trash and biological wastes.

- JJJ. **Yard Trash** shall mean any vegetative matter resulting from normal yard and landscaping maintenance that is not more than six inches (6") in diameter. Yard Trash must be generated by the customer and at the Residential Service Unit wherein the Yard Trash is collected. Yard Trash does not include items herein defined as Contractor- Generated Waste or Exempt Waste.
- KKK. **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 wherein the White Goods are collected.
- LLL. **Work Day** shall mean any day, Monday through Saturday.

SECTION 3: COLLECTION SERVICES TO BE PROVIDED BY CONTRACTOR

Following a determination by the City pursuant to RFP 2020-0911, the CONTRACTOR shall provide Residential Services, as defined in Section 3 herein, within the corporate limits of the CITY. Said service shall include:

3.1 RESIDENTIAL SOLID WASTE

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

3.1.2 **Residential Cart Solid Waste Collection Service** - The CONTRACTOR shall provide Residential Cart Solid Waste Collection for all current and future residents of the City two times per week. Such service dates shall be no less than three days apart, excluding Sundays and City Holidays. The CONTRACTOR shall provide a Grey 96-gallon Solid Waste collection cart with wheels and the City Seal, to all current and future residents.

3.1.2.1 **Purchase and Distribution** – The CONTRACTOR shall be required to purchase and distribute new Residential Solid Waste Carts to existing Residential Containerized Service Units prior to December 15, 2020. The CONTRACTOR shall purchase and distribute Residential Solid Waste Carts to new Residential

Containerized Service Units that are added to the Service Area during the term of the Agreement. The Residential Solid Waste Carts to be purchased and distributed will be in accordance with the information to be provided by the CITY to the CONTRACTOR and the distribution shall be completed within five (5) Work Days of receipt of the information from the CITY. The CONTRACTOR shall provide the number of Residential Solid Waste Carts required by the customer as to prevent overflow based on two (2) times per week Collection. Upon the request by the customer or the CITY, the CONTRACTOR shall deliver additional Residential Solid Waste Cart(s) within two (2) Work Days at no cost or inconvenience to the customer.

- 3.1.2.2 **Container(s) Replacement** - Upon notification from the Residential Containerized Service Unit to the CITY or the CONTRACTOR that the CONTRACTOR damaged the customer's Container(s), the CONTRACTOR shall repair or replace said Container(s) with an equivalent Container(s) (i.e. capacity, wheels, lid, compacting device, etc.), at the CONTRACTOR's own expense, within two (2) Work Days.

3.2 RESIDENTIAL BULK WASTE

- 3.2.1 **Residential Curbside Bulk Waste Collection Service** - The CONTRACTOR shall pick up Bulk Waste, not to exceed twelve (12) cubic yards per Residential Curbside Service Unit, monthly (12) times per year on a schedule determined by the City Manager. A member of the CONTRACTOR's staff shall be present at CITY Hall on such Scheduled Collection Day in order to receive the phone calls and address the issues pertaining to the Bulk Waste Collection. Bulk Waste must be generated by the customer and at the Residential Curbside Service Unit wherein the Bulk Waste is collected. Bulk Waste does not include items herein defined as Contractor-Generated Waste or Exempt Waste. If the customer needs additional Bulk Waste Collection in excess of amount specified above, it will be provided by the CONTRACTOR at a rate specified in Exhibit 1, which fee shall be collected directly by the CONTRACTOR without any obligation or responsibility on the part of the CITY to bill for same.

3.3 RECYCLING

The CONTRACTOR shall provide Recycling Services to all Residential Service Units and CITY facilities in the Service Area, as well as Community Events as described in Section 3.4.7 below. The services to be performed by the CONTRACTOR shall consist of Collection of all designated Recyclable Materials and transportation to the Designated Recycling Facility. 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 be paid before undertaking any changes or revisions to such work.

- 3.3.1 **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 Bin or Recycling Cart. Old corrugated cardboard which has been broken down that is placed beside a Recycling Bin or Recycling Cart, and newspapers that are contained in paper bags and placed beside the Recycling Bin or Recycling Cart shall be collected by the CONTRACTOR. Old

corrugated cardboard and newspaper that have been properly set out and have become wet due to local weather conditions shall be collected by the CONTRACTOR. At such time as the CITY desires to add additional materials to the Recyclable Materials collected, the CITY shall submit to the CONTRACTOR an expansion proposal, and the CONTRACTOR receiving such proposal shall evaluate and consider the same in good faith. If the CONTRACTOR and the CITY fail to reach an agreement with respect to the terms and conditions for expansion of the services within sixty (60) calendar days of submission of expansion proposal, the CONTRACTOR shall continue to perform all services as provided by Agreement for the remaining term thereof.

3.3.2 **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 Cart 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 Cart contaminated, the CONTRACTOR shall leave the Recycling Bin or Recycling Cart un-emptied and issue a Non-Collection Notice to the customer containing instructions on the proper procedures for setting out Recyclable Materials. The design of said notice shall be approved by the CITY, and the cost of printing said notice shall be borne by the CONTRACTOR. However, 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 CITY upon request.

3.3.3 **Recycling Carts** - The CONTRACTOR shall be responsible for the purchase, distribution and replacement of Recycling Carts to all Residential. Containerized Service Units.

3.3.3.1 **Purchase and Distribution** - The CONTRACTOR shall be required to purchase and distribute new Recycling Carts to existing Residential Containerized Service Units prior to December 15, 2020. The CONTRACTOR shall purchase and distribute Recycling Carts to new Residential Containerized Service Units that are added to the Service Area during the term of the Agreement. The Recycling Carts to be purchased and distributed will be in accordance with the information to be provided by the CITY to the CONTRACTOR and the distribution shall be completed within five (5) Work Days of receipt of the information from the CITY. The CONTRACTOR shall provide the number of Recycling Carts require by the customer as to prevent overflow based on one (1) time per week Collection. Upon the request by the customer or the CITY, the CONTRACTOR shall deliver additional Recycling Cart(s) within two (2) Work Days at no cost or inconvenience to the customer.

- 3.3.3.2 **Replacement** - 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 the Agreement. Upon notification from the customer or the CITY, the damaged Recycling Cart(s) shall be replaced by the CONTRACTOR, at the CONTRACTOR's expense, within two (2) Work Days at no cost or inconvenience to the customer.
- 3.3.3.3 **Ownership** - Ownership of Recycling Carts shall rest with the CONTRACTOR, except that ownership of Recycling Carts in the possession of a Residential Containerized Service Unit at the end of the Agreement shall rest with the CITY.
- 3.3.4 **Residential Recycling Service** - The CONTRACTOR shall provide Recycling Service to all Residential Service Units in the Service Area whose Recyclable Materials are properly containerized and have been placed at the curb, within five feet (5') of the street, or other location agreed to by the CONTRACTOR and customer that will provide safe and efficient accessibility to the CONTRACTOR's Collection crew and vehicle. In certain instances, properly containerized Recyclable Materials may be placed in driveway turnout areas to avoid placing it in the traveled roadway. In the event an appropriate location cannot be agreed upon between the CONTRACTOR and the customer, the CITY shall mediate the dispute and designate the location for Collection. The CONTRACTOR shall report monthly to the CITY, situations that prevent or hinder Collection on any premises. Recycling Service shall be provided one (1) time per week on a regularly scheduled Solid Waste Collection day.
- 3.3.4.1 **Residential Off-Street Recycling Service** - The CONTRACTOR shall provide off-street Collection of Recyclable Materials from Residential Curbside Service Units if all adult occupants residing therein are handicapped and if a request for off-street service has been made to, and approved by the CITY, in the manner required by the CITY. The CITY shall notify the CONTRACTOR in writing of any customers requiring off-street service. No additional monies shall be due to the CONTRACTOR for the provisions of off-street service to handicapped customers. The point of Collection for off-street service shall be the back or side yard or such other location as is mutually agreeable to the CONTRACTOR and the customer. In the event the appropriate location cannot be agreed upon, the CITY shall mediate the dispute and designate the location for Collection. The CONTRACTOR shall provide off-street service on the same Scheduled Collection Day that Residential Curbside Service would otherwise be provided to the Residential Curbside Service Unit.
- 3.3.5 **CITY Facilities Recycling Service** - The CONTRACTOR shall provide Recycling Service to all current and future CITY owned and/or operated facilities without charge to the CITY, provided Recyclable Materials are properly containerized in Recycling Carts and/or Recycling Bins. The CITY shall specify the location of Recycling Carts and or Recycling Bins. 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 Cart(s) and/or Recycling

Bin(s) required by the CITY to prevent overflow based on one (1) time per week Collection.

- 3.3.6 **Community Events** - The Contractor shall provide Recycling Bins, Recycling Carts and/ or Containers for up to a maximum of twelve (12) Community Events per year for the term of the Agreement. The CONTRACTOR shall provide Recycling Services for Community Events at no cost to the CITY or Community Event co-sponsors. Such Recycling Bins, Recycling Carts and/or Containers shall be collected by the CONTRACTOR, on an on-call basis. The size and number of said Containers shall be determined by the CITY. The CONTRACTOR will be responsible for the expenses of Container rental and maintenance, Collection, processing charges, and all other Recycling expenses incurred for the Community Events.

3.4 TRANSITION

The CONTRACTOR understands and agrees that the time between the formal Agreement signing and January 1, 2021 is intended to provide the CONTRACTOR with sufficient time to, among other things, order equipment and prepare necessary routing changes. The CONTRACTOR shall be responsible for the provision of all Collection Services beginning January 1, 2021. Accordingly, the CONTRACTOR shall provide Collection Services as set forth in this Agreement no later than January 1, 2021. The CONTRACTOR shall provide the City Manager with a transition schedule within five (5) Business Days after execution of the Agreement and be available to brief the CITY staff on the status of transition activities on a weekly basis leading up to initiation of Collection Services on January 1, 2021.

3.5 DESIGNATED DISPOSAL FACILITY

All Solid Waste, Bulk Waste, Residential Recyclable Materials, and Recyclable Materials from CITY facilities collected pursuant to this Agreement shall be delivered to a resource recovery system disposal facility, landfill, contingency landfill or transfer station designated pursuant to the Broward Solid Waste Disposal District Plan of Operation. The CITY shall retain ownership of all Solid Waste, Bulk Waste, Residential Recyclable Materials, and Recyclable Materials from CITY 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 CITY harmless from any and all losses, claims, or liability associated with the quantities of solid waste or other materials that were commingled. In the event of a change in the Designated Disposal Facility whereby the newly established Designated Disposal Facility is greater than forty (40) miles from the center of the CITY, the CITY and the CONTRACTOR shall negotiate appropriate changes in the Collection rates to compensate for any increases in the CONTRACTOR' s transportation costs.

3.6 SPECIAL COLLECTION SERVICES

Special collection services included in Exhibit 2 shall be provided by the CONTRACTOR. Services listed shall not be adjusted during the term of the Agreement.

SECTION 4: EDUCATION SERVICES

The CONTRACTOR shall provide the following public education services. The CONTRACTOR shall not distribute notices or any other written materials to Residential Service Units. The CITY will be responsible for the distribution of all public education materials. CONTRACTOR shall reimburse CITY, in the form of a cashier's check drawn on a U.S. Bank, in (\$) U.S. dollars, payable to the CITY within thirty (30) calendar days of receipt of CITY's invoice, for public education expenses incurred by CITY related to the services performed by CONTRACTOR under this Agreement.

4.1 NON-COLLECTION NOTICE

The CONTRACTOR shall not be required to collect any Solid Waste, Bulk Waste or Recyclable Materials that do 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, Bag, or other material a Non-Collection Notice explaining why Collection was not made. The design of said notice shall be approved by the CITY and the cost of printing of said notice shall be the responsibility of 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 CITY upon request.

4.2 PUBLIC AWARENESS PROGRAM

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

SECTION 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 7:00 p.m., local time Monday through Saturday with no service on Sunday. The hours, and/or days of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the CITY.

SECTION 6: CHARGES AND RATES

6.1 RESIDENTIAL CURBSIDE COLLECTION SERVICES

The CITY shall be responsible for the billing and collection of payments for all Residential Curbside Service Unit accounts except for additional services as set forth in Sections 3.2.1.

The CITY shall initially pay the CONTRACTOR for Residential Collection Services in accordance with the Rate Structure and generation factors established in Exhibit 1 and as may subsequently be adjusted pursuant to this Agreement.

6.2 PROPOSAL PREPARATION EXPENSES AND YEARLY FEE

The CITY anticipates incurring approximately Seventy-Five Thousand Dollars (\$75,000.00) in costs directly related to the proposal process and resulting Agreement. CONTRACTOR agrees that the costs of the proposal process are part of the costs of effecting Collection services and, thus, are the responsibility of the CONTRACTOR. CONTRACTOR further agrees that, in consideration of that responsibility, and because the proposal process ultimately resulted in a benefit to the CONTRACTOR, namely the awarding of this franchise, that the CONTRACTOR shall compensate the CITY for its costs. Therefore, the CONTRACTOR shall pay the CITY Seventy-Five Thousand Dollars (\$75,000.00) for its costs, and such payment shall be made by a cashier's check payable to the CITY, drawn on a U.S. Bank, in U.S. dollars, prior to CITY'S first payment to the CONTRACTOR for services under this Agreement.

CONTRACTOR further agrees to pay a yearly fee in the amount of One Hundred Thousand Dollars (100,000.00) the exclusive operation of residential waste collection services within the City of West Park.

6.3 TERMS

In accordance with the Florida Prompt Payment Act, Sections 218.70 - 218.80, Florida Statutes, as amended, the CITY shall be invoiced by the Contractor and remit payment to the CONTRACTOR on a monthly basis as set forth in Section 6.5 of this Agreement and reflected in the Rate Structure contained in Exhibit 1.

6.4 FRANCHISE FEES

In consideration of the privilege granted to the CONTRACTOR to use and occupy the streets, alleys, bridges, easements and other public places of the CITY, pursuant to this Agreement, the CONTRACTOR shall pay to the CITY a Franchise Fee for all services CONTRACTOR provides under this Agreement within the CITY's municipal corporate limits. Such Franchise Fee shall be established by a resolution of the City Commission, as may be amended from time to time, and based on a percentage of the CONTRACTOR's Gross Revenues as defined in Section 2 of this Agreement, and shall be paid as follows:

- 6.4.1 The City collects a non-ad valorem special assessment for its solid waste and recycling services. This assessment is paid by property owners as part of their annual property tax bill. The collected money for this service is in turn paid to the City by the Tax Collector. To facilitate collection of the franchise fee, the City adds that fee to assessment that is collected. The CONTRACTOR therefore will generally not have to add the franchise fee to its monthly billing for the solid waste and recycling services provided for that month. The franchise fee is collected directly from the residential customer. The CONTRACTOR is to bill the City only for the services and not for the franchise fee.

6.5 APPROVED RATE STRUCTURE

The rates shown in Exhibits 1 shall apply to all Residential Service Units within the corporate limits of the CITY as well as any areas annexed into the CITY subsequent to the commencement of this Agreement.

6.6 DISPOSAL ELEMENT ADJUSTMENT

In order for the CONTRACTOR to receive a disposal rate adjustment, as set forth below, based on a change in the Disposal Charge per ton, the CONTRACTOR must provide, in a manner that is acceptable to the CITY, evidence of the change in the Disposal Charge. The CITY may request from the CONTRACTOR such further information as may be reasonably necessary. The CITY shall approve the request in accordance with the formula's below to be effective on the date of the change in the Disposal Charge at the Designated Disposal Facility. If the City enters into a new inter-local agreement and is eligible for a reduced rate, The CONTRACTOR agrees and shall reduce disposal element to a proportionate share of the rate reduction, effective on the day disposal rate was reduced.

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

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

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

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

The monthly Residential Curbside Service Unit rates shall be adjusted based on the change in the Residential Curbside Collection Service "Monthly Curbside Unit Disposal Rate" as calculated above, and the resulting change in Franchise Fees.

6.7 ADJUSTMENTS TO GENERATION FACTORS

The CITY, at its sole option, may conduct a generation study to update and establish a new "Monthly Curbside Unit Residential Waste Generation Factor," defined in Section 6.6 and Exhibit 1 of this Agreement. The CONTRACTOR shall cooperate with CITY in the selection of routes, providing all necessary data, and all other aspects to successfully complete the generation study. To the extent a generation study is performed by CITY, CONTRACTOR agrees to utilize the updated generation factors in determining revised disposal rates as defined in Section 6.6 and Exhibit 1.

6.8 ADJUSTMENTS TO OTHER COSTS

Beginning on January 1, 2024 and annually thereafter, the CONTRACTOR shall receive an annual adjustment in the rates that are part of the total Collection element of rates established in the Rate Structure provided in Exhibit 1. The adjustment to the costs in Exhibit 2 and to the Collection element of cost in Exhibit 1 will be based on the June of the Year Consumer Price Index - All Urban Consumers, Series ID CUURA320SA0, CUUSA320SA0, for Miami-Fort Lauderdale, Florida. The Consumer Price Index is available from the United States Department of Labor, Bureau of Labor Statistics.

6.9 RECYCLING REVENUES

In the event of any recycling revenue, the CITY shall retain all sums received by the County or processor and the resulting sale of processed Recyclable Materials as a result of the CONTRACTOR' s provision of Recycling services for Residential Curbside Service Units, Residential Containerized Service Units, Community Events, Special Materials Stations, and CITY 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 CITY and not the CONTRACTOR. The CONTRACTOR shall maintain proper and accurate records to reflect the weight, by sort category, of the Recyclable Materials recovered each month, including copies of receipts from the Designated Recycling Facility and that portion of the CITY's Recyclable Materials sold each month.

SECTION 7: SCHEDULES AND ROUTES

7.1 SCHEDULES AND ROUTES TO CITY

The CONTRACTOR shall submit a proposed route and schedule to be approved by the City Manager no later than sixty (60) calendar days prior to January 1, 2021.

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

In the event of a change in residential routes or schedules that will alter the day of Collection, the CONTRACTOR shall have said changes approved by the City Manager not less than sixty (60) calendar days prior to the change. In accordance with Section 4, of this Agreement the CONTRACTOR shall bare all expenses for public education in the event of a change in residential routes (i.e. postage, copies, etcetera).

7.2 HOLIDAY PICK-UP SCHEDULE

Solid Waste and Bulk Waste Collection will not occur on Work Days that the Designated Disposal Facility is closed. Collections that would normally occur on Work Days that the Designated Disposal Facility is closed shall occur on the next Work Day that the Designated Disposal Facility is open.

Recycling Services will not occur on Work Days that the Designated Recycling Facility is closed. Collections that would normally occur on Work Days that the Designated Recycling Facility is closed shall occur on the next Work Day that the Designated Recycling Facility is open.

SECTION 8: EMERGENCY SERVICE PROVISIONS

In an emergency event such as a hurricane, tornado, major storm, natural disaster, or other such event, the City Manager may grant the CONTRACTOR a variance from regular routes and schedules. As soon as practicable after such event, the CONTRACTOR shall advise the City Manager when it is anticipated that normal routes and schedules can be resumed. The clean-up from emergency events is not exclusive to this Agreement. The CITY 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 CITY, 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 all in accordance with the "Emergency Preparedness Plan", Exhibit 3, submitted by the CONTRACTOR and approved by the CITY. 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 based on the rates set forth in Exhibit 4, attached hereto and included herein provided the CONTRACTOR has first secured written authorization and approval from the CITY through the City Manager. The CONTRACTOR shall be responsible for the preparation of all documents and forms and support information required by FEMA. Such documents, forms and information shall be submitted to the CITY by the CONTRACTOR within the time limits established by FEMA for such filings.

SECTION 9: CONTRACTOR'S RELATION TO CITY

9.1 CONTRACTOR REPRESENTATIVE AVAILABILITY

The CONTRACTOR shall cooperate with the CITY 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 CITY shall have twenty-four (24) hour access to said representative via a non-toll call from the CITY. 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 City Manager, or the CITY's designated representative, the CONTRACTOR is in no respect an agent, servant or employee of the CITY.

9.3 SUPERVISION OF AGREEMENT PERFORMANCE

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

9.4 MONTHLY OPERATIONS REPORT

The CONTRACTOR shall provide to the CITY a monthly report identifying each service, additional service, weigh ticket, etc. as provided for Residential Curbside Service Unit in Microsoft Excel or in an alternative computer program selected by the CITY, no later than the fifteenth (15th) day of each month, outlining the following information for the preceding month: List of weigh tickets for Solid Waste and Recyclables collected in the CITY including route number, date, and Solid Waste or Recyclable quantity and summary of Additional Services subject to Franchise Fee provided by CONTRACTOR, and associated revenues obtained. The CONTRACTOR shall maintain the weigh tickets from the Designated Disposal Facility for the Collection of Solid Waste, Bulk Waste, or other materials from Residential Service Units delivered from the CITY and the weigh tickets from the Designated Recycling Facility for the Recyclable Materials delivered from the CITY for review by the CITY upon reasonable notice. Said data shall be reviewed at CONTRACTOR' s offices for purposes of protecting proprietary information. If the CONTRACTOR fails to provide the above data or additional data requested by the CITY, the CITY reserves the right to impose a penalty or withhold payment for services as provided in the Agreement.

9.5 MONTHLY COMPLAINTS AND MISSED COLLECTION REPORT

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 complaint or missed collection, and the date and time the complaint or missed collection was resolved. The CONTRACTOR shall provide the complaint log to the CITY in the form of a monthly report in Microsoft Excel or in an alternative computer program selected by the CITY, no later than the fifteenth (15th) day of each month, or upon request by the CITY. The CITY reserves the right to correct a complaint if the complaint is not corrected within twenty-four (24) hours of notification to the CONTRACTOR. If the CONTRACTOR fails to provide the above data or additional data requested by the CITY, the CITY reserves the right to withhold payment for services or impose the penalty provided in Sections 11 and 12.

9.6 AUDIT AND INSPECTION OF WORKRIGHTS

CONTRACTOR shall, during the term of this Agreement, maintain records and accounts of all transactions that result from doing business pursuant to this Agreement for a period of six (6) years, utilizing a computerized record-keeping program that is capable of accounting. Such records shall include complete and legible daily attendance and enrollment records. CONTRACTOR shall also keep financial records so as to satisfy generally accepted accounting procedures. These records shall include a statement of revenues and expenses ("the Revenue/Expense Statements"), identifying the source of the revenues, and shall be provided to the CITY monthly, along with documentation of the time period represented by each payment. Such books and records shall be made available to CITY for inspection, review and auditing during regular hours on Business Days, with the exception of Holidays, without advance notice. Any such audit will be at the expense of the CITY unless the result of the audit shows a variance from the Revenue/Expense Statements of more than two percent (2%).

9.7 FACILITY INSPECTION RIGHTS

The CITY may, at reasonable times during the term hereof, inspect the CONTRACTOR's facilities and perform such inspections, as the CITY 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 CITY all reasonable facilities and assistance to facilitate the performance of inspections by the CITY's representatives.

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

It is expressly agreed that in no event shall the CITY 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 CITY or the CONTRACTOR, or on account of any delay from any cause over which the CITY 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 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 CITY shall have the right to call the bond hereinafter described within one (1) week of such action and engage another person, firm or corporation to provide necessary services with the bond proceeds applied to pay any difference between the Agreement price in effect and the costs charged by the successor company. In the event the bond is called, the CITY will first call and use the cash/surety bond posted by the CONTRACTOR.

9.9 BREACH OF AGREEMENT

If, in the opinion of the City Manager, or the authorized CITY representative, there has been a material breach of Agreement, the City Manager, or designated CITY 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 the notice, the CONTRACTOR has not eliminated or otherwise cured the conditions considered to be a breach of Agreement, the City Manager shall so notify the City Commission in writing, and a public hearing shall be set for a date within fifteen (15) calendar days of such notice to the City Commission. On the date of the hearing, the City Commission shall hear from the CONTRACTOR and the CITY's representatives 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 CITY, as hereinafter provided. Pending resolution of the alleged breach, the CONTRACTOR shall be governed by the provisions of Section 20.

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 City 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 City Commission, the CITY may thereupon, by action of the City Commission, declare the Agreement terminated and in default. Upon such declaration of cancellation or breach, the CITY may take over the work or any portion thereof or engage another firm to take over the work or any portion thereof. The CITY shall pay the CONTRACTOR 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 CITY 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 CITY in the amount of any such expenses in excess of the Agreement price. The CITY 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.

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 CITY. The CONTRACTOR agrees that it shall have telephone service via a non-toll call from the CITY. The non-toll telephone service shall be listed in the name in which the company is doing business as the CONTRACTOR. The telephone service shall be staffed from 7:00 a.m., local time till 7:00 p.m., local time, Monday through Saturday, by the CONTRACTOR's employee(s), whom shall be familiar with the CITY. 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 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 CITY or customer before 3:00 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 CITY or customer. Any deviation from the requirements of this provision must be approved by the City Manager, or the CITY's designated representative. The CONTRACTOR is expected to complete daily collection route. In the event CONTRACTOR could not complete the daily collection, CONTRACTOR shall notify the City immediately and notify resident of each property not completed, by placing the preapproved flyer/door hanger on each property. The flyer/door hanger shall state the reason for not completing the collection and that the collection shall be completed before 12:00 p.m., local time on the next work day. If the CONTRACTOR fails to comply with this provision, or any of the terms and conditions of the Agreement, the CITY reserves the right to ensure that the collection is made, either with its own force or an outside source, and to charge all costs, plus reasonable

overhead, to the CONTRACTOR. The CONTRACTOR shall not be required to collect material from curbside that is non-conforming; however, in each such case, the CONTRACTOR shall notify each resident by door hanger or other means, in a form approved by the CITY, notifying the resident of the problem and how the customer needs to correct the problem. The CONTRACTOR shall then notify the CITY 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 Garbage Cans, Containers, Roll-off Containers, Recycling Bins, and Recycling Carts caused by the carelessness of the customer; however, the CONTRACTOR shall clean up any Solid Waste, Bulk Waste, Recyclable Materials or other refuse materials including leakage of fluids spilled from Garbage Cans, Containers, Roll-off Containers, Recycling Bins, Recycling Carts, and Collection vehicles by the CONTRACTOR, CONTRACTOR's vehicles or the CONTRACTOR's employees. During transport, all Solid Waste and Recyclable Materials shall be contained, covered or enclosed so that leaking, spilling and blowing of the Solid Waste, Bulk Waste, Recyclable Materials or other refuse materials is prevented. The CONTRACTOR shall be responsible for the cleanup of any spillage or leakage caused by the CONTRACTOR, CONTRACTOR's vehicles or the CONTRACTOR's employees. Said cleanup shall be done at the CONTRACTOR(s) expense within twenty-four (24) hours of the spillage or leakage.

SECTION 11: PENALTIES

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

The CONTRACTOR shall have five (5) Work Days from the date of the written notice to file a written letter of protest with the City Manager. If the protest is filed within five (5) Work Days, the City Manager or individuals appointed by the City Manager shall conduct a formal review of each properly filed protest. Such review shall be open and subject to Florida's Sunshine Law. The determination of the City Manager and/or his designee shall be final.

If the protest is not timely filed, the City Manager shall deduct the amount of the penalty from payment due or to become due the CONTRACTOR.

11.1 TRANSITION PROVISIONS

Failure by the CONTRACTOR to comply with the transition provisions of this Agreement shall result in the City Manager imposing penalties as set forth below:

11.1.1 General Administrator of Operations - Failure to have the CONTRACTOR's General Administrator of Operations retained within ninety (90) calendar days prior to January 1, 2021. For each day of delay, a penalty in the amount of Two Thousand Dollars (\$2,000.00) shall be assessed.

11.1.2 Collection Vehicles - Failure to have the necessary Collection vehicles delivered to the CONTRACTOR's equipment yard and street legal (registered, licensed and tagged) within thirty (30) calendar days prior to the January 1, 2021. For each day of delay, a penalty in the amount of Two Thousand Dollars (\$2,000.00) shall be assessed.

- 11.1.3 **Collection Equipment** - Failure to provide purchase orders or other documentation to the CITY, satisfying that the necessary arrangements have been made to have the necessary Recycling Bins, Recycling Carts, Containers, and Roll-offs delivered to the CONTRACTOR' s equipment yard for distribution within thirty (30) calendar days prior to January 1, 2021. For each day of delay, a penalty in the amount of Two Thousand Dollars (\$2,000.00) shall be assessed.
- 11.1.4 **Schedules and Routes** - Failure to provide the City Administrator with a copy of schedules, and routes, including service levels, within ninety (90) calendar days prior to January 1, 2021, and annually thereafter for the term of the Agreement as provided for in Section 7.1. For each day of delay, a penalty in the amount of Two Thousand Dollars (\$2,000.00) shall be assessed.
- 11.1.5 **CONTRACTOR Reports** - Failure to provide the reports of the Agreement as provided in Section 6 and Section 9. For each day of delay, a penalty in the amount of Two Hundred Fifty Dollars (\$250.00) shall be assessed for each report. In addition, the CITY shall withhold payment for services until receipt of reports.

11.2 OTHER PROVISIONS

Following notification by the City Manager or customer, 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 City Manager imposing penalties, or any other legal means available. Penalties are as set forth below:

- 11.2.1 **Spillage and Litter** - Failure to clean up spilled material from loading and/or transporting in compliance with the "Florida Litter Law" or as described in Section 10.3. Each failure shall result in the imposition of a penalty in the amount of Two Hundred Fifty Dollars (\$250.00).
- 11.2.2 **Collection Misses** - Failure or neglect to collect properly prepared Solid Waste or properly prepared Program Recyclables from any customer at those times provided by this Agreement within the schedule described in Section 10.2. Each failure shall result in the imposition of a One Hundred Dollars (\$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).
- 11.2.3 **Route Completion** - Failure or neglect to complete each route (including missing whole streets) on the regular scheduled Collection day within twenty-four (24) hours of the day of notification shall result in the imposition of a penalty in the amount of Five Hundred Dollars (\$500.00) /route/day for each instance.
- 11.2.4 **Mixing Materials** - Intentionally mixing Recyclables, Solid Waste, used oil, Exempt 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.
- 11.2.5 **Mixing Program Recyclables** - Mixing Recyclable Containers during Collection or tipping at the Designated Recycling Facility shall result in the imposition of a penalty in the amount of One Thousand Dollars (\$1,000.00) for each occurrence.
- 11.2.6 **Mixing Residential Program Recyclables** - Mixing Residential Program Recyclables during Collection or tipping at the Designated Recycling Facility shall result in the imposition of a penalty in the amount of One Thousand Dollars (\$1,000.00).

- 11.2.7 **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 occurrence.
- 11.2.8 **Disposing at non-Designated Disposal Facility** - Failure to dispose of Solid Waste collected in the CITY at the Designated Disposal Facility shall result in the imposition of a penalty equal to the current tip fee at the Designated Disposal Facility plus twenty-five percent (25%), per ton disposed at non-Designated Disposal Facility.
- 11.2.9 **Chronic Complaint Problems** - Failure or neglect to correct chronic problems (chronic shall mean three (3) or more similar complaints at the same premises within a twelve (12) month period) in any category of service shall result in the imposition of a Two Hundred Fifty Dollars (\$250.00) penalty for each occurrence after the second. The CONTRACTOR being penalized for more than five (5) chronic complaint problems within a month shall result in the imposition of a penalty in the amount of Five Hundred Dollars (\$500.00).
- 11.2.10 **Chronic Equipment Problems** - Failure or neglect to correct chronic equipment problems (chronic shall mean three instances of the same or similar problem with the same equipment/trucks within a twelve-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.
- 11.2.11 **Failure to Properly Label Equipment** - Failure to properly and legibly label vehicles, Recycling Bins, Recycling Carts, Containers and Roll-offs according to the Agreement shall result in the imposition of a penalty in the amount of One Hundred Dollars (\$100.00) for each equipment not properly labeled.
- 11.2.12 **CONTRACTOR Reports** - Failure to provide the reports of the Agreement as provided in Section 6 and Section 9. For each day of delay, a penalty in the amount of Two Hundred Fifty Dollars (\$250.00) shall be assessed for each report. In addition, the CITY shall withhold payment for services until receipt of reports.

SECTION 12: PAYMENT WITHHELD

In addition to express provisions elsewhere contained in this Agreement, the CITY may withhold from any payment otherwise due the CONTRACTOR such amount as determined necessary to protect the CITY'S interest, or, if it so elects, may withhold or retain all or a portion of any monthly payment or refund payment on account of: Unsatisfactory progress of the work not caused by condition beyond the CONTRACTOR'S control;

- (1) Defective work not corrected;
- (2) The CONTRACTOR'S failure to carry out instructions or orders of the CITY or its representative;
- (3) A reasonable doubt that the Agreement can be completed for the balance then unpaid;
- (4) Execution of work not in accordance with the Agreement;
- (5) Claim filed by or against the CONTRACTOR or reasonable evidence indicating probable filing of claims;
- (6) Failure of the CONTRACTOR to make payments to any subcontractor for material or labor;

- (7) Damage to another CONTRACTOR;
- (8) Unsafe working conditions allowed to persist by the CONTRACTOR;
- (9) Failure of the CONTRACTOR to provide route schedules and other reports as required by the CITY;
- (10) Use of any subcontractors without the CITY'S prior written approval.

When the above grounds are removed, payment shall be made for amounts withheld because of them and the CITY shall never be liable for interest on any delayed or late payment. The CITY's right to withhold payments under this Section will be reasonable in light of the nature of the claim, amount of available insurance and performance bond pursuant to this Agreement.

SECTION 13: PERFORMANCE BOND

The CONTRACTOR shall furnish at its own cost, to the CITY, an irrevocable Performance Bond, in form and content approved by the CITY Attorney and as attached to this Agreement as Exhibit 5 for the faithful performance of this Agreement and all of its obligations arising hereunder in the amount of Two Million Dollars (\$2,000,000.00). Said bond shall be rated "A+" or better as to management and "FSC XV" or better as to the strength by Best's Insurance Guide or Surety; shall be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds or bonding limits shall not exceed 20% of its policy surplus (capital & surplus) as listed in Best's Insurance Guide; and, Surety shall have been in business and have a record of successful and continuous operation for at least five years; further, all bonds shall contain all provisions required by §255.05, Florida Statutes, guarantee the performance of the Agreement and serve as security for the payment of all persons performing labor and furnishing materials in connection with the Agreement. The CONTRACTOR shall furnish to the CITY proof of such bond within ten (10) calendar days after the execution of this Agreement. Such proof shall include a statement that the policy or bond may not be canceled or altered without at least thirty (30) calendar days' prior notice to the CITY.

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 CITY against the CONTRACTOR for breach, default or damages hereunder.

The CONTRACTOR shall cause to be obtained a corporate guaranty of PARENT COMPANY ("Guarantor"), whereby the Guarantor shall guaranty all of the obligations of the CONTRACTOR under this Agreement. The form of the guaranty is attached hereto as Exhibit 5

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

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 CITY.

14.2 EQUIPMENT IN GOOD REPAIR

The CONTRACTOR shall use Collection vehicles, one (1) per route, and freshly painted, with bodies that are watertight to a depth of not less than eighteen inches (18"), with solid sides, without body damage, using pneumatic tires. The average age of the CONTRACTOR's Collection vehicles shall not exceed three-half (3.5) years old, with no vehicle over seven (7) years old. All vehicles shall be equipped with operational radio transceiver capable of communicating with the CONTRACTOR's dispatch from anywhere in the CITY. 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 Carts, Containers, Roll-offs or any other equipment servicing the CITY. The CONTRACTOR is required to keep Collection vehicles and Containers emptied by mechanical means cleaned and painted to present a pleasing appearance. The CONTRACTOR shall submit for approval by the CITY a schedule showing the frequency of the cleaning and painting of the vehicles, the age, and miles of the vehicle.

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

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

14.3 CONTRACTOR'S PERSONNEL

The CONTRACTOR shall assign a qualified person or persons to be in charge of its operations within the CITY, and shall give the name or names of the CONTRACTOR's representatives to the CITY. 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 contractors of the CONTRACTOR shall be considered

to be, at all times, the sole employees or contractors of the CONTRACTOR under its sole discretion and not an employee, contractor, or agent of the CITY. The CONTRACTOR shall supply competent and physically capable employees and contractors. The CITY may require the CONTRACTOR to remove any employee or contractor it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the CITY.

- 14.3.3 The direction and supervision of Collection and disposal and salvage 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 CITY. All subcontractors, sub consultants, superintendents, foremen and workmen employed by the CONTRACTOR shall be careful and competent. The CONTRACTOR shall also provide uniforms that are clearly identified with the company name. Employees and subcontractors of the CONTRACTOR shall have and wear proper dress attire at all times. Proper dress attire shall consist of industrial style work pants, a button front shirt or T-shirt with the CONTRACTOR's company name or logo and the name of the shirt bearer, and appropriate footwear.
- 14.3.4 All employees 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 employees cause any disturbance, interference of delay to any work or service rendered to the CITY or by the CITY and in no case or in any circumstances will the employees conduct themselves negligently, disorderly or dishonestly in the due and proper performance of the employee's duties. The CONTRACTOR shall see to it that his employees serve the public in a courteous, helpful and impartial manner. The CONTRACTOR shall furnish the CITY with a current roster of employees on the first (1st) Business Day of every month for the term of the Agreement.
- 14.3.5 The CONTRACTOR's employees shall follow the regular walk for pedestrians while on private property and shall not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. No employee shall meddle with property that does not concern him. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings. After emptying Garbage Cans, Recycling Bins, Containers, or Roll-offs employees shall return them to the same location from which they were taken, in the proper position behind the curb or edge of pavement and anything spilled shall be picked up immediately by such employee. Any damages incurred shall be paid by CONTRACTOR.

SECTION 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.

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 CITY, at the City's address certificates of insurance which indicate that insurance coverage has been obtained that meets the following requirements.

The CONTRACTOR shall provide or cause to be provided insurance of the type and on the terms and conditions as specified in this Section. The cost of this insurance is included in the service rate. The failure of the CONTRACTOR to provide such insurance shall be considered a material breach of this Agreement. Insurance purchased by the CONTRACTOR shall be purchased from a carrier acceptable to the CITY. 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 CITY (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein.

- (1) Professional Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000) with respect to CONTRACTOR.
- (2) Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.

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

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the CITY. The CONTRACTOR shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) calendar days prior written notice to owner except in the case of non-payment by the Contractor for which ten (10) calendar days' prior written notice will be provided to owner; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the owner; and (iv) be effective for a period from the date of this 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 CITY at the times required by this Section at which time the CONTRACTOR shall deliver to CITY a certificate of insurance naming Owner as an additional insured as required hereunder for each policy of required insurance except for professional liability insurance. The minimum coverages and time periods specified above are not intended, and shall not be construed, to limit any liability of the CONTRACTOR to Owner 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 CITY and its elected and appointed officials, employees and agents (collectively referred to as "Indemnities") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this 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 provide above, for which the CONTRACTOR's liability to such employee would otherwise be limited to payments under state Worker's Compensation or similar laws.

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 express, written consent of the CITY.

19.2 The CONTRACTOR shall not sell or otherwise dispose of any assets during the term of this Agreement, without the express, written consent of the CITY. The CITY 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.

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

SECTION 20: OPERATIONS DURING DISPUTE

In the event that any dispute, arises between the CITY 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 CITY, regardless of such dispute.

The CONTRACTOR expressly recognizes the paramount right and duty of the CITY 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 CITY 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 CITY.

Notwithstanding the other provisions in this Section, the CITY 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 CITY provides written notice to the CONTRACTOR pursuant to Section 9 of this Agreement. Upon termination, the CITY may call the bond and apply the cash and surety bond for the cost of service in excess of that charged to the CITY by the firm engaged for the balance of the Agreement period.

SECTION 21: ORDINANCE

Nothing contained in any CITY 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 CITY and this Agreement is amended accordingly.

SECTION 22: AMENDMENTS

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

SECTION 23: MODIFICATIONS TO THE CONTRACT

The CITY shall have the power to make changes in this Agreement as the result of changes in law, CITY Code or both to impose new rules and regulations on the CONTRACTOR under this Agreement relative to the scope and methods of providing Collection Services as shall from time-to-time be necessary and desirable for the public welfare. The CITY shall give the CONTRACTOR

notice of any proposed change and an opportunity to be heard concerning those matters. 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 CITY and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. The CONTRACTOR agrees that the terms and provisions of CITY 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 CITY 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 CITY 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 CITY and the CONTRACTOR shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Agreement under this Section. The CITY and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

SECTION 24: 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 25: 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 26: COMPLIANCE WITH LAWS AND REGULATIONS

The CONTRACTOR hereby agrees to abide by and comply with all applicable Federal, State, County, Special District and CITY laws, statutes, codes, rules and regulations. The CONTRACTOR and its cash/surety shall indemnify, defend and hold harmless the CITY, its City 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 27: 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 CITY, 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 28: GENERAL

28.1 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 CITY 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.

28.2 NO WAIVER

No waiver by the CITY 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 29: 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 30: MISCELLANEOUS

30.1 RECORDS

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

30.2 MODIFICATION

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

30.3 PROPRIETARY INFORMATION

The documents, records, routing, charges, and pricing of the CONTRACTOR are proprietary information and records of the CONTRACTOR, and 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 either the City Manager or the City Attorney, such documents and records are not within said statutory exemption.

30.4 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 to 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 CITY designate the following as the respective places for giving of notice:

As to CITY:

W. Ajibola Balogun, City Manager
City of West Park
1965 South State Road 7
West Park, Florida 33323
Telephone: (954) 989-2688
Facsimile: (954) 989-2684

Copy to:

Burnadette Norris-Weeks, City Attorney
Burnadette Norris-Weeks, P.A.
401 North Avenue of the Arts
Ft. Lauderdale, Florida 33311
Telephone: (954) 768-9770
Facsimile: (954) 768-9790

As to CONTRACTOR:

Copy to:

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 abovewritten.

CITY OF WEST PARK,
through its City Commission

Attest:

City Clerk

By: _____
Eric H. Jones, Jr., Mayor
____ day of _____, 2020

Approved as to form and legality by
the City Attorney

By: _____
W. Ajibola Balogun, City Manager
____ day of _____, 2020

By: _____
Burnadette Norris-Weeks, City Attorney
____ day of _____, 2020

(CITY SEAL)

CONTRACTOR

COMPANY

WITNESSES:

BY:

Signature

Signature

Print Name and Title

Print Name and Title

____ day of _____, 2020

____ day of _____, 2020

Signature

Print Name and Title

____ day of _____, 2020

ATTEST:

SECRETARY

STATE OF FLORIDA)

) SS:

COUNTY OF BROWARD)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of _____, an organization authorized to do business in the State of Florida, and acknowledged executed the foregoing 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 _____, 2020.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT 1

Residential Curbside Collection Service Rates

(To be Inserted)

DRAFT

EXHIBIT 1

Residential Curbside Collection Service Rates

(To be Inserted)

DRAFT

EXHIBIT 3

EMERGENCY PREPAREDNESS PLAN

(To be Inserted)

DRAFT

EXHIBIT 2

Special Collection Services Rates Determined by the CITY

(NOT TO BE ADJUSTED DURING TERM OF AGREEMENT)

Rolling Out Container (and returning it to original location)	No Charge
Opening (and closing) Doors or Gates	No Charge
Adding wheels to or changing wheels	No Charge
Adding lids to or changing lids	No Charge
Moving Container off Location Per Customer Request	No Charge
Changing Out Sizes (above twice per year)	No Charge
Residential Off-Street Collection Service (excluding handicapped)	Negotiable
Collection Of Unbundled (Loose) Yard Waste for Residential Service Units	Negotiable \$ Per Cubic Yard
Additional Bulk Waste Collection for Residential Service Units	Negotiable \$ Per Cubic Yard

EXHIBIT 3

Emergency Preparedness Plan

(To be Inserted)

DRAFT

EXHIBIT 4

Emergency Preparedness Plan Costs

(To be Inserted)

DRAFT

EXHIBIT 5

Performance Bond

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

CONTRACTOR (name and address):

SURETY (name and principal place of business):

CITY (OWNER):

City of West Park
1965 South State Road 7
West Park, Florida 33023

**SOLID WASTE, BULK WASTE AND
RECYCLING COLLECTION SERVICES AGREEMENT**

Date: _____

Amount: _____

Description (name and location): _____

BOND

Date (not earlier than
Solid Waste Agreement
Date):

Amount:

Modifications to this Bond:

None _____

See Page(s) _____

EXHIBIT 5

**Performance Bond
(continued)**

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature

Print Name

Title

SURETY

Company: (Corporate Seal)

Signature

Print Name

Title

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

FLORIDA RESIDENT AGENT

Print Name

Address

Phone

Fax

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

EXHIBIT 5

Performance Bond (continued)

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

- B. The CITY has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Agreement. Such CONTRACTOR Default shall not be declared earlier than twenty (20) days after the CONTRACTOR and the Surety have received.
- 4. When the CITY has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - A. Arrange for the CONTRACTOR, with consent of the CITY, to perform and complete the Solid Waste, Bulk Waste and Recycling Collection Services Agreement; or
 - B. Undertake to perform and complete the Solid Waste, Bulk Waste and Recycling Collection Services Agreement itself, through its agents or through independent contractors; or
 - C. Obtain bids or negotiated proposals from qualified contractors acceptable to the CITY for a contract for performance and completion of the Solid Waste, Bulk Waste and Recycling Collection Services Agreement, arrange for a contract to be prepared for execution by the CITY and the contractor selected with the CITY's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued on the Solid Waste, Bulk Waste and Recycling Collection Services Agreement, and pay to the CITY the amount of damages as described in paragraph 6 in excess of the balance of the contract price incurred by the CITY resulting from the CONTRACTOR 's default; or

EXHIBIT 5

Performance Bond (continued)

- D. Waive its right to perform and complete, arrange for completion, or obtain a new contractor acceptable to the CITY and with reasonable promptness under the circumstances:
- (1) After investigation, determine the amount for which it may be liable to the CITY and, as soon as practicable after the amount is determined, tender payment therefore to the CITY;
or
 - (2) Deny liability in whole or in part and notify the CITY citing reasons therefore.
5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this bond fifteen (15) days after receipt of an additional written notice from the CITY to the Surety demanding that the Surety perform its obligations under this Bond, and the CITY shall be entitled to enforce any remedy available to the CITY. If the Surety proceeds, on in part, without further notice, the CITY shall be entitled to enforce any remedy available to the CITY.
6. After the CITY has terminated the CONTRACTOR's right to complete the Solid Waste, Bulk Waste and Recycling Collection Services Agreement, and if the Surety elects to act, then the responsibilities of the Surety to the CITY shall not be greater than those of the CONTRACTOR under the Agreement, and the responsibilities of the CITY to the Surety shall not be greater than those of the CITY under the Solid Waste, Bulk Waste and Recycling Collection Services Agreement. To the limit of the amount of this bond, but subject to commitment by the CITY of the balance of the contract price to mitigation of costs and damages on the Solid Waste, Bulk Waste and Recycling Collection Services Agreement, the Surety is obligated without duplication for:

EXHIBIT 5

Performance Bond (continued)

- A. The responsibilities of the CONTRACTOR for correction of defective work and completion of the Solid Waste, Bulk Waste and Recycling Collection Services Agreement;
- B. Additional legal, design professional and delay costs resulting from the CONTRACTOR 's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
- C. Liquidated damages, or if no liquidated damages are specified in the Solid Waste, Bulk Waste and Recycling Collection Services Agreement, actual damages caused by delayed performance or non-performance of the CONTRACTOR.
7. The Surety shall not be liable to the CITY or others for obligations of the CONTRACTOR that are unrelated to the Solid Waste, Bulk Waste and Recycling Collection Services Agreement. No right of action shall accrue on this bond to any person or entity other than the CITY or its heirs, executors, administrators or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Solid Waste, Bulk Waste and Recycling Collection Services Agreement or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after CONTRACTOR Default or within two (2) years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the CITY or the CONTRACTOR shall be mailed or delivered to

W. Ajibola Balogun, City Manager
City of West Park
1965 South State Road 7
West Park, Florida 33023
Phone: 954-989-2688
Fax: 954-989-2684

EXHIBIT 5

Performance Bond (continued)

and to other addresses as shown on the signature page.

11. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this bond shall be construed as a statutory bond and not as a common law bond.

12. DEFINITIONS

- A. **CONTRACTOR Default:** Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Solid Waste Agreement.
- B. **Solid Waste, Bulk Waste and Recycling Collection Services Agreement:** The Agreement between the CITY and the CONTRACTOR identified on the signature page, including all Request for Proposals and Agreement Documents and changes thereto.
- C. **CITY Default:** Failure of the CITY, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Solid Waste, Bulk Waste and Recycling Collection Services Agreement or to perform and complete or comply with the other terms thereof.

MODIFICATONS TO THIS BOND ARE AS FOLLOWS:

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

EXHIBIT 5

**Performance Bond
(continued)**

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature

Print Name

Title

SURETY

Company: (Corporate Seal)

Signature

Print Name

Title

DRAFT