

**Exclusive Franchise Agreement**  
**between**  
**Village of Wellington, Florida**  
**and**  
**FCC Environmental Services Florida, LLC,**  
**for the Collection of**  
**Solid Waste and Recyclable Materials**

# **Exclusive Franchise Agreement**

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## **EXCLUSIVE FRANCHISE AGREEMENT**

This Exclusive Franchise Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by and between the Village of Wellington, Florida (“Village”), a municipal corporation organized and existing under the laws of the State of Florida, and FCC Environmental Services Florida, LLC, (“Contractor”), a Florida Limited Liability Company, which is authorized to do business in the State of Florida.

### **RECITALS**

WHEREAS, the Village issued a request for proposals (“RFP”) (Village RFP No. 202108) for the Collection of certain types of Solid Waste and Recyclable Materials that are generated in the Village; and

WHEREAS, the Contractor submitted a proposal in response to the Village’s RFP; and

WHEREAS, the Village has relied upon the proposal and other information provided by the Contractor concerning the Contractor’s experience and ability to provide Collection Services to the Village; and

WHEREAS, after evaluating all of the proposals that were submitted in response to the Village’s RFP, the Village Council (“Council”) finds that the Contractor has submitted the best proposal; and

WHEREAS, the Village wishes to use and the Contractor wishes to provide the Contractor’s services for the Collection of Solid Waste and Recyclable Materials, subject to the terms and conditions contained in this Agreement; and

WHEREAS, the Council finds that granting an exclusive franchise to the Contractor, subject to the terms and conditions contained in this Agreement, is in the public interest and will protect the public health, safety, and welfare; and

WHEREAS, the Council finds that the franchise granted herein properly balances the Council’s desire to provide excellent, environmentally-sound Collection Services to the Village’s residents and the Council’s desire to minimize the cost of such services; and

WHEREAS, the Solid Waste Authority of Palm Beach County (“Authority”) has adopted an integrated Solid Waste management plan and the Village supports the Authority’s plan; and

WHEREAS, this Agreement will help the Village implement the Authority’s integrated Solid Waste management plan, which will enhance the public health, safety, and welfare.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and the mutual benefits provided hereunder, the receipt and sufficiency of which are hereby acknowledged, the Village and the Contractor agree that they shall be bound by and shall strictly comply with the following provisions of this Agreement:

## 1. DEFINITIONS

The capitalized words and phrases in this Agreement are defined in this Section 1. The definitions contained in this Section 1 shall be used when interpreting this Agreement. If a word or phrase is not defined in this Agreement, the definition of such word or phrase in the Village's Ordinances shall apply. In the event that a definition contained herein conflicts with a similar definition in a federal, state or local law, including but not limited to the Ordinances, the definition herein shall prevail when construing this Agreement. If the definition of a word or phrase in this Agreement is inconsistent with the definition of the same word or phrase in Section 403.703, Florida Statutes, the definition in Section 403.703 shall prevail, but only to the extent necessary to resolve the conflict between the two (2) definitions.

**1.1 Administrator** shall mean the Village's contract administrator under this Agreement. The Administrator shall be a Village employee designated by the Manager to be the Village's official representative in routine discussions with the Contractor regarding this Agreement.

**1.2 Advertising** shall mean any written communication for the purpose of promoting a product or service. The Contractor's name and telephone number, and other information provided in the manner specified in this Agreement, is not Advertising.

**1.3 Agreement** shall mean this Exclusive Franchise Agreement between the Village and the Contractor.

**1.4 Applicable Law** shall mean any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which is in effect or is enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relates in any manner to the performance of the Village or the Contractor under this Agreement.

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

**1.6 Automated Collection Service** shall mean the Collection of Garbage and Rubbish in a Garbage Cart, using fully automated equipment (e.g., a side-loading Collection Vehicle that is manned with a driver only) or semi-automated equipment (e.g., a rear-loading Collection Vehicle that is equipped with a hydraulic "tipper," a driver, and a crew of one or two people).

**1.7 Biological Waste** shall mean dead animals, fish, and birds. However, Biological Waste does not include dead horses, cows, or other equally large animals.

**1.8 Biomedical Waste** shall mean any solid or liquid waste which may present a threat of infection to humans, including non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; discarded sharps; and absorbent materials saturated with blood or body fluids.

**1.9 Bulky Waste** shall mean a large item that (a) is discarded by a Customer on their own Property as a result of normal housekeeping activities on that property and (b) cannot be placed in a Garbage Cart because of its size, shape or weight. Bulky Waste includes, but is not limited to, White Goods, furniture, mattresses, fixtures, sinks, toilets, ladders, and large pieces of carpet.

**1.10 Central Village** shall mean the portion of the Village that is depicted in Exhibit 2. The area designated as the Central Village may be modified with the mutual written consent of the Administrator and the Contractor.

**1.11 Certificate of Occupancy** shall mean a document issued by the Village certifying that a newly constructed or renovated building complies with the Village's specifications and is suitable for use.

**1.12 Change in Law** shall mean the adoption, promulgation, or modification of any Applicable Law after the Effective Date that directly and substantially affects the Contractor's or Village's ability to perform under this Agreement. A Change in Law does not include a change in any tax law or workers' compensation law.

**1.13 Collection** shall mean the process of picking up Solid Waste (i.e., Garbage, Rubbish, Bulky Waste, and Yard Waste) and Program Materials from a Person that generates such waste and materials, and then transporting and delivering the Solid Waste and Program Materials to a Designated Facility (e.g., a Solid Waste Management Facility owned by or operated for the benefit of the Authority).

**1.14 Collection Container** shall mean Garbage Cans, Garbage Carts, Recycling Containers, and Mechanical Containers that comply with the standard specifications for containers used in the Solid Waste industry, as determined by the Administrator.

**1.15 Collection Plan** shall mean the Contractor's written plan for providing Collection Service in compliance with the requirements in this Agreement, as described in Section 23, below.

**1.16 Collection Service** shall mean one or more of the services provided by the Contractor for the Collection of Solid Waste and Recyclable Materials pursuant to this Agreement. Collection Service includes Residential Collection Service, Commercial Collection Service, Special Collection Service, and Collection Service provided to the Village's facilities.

**1.17 Commencement Date** shall mean December 30, 2021, which is the date when the Contractor shall begin providing Collection Services in the Village pursuant to this Agreement.

**1.18 Commercial Collection Service** shall mean the Collection of Commercial Waste from a Commercial Customer. Commercial Collection Service also includes the Collection of Source Separated Recyclable Materials from a Commercial Customer, in a comingled "single stream" system, if the Customer requests such service.

**1.19 Commercial Customer** shall mean any Person that owns or occupies Commercial Property and receives or should receive Commercial Collection Service from the Contractor pursuant to this Agreement.

**1.20 Commercial Lawn Care Company** shall mean a Person that provides lawn and garden maintenance services for remuneration. This definition includes landscapers.

**1.21 Commercial Property** shall mean real property that is located in the Service Area and not classified as Residential Property. Commercial Property includes property used primarily for: (a) commercial purposes, such as hotels, motels, stores, restaurants, business offices, theaters, and service stations; (b) institutional purposes, such as governmental offices, churches, hospitals, and schools; and (c) not-for-profit organizations. Commercial Property also includes industrial property, as well as vacant land that is not classified as Improved Property.

**1.22 Commercial Waste** shall mean Garbage and Rubbish generated on Commercial Property. Commercial Waste does not include Bulky Waste and Yard Waste.

**1.23 Community Events** shall mean parades, festivals, and other civic events sponsored by the Village or designated by the Village pursuant to Section 36.8, below.

**1.24 Compactor** shall mean a stationary or mobile mechanism that is used to compress and densify Solid Waste in a Mechanical Container.

**1.25 Construction and Demolition Debris** shall have the meaning set forth in Section 403.703(6), Florida Statutes. In general, Construction and Demolition Debris means discarded materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, resulting from the construction, destruction, or renovation of a structure.

**1.26 Consumer Price Index or CPI** shall mean the “Consumer Price Index—All Urban Consumers: Water, Sewer and Trash Collection Services” (Series ID CUUR0000SEHG), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor agency.

**1.27 Contaminated Recyclable Material** shall mean Recyclable Material that is mixed or otherwise comingled with Non-Conforming Material (e.g., Garbage) in quantities that exceed the thresholds in this Section 1.27. The contents of a Recycling Container or a Load of Recyclable Material shall be deemed to be Contaminated Recyclable Material if: (a) the contents contain Biological Waste, Biomedical Waste, Hazardous Material, or radioactive waste; or (b) more than twelve percent (12%) of the contents is Non-Conforming Material. With regard to Recycling Containers used to collect Fiber Products, and with regard to Loads of Fiber Products, the contents of the container or Load shall be deemed to be Contaminated Recyclable Material if more than five percent (5%) of the contents is Non-Conforming Material.

**1.28 Contingency Plan** shall mean the Contractor’s plan for avoiding an interruption in Collection Service in the event that an emergency, disaster, equipment breakdown, or other situation upsets the Contractor’s normal operations (e.g., renders the Contractor’s operations yard or equipment unusable; prevents the Contractor’s drivers from reporting for work).

**1.29 Contractor** shall mean FCC Environmental Services Florida, LLC, a Florida Limited Liability Company.

**1.30 Council** shall mean the Council of the Village of Wellington, Florida.

**1.31 Curbside** shall mean a location adjacent to a road or right-of-way that abuts a Customer’s property and provides access for the Contractor’s Collection vehicles. If there is no public access to the Customer’s property, Curbside shall mean a location that is adjacent to a public or private roadway where the Contractor may lawfully gain access and provide Collection Service to the Customer. The adjacent location shall be within three (3) feet of the curb or the edge of the road.

**1.32 Customer** shall mean a Person (other than the Village) that uses or is entitled to use one or more of the Contractor’s Collection Services under this Agreement. A Customer is either a Residential Customer or a Commercial Customer.

**1.33 Designated Facility** shall mean a facility designated by the Village for the Recycling or disposal of the Solid Waste and Source Separated Recyclable Materials collected pursuant to this Agreement. As

of the Effective Date, the Designated Facilities shall be the same facilities that the Village and Authority designated for such purposes in their Interlocal Agreement, which is attached hereto as Exhibit 11.

**1.34 Disaster Debris** shall mean debris produced or generated by a natural or human event that is declared a disaster by the federal government or the Village. Disaster Debris includes but is not limited to Yard Waste, Construction and Demolition Debris, and Bulky Waste that is generated by such disaster.

**1.35 Disaster Debris Contract** shall mean the Village's contract(s) with one or more contractors for removing, transporting, processing, disposing, or Recycling of Disaster Debris.

**1.36 District Manager** shall mean the senior employee designated by the Contractor as the Contractor's primary representative with regard to matters involving this Agreement.

**1.37 Dwelling Unit** shall mean any type of structure or building, or a portion thereof, intended for or capable of being used for residential living. A Dwelling Unit includes a room or rooms constituting a separate, independent living area with a kitchen or cooking facilities, a separate entrance, and bathroom facilities, which are physically separated from other Dwelling Units, whether located in the same structure or in separate structures. However, a room in a licensed hotel or motel is not a Dwelling Unit.

**1.38 Effective Date** shall mean the date when this Agreement is signed and duly executed by the Council or its designee, which shall occur after the Agreement is signed and duly executed by the Contractor.

**1.39 Electronic Equipment** shall mean large electronic devices that have been discarded, including but not limited to computers, monitors, televisions, cathode ray tubes, printers, scanners, and copying machines.

**1.40 Exempt Waste** shall mean materials that are exempt from the Contractor's exclusive franchise under this Agreement.

**1.41 Fiber Products** shall mean newspapers (including inserts), magazines, catalogs, telephone books, corrugated cardboard, Mixed Paper, Office Paper, and kraft paper bags.

**1.42 Field Supervisor** shall mean the Contractor's employee that is responsible for directly supervising the Contractor's Collection Services in the Village on a daily basis.

**1.43 First Operating Year** shall mean the period beginning on the Commencement Date and ending on September 30, 2022, unless this Agreement is terminated earlier.

**1.44 Force Majeure** shall mean the following events or circumstances, but only to the extent that they delay or preclude the Village or the Contractor from performing any of its obligations (other than payment obligation) under this Agreement: (a) an act of God, tornado, hurricane, flood, fire, explosion (except those caused by the negligence of the Contractor, its agents, and assigns), landslide, earthquake, epidemic, pandemic, and extremely abnormal and inclement weather; (b) acts of a public enemy, acts of war, terrorism, insurrection, riots, civil disturbances, or national or international calamities; (c) the suspension, termination, or interruption of utilities necessary to a Party's operations or duties under this Agreement; (d) an injunction, or a legal or equitable proceeding brought against a Party, or a Change in Law; and (e) any act, event, or condition that is determined by mutual agreement of the Village and the Contractor to be of the same general type as the events of Force Majeure identified in Sections 1.44 (a) through (d).

**1.45 Franchise Fee** shall mean the fee paid by the Contractor for: (a) the Contractor's exclusive right to provide certain Collection Services in the Village; (b) the Village's agreement to not compete in the provision of such Collection Services; (c) the Contractor's use of the Village's rights-of-way when

conducting its business; (d) reimbursement to the Village for the Village's services that aid in the Contractor's provision of Collection Services; (e) reasonable compensation to the Village in its proprietary capacity for its oversight of the provision of Collection Services and the implementation of this Agreement; and (f) the other rights and benefits provided to the Contractor under this Agreement.

**1.46 Garbage** shall mean all kitchen and table food waste, and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking, or handling of food materials.

**1.47 Garbage Can** shall mean any commonly available metal or heavy-duty plastic container for Solid Waste that has enclosed sides and bottom, a tight fitting lid or top, handles on the sides, and a capacity of approximately thirty-five (35) gallons or less.

**1.48 Garbage Cart** shall mean a Garbage container that is made with heavy-duty hard plastic or other impervious material, with an enclosed bottom and sides, mounted on two wheels, equipped with a tight-fitting hinged lid, having a capacity of approximately one hundred (100) gallons or less, with a lift bar, and used for the automated or semi-automated Collection of Garbage and Rubbish. If the Garbage Cart is provided by the Customer, the capacity of the cart shall be approximately sixty-five (65) gallons or less.

**1.49 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. Hazardous Waste includes any material or substance identified as a hazardous waste or hazardous substance in the Florida Administrative Code, Florida Statutes, U.S. Code, Code of Federal Regulations, U.S. Code, Code of Federal Regulations, or other Applicable Law.

**1.50 Holiday** shall mean a day when the Contractor does not need to provide Collection Service to Residential Customers. The only Holidays are Thanksgiving and Christmas (December 25), unless the Village and the Contractor mutually agree to designate additional days as Holidays.

**1.51 Improved Property** shall mean any cleared, graded or drained real property upon which a building or structure is erected and occupied or capable of being occupied (i.e., a Certificate of Occupancy has been issued) for residential, commercial, institutional or industrial use.

**1.52 Indemnified Loss** shall mean all actual costs, losses, damages, expenses, and liabilities that a Village Indemnified Party incurs or suffers pursuant to or in connection with, or are caused by or result from, directly or indirectly, in whole or in part, any wrongful act, any error or omission, or any negligence by the Contractor or any of its agents or employees, or any tier of subcontractors to the Contractor, or any subcontractor to a subcontractor of the Contractor, or anyone employed by any of those Persons for whose wrongful act, error or omission, or negligence any of them may be liable, in the execution or performance of the Contractor's obligations under or incidental to this Agreement. Such costs include, but are not limited to attorneys' fees, court costs, and expert witness fees in all trial, appellate, mediation and bankruptcy proceedings. An Indemnified Loss includes, but is not limited to: (a) any bodily injury, property damage, sickness, disease, or death; (b) any claim arising under or from any actual or alleged violation of any Applicable Law (including workers' compensation laws, environmental laws, and health and safety laws) or any common law duty; (c) any actual or alleged infringement of any intellectual rights or property of any Person; (d) any actual or alleged pollution of or damage or destruction to property, natural resources, or the environment; (e) any claim resulting from or related to the designation by the Contractor of any document or material as exempt from public disclosure or public records laws; (f) any lawsuit resulting from or related



to the Village's decision to award this Agreement to the Contractor; and (h) defending, settling, prosecuting, investigating, or participating in (as a witness or otherwise) any proceeding that arises out of or pertains to any of the foregoing; in each case, to the extent permitted by law and not otherwise prohibited, without regard to or limitation by the amount or type of benefits, damages, or compensation payable by or for the Contractor, any subcontractor of the Contractor, or any subcontractor of a subcontractor of the Contractor under any insurance policy or any Applicable Law (including employee benefits, disability benefits, and workers' compensation laws).

**1.53 Interest** shall mean a payment by the Village or the Contractor for the use of money, which shall be set at a percentage rate determined pursuant to Section 55.03(1), Florida Statutes.

**1.54 Interlocal Agreement** shall mean the "Interlocal Agreement for the Delivery of Municipal Solid Waste to Designated Facilities and for a Municipal Revenue Sharing Recycling Program" between the Village and the Authority. The Interlocal Agreement is attached hereto as Exhibit 11.

**1.55 Land Clearing Debris** shall mean the trees, tree trunks, limbs, stumps, bushes, vegetation, rocks, soil, and other materials resulting from a land clearing or lot clearing operation.

**1.56 Legitimate Complaint** shall mean any complaint by a Customer or the Village in a case where one or more of the applicable requirements in this Agreement were not satisfied by the Contractor, as determined by the Administrator.

**1.57 Load** shall mean the Solid Waste, Recyclable Material, and other cargo that is transported in one of the Contractor's Collection vehicles.

**1.58 Manager** shall mean the Village's chief executive officer or the Manager's designee.

**1.59 Materials Recovery Facility** (MRF) shall mean a Solid Waste management facility that provides for the extraction from Solid Waste of Recyclable Materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

**1.60 Mechanical Container** shall mean a dumpster, Roll-Off Container, Compactor, or other large container that is placed on and removed from a Person's Premises with mechanical equipment, and used for the Collection of Solid Waste or Source Separated Recyclable Materials. However, Garbage Carts and Recycling Carts are not Mechanical Containers.

**1.61 Mixed Paper** shall mean a mixture of various types and grades of paper, including Office Paper, colored paper, corrugated cardboard, envelopes (excluding envelopes with cellophane windows), junk mail, kraft bags, magazines, and catalogs. However, Mixed Paper does not include tissue paper or paper towels.

**1.62 Missed Collection** shall mean any occasion when the Contractor fails to provide Collection Service to a Customer on a Scheduled Collection Day in compliance with the requirements in this Agreement.

**1.63 Multi-Family Collection Service** shall mean the collection of Residential Waste from Multi-Family Dwellings pursuant to this Agreement.

**1.64 Multi-Family Dwelling** shall mean apartments, condominiums, and other structures that have five (5) or more Dwelling Units under one roof.

**1.65 New Customer** shall mean a Person occupying Improved Property that begins to receive or becomes entitled to receive Collection Service from the Contractor on or after the Commencement Date.

**1.66 Non-Collection Notice** shall mean a written form, tag, or sticker that is used by the Contractor to notify a Customer of the reason(s) why the Solid Waste or other materials Set Out by the Customer were not collected by the Contractor.

**1.67 Non-Conforming Material** shall mean any material that is not a Program Material. Non-Conforming Material includes Garbage, Rubbish, Bulky Waste, Yard Waste, and Recyclable Materials that are not Program Materials.

**1.68 Office Paper** shall mean paper used for office purposes, including paper with a letterhead, legal paper, loose-leaf paper, white ledger paper, and paper used for letters, computer print-outs, copy machines, or typing.

**1.69 Operating Day** shall mean Monday through Saturday, except Holidays, from the Commencement Date until this Agreement expires or terminates.

**1.70 Operating Month** shall mean each calendar month from the Commencement Date until this Agreement expires or terminates. However, the first Operating Month shall begin on the Commencement Date and the last Operating Month shall end on the day when this Agreement expires or terminates.

**1.71 Operating Year** shall mean a period of twelve (12) consecutive Operating Months, beginning on October 1 and ending on September 30 of the following year. Notwithstanding the foregoing, the first Operating Year shall begin on the Commencement Date and end on September 30, 2022, and the last Operating Year shall end on the day when this Agreement expires or terminates.

**1.72 Ordinances** shall mean the Village's Code of Ordinances and any amendments thereto.

**1.73 OSHA** shall mean the Occupational Safety and Health Administration.

**1.74 Party** shall mean, depending on the context, either the Village or the Contractor.

**1.75 Parties** shall mean the Village and the Contractor.

**1.76 Performance Bond** shall mean the financial security furnished by the Contractor as a guarantee that the Contractor will perform its work and pay all lawful claims in compliance with the terms of this Agreement.

**1.77 Person** shall mean any and all persons, natural or artificial, including any individual, firm, partnership, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any county or municipality; and any governmental agency of any state or the federal government.

**1.78 Plastic Bag** shall mean a heavy-duty plastic or biodegradable bag that has a drawstring at the top and a capacity of approximately forty (40) gallons or less, that is designed to be used for the Collection of Solid Waste.

**1.79 Premises** shall mean Improved Property.

**1.80 Program Materials** shall mean Source Separated Recyclable Materials that are accepted for Recycling at the Designated Facility for Recyclable Materials. As of the Effective Date, the Program Materials shall be the same as the "Designated Recyclables" identified in the Interlocal Agreement (Exhibit

11). The Designated Recyclables are: (a) Fiber Products; (b) Recyclable Containers; and (c) other Recyclable Materials that the Authority designates.

**1.81 Radioactive Waste** shall mean any equipment or materials that are radioactive or have radioactive contamination, and are required by law to be stored, treated, or disposed of as radioactive waste.

**1.82 Rates** shall mean the fees and charges approved by the Village for the Contractor's Collection Services.

**1.83 Recovered Materials** shall mean metal, paper, glass, plastic, textile, or rubber materials that have known Recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the Solid Waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered Materials as described above are not Solid Waste. Recovered Materials do not include any material or substance that does not fit within one of the six categories described in this definition (metal, paper, glass, plastic, textile, or rubber). Among other things, a mixture of different types of Construction and Demolition Debris is not Recovered Material.

**1.84 Recovered Materials Processing Facility (RMPF)** shall mean a facility engaged solely in the storage, processing, resale, or reuse of Recovered Materials. For example, a RMPF includes a facility operated by, for, or on behalf of the Authority for the purpose of receiving, sorting, processing, storing, and/or preparing Program Materials for sale, pursuant to the Village's Interlocal Agreement with the Authority.

**1.85 Recyclable Containers** shall mean: aluminum cans; glass bottles and jars made with green, brown or clear glass; aseptic containers; gable-topped containers; and containers made with plastic (plastic nos. 1 through 7, but not Styrofoam).

**1.86 Recyclable Materials** shall mean those materials that are capable of being recycled and would otherwise be processed or disposed of as Solid Waste.

**1.87 Recycling** shall mean any process by which materials that would otherwise have been Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

**1.88 Recycling Bin** shall mean a rectangular bin that is approximately eighteen (18) or twenty-five (25) gallons in capacity, made of heavy-duty hard plastic or other impervious material, and used for the storage and Collection of Source Separated Recyclable Materials.

**1.89 Recycling Cart** shall mean a container that is made of heavy-duty hard plastic or other impervious material, with enclosed sides and a bottom, mounted on two wheels, equipped with a tight-fitting hinged lid, having a capacity of approximately one hundred (100) gallons or less, and used for the automated or semi-automated Collection of Source Separated Recyclable Materials.

**1.90 Recycling Container** shall mean any container approved by the Administrator for the Collection of Recyclable Materials, including but not limited to Recycling Bins and Recycling Carts.

**1.91 Residential Collection Service** shall mean the Collection of Residential Waste from Residential Property pursuant to this Agreement.

**1.92 Residential Customer** shall mean a Person that receives or is entitled to receive Residential Collection Service.

**1.93 Residential Customer List** shall mean a list that identifies the Dwelling Units in the Service Area that are entitled to receive Residential Collection Service from the Contractor.

**1.94 Residential Property** shall mean each parcel of Improved Property that is included in the Residential Customer List. Residential Property generally includes each parcel of Improved Property in the Service Area on which there is a Dwelling Unit, including a single-family Dwelling Unit, duplex, triplex, quadraplex, mobile home, or Multi-Family Dwelling; however, the Administrator may determine that some parcels of Improved Property with Dwelling Units (e.g., mixed use buildings that are predominantly commercial) will be excluded from the Residential Customer List and treated as Commercial Property.

**1.95 Residential Waste** shall mean Garbage, Rubbish, Yard Waste, Recyclable Materials, and Bulky Waste generated by a Customer upon the Customer's Residential Property.

**1.96 Roll-Off Container** shall mean a large metal container (i.e., typically with a capacity of 10, 20, 30 or 40 cubic yards) used for the Collection of Solid Waste or Source Separated Recyclable Materials, which is rolled-off of a motor vehicle when the container is placed at a site and then rolled onto the vehicle when the container is ready to be transported to a Solid Waste Management Facility.

**1.97 Route** shall mean the roadways that will be used by one Collection vehicle on a single Operating Day when providing Collection Service. Each Route shall have a designated starting location and time, a designated sequence of streets to be followed when providing Collection Service, and a designated location for finishing.

**1.98 Rubbish** shall mean waste materials (other than Garbage, Yard Waste, and Bulky Waste) resulting from normal housekeeping activities on Residential Property and Commercial Property. Rubbish includes but is not limited to discarded trash, rags, sweepings, packaging, Recyclable Materials that are not source separated, and similar materials.

**1.99 Scheduled Collection Day** shall mean an Operating Day when the Contractor is scheduled to collect a Customer's Source Separated Recyclable Materials or one of the components of the Customer's Residential Waste.

**1.100 Service Area** shall mean the geographic area where the Contractor has a franchise from the Village pursuant to this Agreement. The Service Area is the incorporated area of the Village, as shown on Exhibit 1.

**1.101 Set Out** shall mean the Customer's preparation and placement of Solid Waste and Source Separated Recyclable Materials for Collection at the Customer's Premises, in accordance with the requirements in this Agreement.

**1.102 Side Door Service** shall mean the Collection of Solid Waste and Source Separated Recyclable Materials from a Residential Customer's side yard, back yard, or other location that is not Curbside, pursuant to Section 7.7, below.

**1.103 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 waste having similar characteristics.

**1.104 Solid Waste** shall have the meaning set forth in Section 403.703(36), Florida Statutes, which states that Solid Waste means “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, semi-solid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations.” Solid Waste includes but is not limited to Biological Waste, Biomedical Waste, Bulky Waste, Commercial Waste, Construction and Demolition Debris, Disaster Debris, Electronic Equipment, Garbage, Hazardous Waste, Land Clearing Debris, Radioactive Waste, Recyclable Materials that have not been source separated, Residential Waste, Rubbish, White Goods, and Yard Waste.

**1.105 Solid Waste Management Facility** means any Solid Waste disposal area, volume reduction plant, transfer station, Materials Recovery Facility, or other facility, the purpose of which is resource recovery or the disposal, Recycling, processing, or storage of Solid Waste. The term does not include Recovered Materials processing facilities that meet the requirements of Section 403.7046, Florida Statutes, except the portion of such facilities, if any, which is used for the management of Solid Waste.

**1.106 Source Separated Recyclable Materials** shall mean Recyclable Materials that are separated from the Solid Waste at the location where they are generated (e.g., Residential Property) and then Set Out for Collection at that location.

**1.107 Special Collection Service** shall mean any service requested by a Customer that is in addition to or different than the normal Collection Service provided to similarly situated Customers. Special Collection Services include: (a) the Collection of discarded material at times other than the Customer’s Scheduled Collection Day for such material; (b) the Collection of discarded material in quantities that are greater than the amounts authorized herein for such material; and (c) the services identified in Exhibit 5. The Village also may request Special Collection Service, in addition to the Collection Services it normally receives.

**1.108 Tipping Fee** shall mean a fee that must be paid for the disposal of Solid Waste or other material.

**1.109 Transition Period** shall mean the period of time between the Effective Date and the Commencement Date.

**1.110 Transition Plan** shall mean a document describing in detail the activities that will be undertaken and the schedule that will be followed by the Contractor to ensure the Contractor successfully provides Collection Service in compliance with this Agreement on and after the Commencement Date.

**1.111 Village** shall mean, depending on the context, either (a) the geographic area contained within the boundaries of the incorporated Village or (b) the government of the Village, acting through the Council or the Council’s designees.

**1.112 Village Indemnified Parties** shall mean the Village, the Council and each of its members, and every agent, officer, official, servant, and employee of the Village.

**1.113 White Goods** shall mean large discarded appliances (e.g., refrigerators, ranges, washing machines, clothes dryers, water heaters, freezers, and air conditioners) that are generated by the Customer on the Improved Real Property where the White Goods are collected.

**1.114 Yard Waste** shall mean any vegetative matter resulting from yard and landscaping maintenance, including but not limited to shrub and tree trimmings, bagged grass clippings, palm fronds, and branches. Yard Waste does not include Land Clearing Debris.

**1.115 Yard Waste Cart** shall mean a container that is made of heavy-duty hard plastic or other impervious material, with enclosed sides and a bottom, mounted on two wheels, equipped with a tight-fitting hinged lid, having a capacity of approximately one hundred (100) gallons or less, and used for the automated or semi-automated Collection of Yard Waste.

## **2. CONTRACTOR'S FRANCHISE**

### **2.1 EXCLUSIVE FRANCHISE FOR RESIDENTIAL AND COMMERCIAL COLLECTION SERVICE**

Subject to the conditions and limitations contained in this Agreement, the Contractor is hereby granted an exclusive franchise to provide Residential Collection Service and Commercial Collection Service in the Service Area. The Contractor's franchise includes the exclusive right to collect: (a) Garbage, Rubbish, Yard Waste, Bulky Waste, and Source Separated Recyclable Materials that are generated on Residential Property and collected at Curbside; (b) Garbage, Rubbish, Bulky Waste, and Source Separated Recyclable Materials that are generated on Residential Property (i.e., Multi-Family Dwellings) where the Garbage and Rubbish are collected in Mechanical Containers; and (c) Garbage and Rubbish generated on Commercial Property. The Contractor shall have the sole right to provide these Collection Services in the Service Area. The Contractor shall have the sole responsibility for providing these Collection Services in compliance with the requirements in this Agreement.

### **2.2 NON-EXCLUSIVE FRANCHISE FOR SOURCE SEPARATED RECYCLABLE MATERIALS GENERATED ON COMMERCIAL PROPERTY**

Subject to the conditions and limitations contained in this Agreement, the Contractor is hereby granted a non-exclusive franchise for the Collection of Source Separated Recyclable Materials generated on Commercial Property in the Service Area. At its option, the Village may grant any other Person a non-exclusive franchise, license, or other authorization for the Collection of Source Separated Recyclable Materials generated on Commercial Property in the Service Area.

### **2.3 LIMITATIONS ON THE CONTRACTOR'S FRANCHISE**

This Agreement only grants a franchise for the services and types of Solid Waste that are explicitly addressed herein. No other services or materials are subject to the Contractor's franchise under this Agreement. For example, the Contractor's exclusive franchise does not include Yard Waste generated on (a) Residential Property where Garbage and Rubbish are collected in Mechanical Containers or (b) Commercial Property. Section 21, below, identifies some of the other materials that are not subject to the Contractor's franchise.

### **2.4 ENFORCEMENT OF THE EXCLUSIVE FRANCHISE**

The Village shall determine, in its sole discretion, the measures the Village will use to ensure that the Contractor's exclusive rights under this Agreement are not infringed upon by a third party. The Village also shall determine, in its sole discretion, how and when it will implement those measures. The Contractor shall have no right to compel the Village to undertake any specific action to enforce or maintain the exclusivity of the Contractor's franchise.

### **3. TERM OF THIS AGREEMENT**

#### **3.1 INITIAL TERM OF FRANCHISE AGREEMENT**

This Agreement shall take effect and be binding upon the parties from the Effective Date until the date when this Agreement is terminated or expires. The initial term of this Agreement shall begin on the Effective Date and continue through and including September 30, 2031, unless this Agreement is terminated earlier.

#### **3.2 VILLAGE'S OPTION TO RENEW THE AGREEMENT**

At the end of the initial term, the Village shall have the right to renew this Agreement for one (1) renewal term of five (5) years, unless the Contractor gives written notice to the Manager that the Contractor is not willing to renew this Agreement and such notice is delivered on or before April 1, 2030. During the renewal term (if any), the Village and the Contractor shall be subject to the same conditions and limitations that are contained herein, unless the Village and the Contractor agree otherwise.

### **4. THE SERVICE AREA**

#### **4.1 DESCRIPTION OF THE SERVICE AREA**

The Service Area includes all of the land located within the incorporated areas of the Village. A general map of the Service Area is provided in Exhibit 1. A map of the Central Village is provided in Exhibit 2.

#### **4.2 ADJUSTMENTS TO THE SERVICE AREA**

The boundaries of the Service Area may be adjusted if lands are added to or removed from the Village pursuant to an annexation, interlocal agreement, or similar change after the Effective Date. In such cases, the rights of the Contractor may be revised in accordance with Section 171.062, Florida Statutes, or other Applicable Laws.

The annexation of lands after the Effective Date may require the Contractor to provide Collection Services in the annexed area or, in the alternative, such area may be served by another Person. In either case, the Contractor shall provide its services to the Village (with or without the annexed area) for the Rates established in this Agreement. There shall be no change in the Contractor's Rates if Collection Service in the annexed area is provided by another Person. There also shall be no change in the Contractor's Rates if the boundaries of the Service Area are revised after the Effective Date.

### **5. CONTRACTOR'S OBLIGATIONS PRIOR TO COMMENCEMENT DATE**

#### **5.1 CONTRACTOR'S TRANSITION PLAN**

The Contractor shall ensure that the Customers and the Village do not experience any delay or disruption in service when the Contractor begins to provide its services under this Agreement on the Commencement Date. The Contractor shall prepare and provide the Administrator with a

Transition Plan in compliance with the requirements herein. At a minimum, the Transition Plan shall demonstrate that the Contractor will hire and train the necessary personnel, and procure and prepare the necessary vehicles and equipment, to enable the Contractor to provide its Collection Services in compliance with this Agreement on and after the Commencement Date. The Transition Plan shall contain a detailed description of the steps the Contractor will take, and the schedule for completing each of those steps, as the Contractor prepares for the Commencement Date. Among other things, the Transition Plan shall identify and describe: (a) the number and types of Collection vehicles and Mechanical Containers that the Contractor will need to have in stock at its local equipment yard before the Commencement Date; (b) how and when the Contractor will provide its Mechanical Containers to the Customers; (c) how the Contractor will provide additional personnel, vehicles, and containers to serve the Village if the Contractor needs additional resources on or after the Commencement Date. The Transition Plan is subject to the approval of the Administrator. If requested, the Contractor shall revise the plan within twenty (20) calendar days and resubmit the plan for the Administrator's approval.

## **5.2 DEADLINES FOR THE CONTRACTOR'S TRANSITION PLANNING**

The Contractor shall address the following performance requirements in the Transition Plan and shall accomplish these requirements no later than the following deadlines:

- (a) Within two weeks after the Effective Date, the Contractor and Village shall meet and discuss the concepts to be addressed in the Contractor's Transition Plan and any other matters that will help ensure the successful implementation of the Contractor's Transition Plan.
- (b) On or before June 1, 2021, the Contractor shall provide the Administrator with a Collection Plan, pursuant to Section 23, below, which shall be subject to the approval of the Administrator.
- (c) On or before June 15, 2021, the Contractor shall provide the Administrator with its Transition Plan.
- (d) On or before July 1, 2021, the Contractor shall provide the Administrator with documentation demonstrating that all necessary Collection vehicles, equipment, and Collection Containers have been ordered and will be delivered to the Contractor's equipment yard no later than December 1, 2021.
- (e) On or before August 1, 2021, the Contractor shall provide the Administrator with a detailed plan for the distribution of all Collection Containers that will be provided to (1) Commercial Customers and (2) Customers in Multi-Family Dwellings that will receive Collection Service with Mechanical Containers. This plan shall describe how the delivery of the Contractor's Collection Containers will be coordinated with the removal of the Collection Containers currently being used by the Commercial Customers and Multi-Family Dwellings.



- (f) On or before November 1, 2021, the Contractor shall provide the Administrator with: (1) a written safety plan covering all aspects of the Contractor's operations under this Agreement, in compliance with the requirements of Section 22, below; (2) a Contingency Plan, pursuant to Section 37.4, below; and (c) a copy of the standard form contract that the Contractor intends to use with Commercial Customers, as well as Multi-Family Dwellings that use a Mechanical Container, pursuant to Sections 33.1 and 33.6, below .
- (g) On or before November 15, 2021, the Contractor shall provide the Administrator with electronic (digital) copies of the notices, brochures, and informational material the Contractor intends to provide to Customers concerning the Collection Services it will provide under this Agreement. The notices, brochures, and informational materials shall be designed to satisfy the requirements in Section 35, below. The notices, brochures, and informational materials shall be subject to the Administrator's approval and shall be delivered in compliance with the requirements in Section 35.
- (h) On or before November 20, 2021, the Contractor shall have its supervisors, drivers, and other relevant personnel familiarize themselves with the proposed Routes and schedules for providing Collection Service. The supervisors, drivers, and other relevant personnel shall drive each street on each Route to ensure that the proposed Routes and schedules for Collection Services are appropriate.
- (i) On or before December 1, 2021, the Contractor and the Administrator shall meet and discuss the status of the Contractor's Transition Plan and its implementation. On or before this deadline, the Contractor also shall demonstrate that its computer systems are fully operational and capable of tracking complaints in compliance with the requirements in Sections 31.1.4, below.
- (j) On or before December 1, 2021, the Contractor shall confirm in writing to the Administrator that: (1) all of the vehicles and equipment necessary to provide Collection Service have been delivered to the Contractor's equipment yard; and (2) all of the Collection Containers necessary to provide Collection Service have been delivered to the Contractor's equipment yard.
- (k) On or before December 1, 2021, the Contractor shall confirm in writing to the Administrator that all of the vehicles necessary to provide Collection Service have been registered, licensed, tagged, and equipped, and are ready to perform in compliance with the requirements of this Agreement.
- (l) On or before December 9, 2021, Contractor shall provide the Administrator with: (1) a vehicle list that shows the make, model, year, tare weight, license tag number, and identification number for each Collection vehicle; and (2) a list that shows the identification number and capacity of each Mechanical Container that will be used by the Contractor under this Agreement.
- (m) On or before December 16, 2021, the Contractor shall confirm in writing to the Administrator that: (1) the Contractor has delivered the Village-approved notices, brochures, and informational materials to all of the Commercial Customers and Multi-Family Dwellings that use Mechanical Containers, in compliance with the requirements and deadlines in this Agreement; (2) the Contractor has hired and trained all of the employees needed to provide Collection Service in compliance with the requirements in

this Agreement; (3) all of the Contractor's drivers have inspected their Routes for providing Collection Service; and (4) all of the Contractor's drivers have confirmed their ability to complete their Routes on time on the Scheduled Collection Days.

- (n) On or before December 28, 2021, the Contractor shall confirm in writing to the Administrator that it has delivered all of the Collection Containers needed to provide Collection Service in compliance with this Agreement to: (1) Commercial Customers; (2) Multi-Family Dwellings that use Mechanical Containers; and (3) the Village's facilities and properties identified in Exhibit 9.
- (o) On or before December 28, 2021, the Contractor shall confirm in writing to the Administrator that it has delivered notice to all Residential Customers in compliance with the requirements in Section 35.1, below.

### **5.3 THE CONTRACTOR'S INITIAL SERVICES**

The Contractor shall assign one of its Customer service representatives to work at the Village's offices each Operating Day during the first Operating Month. The Contractor's service representative shall assist the Village in addressing Customer complaints concerning the Contractor's performance. After the first week of operations, the Contractor may request the Administrator to waive the requirements in this Section 5.3 if the Village no longer needs the service representative's assistance with the Legitimate Complaints the Village receives as a result of the Contractor's performance under this Agreement.

## **6. GENERAL SCOPE OF CONTRACTOR'S DUTIES AFTER COMMENCEMENT DATE**

This Section 6 describes the general scope of the Contractor's duties under this Agreement. The general requirements in this Section 6 are supplemented by the specific requirements in other sections of this Agreement. Subject to the conditions contained herein, the Contractor shall:

- (a) provide Residential Collection Service and Commercial Collection Service in the Service Area;
- (b) provide Collection Service for the Village's facilities and Community Events;
- (c) deliver all of the Solid Waste and Source Separated Recyclable Materials it collects under this Agreement to the Designated Facilities;
- (d) pay the applicable Tipping Fees at the Designated Facilities;
- (e) comply at all times with the requirements in this Agreement and Applicable Law;
- (f) provide all labor, services, supervision, materials, equipment, insurance, and other resources necessary to accomplish the Contractor's work under this Agreement; and

- (g) perform all of its work and satisfy all of its obligations under this Agreement at the Contractor's sole expense, in exchange only for the payments by the Village and Customers that are expressly authorized herein.

## **7. CONTRACTOR'S SPECIFIC COLLECTION SERVICES**

### **7.1 GENERAL REQUIREMENTS FOR RESIDENTIAL COLLECTION SERVICE AT CURBSIDE**

The Contractor shall provide the following Residential Collection Services to each Residential Customer that resides in: (a) a single family Dwelling Unit; (b) a duplex; (c) a triplex; (d) a quadraplex; (e) a mobile home; or (f) a Multi-Family Dwelling that cannot or should not receive Collection Service with a Mechanical Container, as determined by the Administrator.

- 7.1.1 The Contractor shall collect each Customer's Garbage and Rubbish at the Curbside twice each week. The Contractor shall provide this Collection Service by using automated or semi-automated equipment and Garbage Carts (i.e., Automated Collection Service).
- 7.1.2 The Contractor shall collect each Customer's Source Separated Recyclable Materials at the Curbside once each week. The Contractor shall provide this service by using manual labor and Recycling Bins.
- 7.1.3 The Contractor shall collect each Customer's Bulky Waste and Yard Waste at the Curbside once each week. Bulky Waste shall be collected using manual methods. Yard Waste shall be collected using Yard Waste Carts and automated or semi-automated equipment (i.e., Automated Collection Service), except in those instances where the Customer does not have a Yard Waste Cart. Yard Waste that is not Set Out in Yard Waste Carts shall be collected by using manual methods.
- 7.1.4 Except as otherwise expressly provided herein, the Contractor shall collect all of the Garbage, Rubbish, Yard Waste, Bulky Waste, and Source Separated Recyclable Materials that are Set Out at Curbside by each Customer. There is no limit on the number of Garbage Carts, Recycling Bins, and Yard Waste Carts that may be Set Out at Curbside by a Residential Customer.
- 7.1.5 The Contractor shall collect all of the Garbage and Rubbish that is Set Out at Curbside in a Customer's Garbage Cart(s). If a Customer with a Garbage Cart also Sets Out a small Plastic Bag or box next to the Customer's Garbage Cart at Curbside, the Contractor shall collect the bag or box, in addition to the contents of the Garbage Cart. The Contractor shall place a Non-Collection Notice on any Garbage Cans, containers, or materials that it leaves at Curbside and the Contractor shall comply with the applicable requirements in Sections 15.1, 15.5, and 15.7, below.

### **7.2 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR RECYCLABLE MATERIALS**

The Contractor shall collect all of the Source Separated Recyclable Materials that Residential Customers Set Out in Recycling Bins or paper bags at Curbside, except as otherwise provided in Section 77, below. The Contractor also shall collect Source Separated Recyclable Materials that

are placed at Curbside in containers that are similar to the Village's Recycling Bins. Further, the Contractor shall collect cardboard that is Set Out at Curbside if the cardboard is cut into pieces no larger than three (3) feet by three (3) feet in size.

The Contractor shall collect Source Separated Recyclable Materials at Curbside in a "dual stream" – i.e., Fiber Products shall be collected in one Recycling Bin and a second Recycling Bin shall be used for the Collection of Recyclable Containers and other Program Materials. When the Contractor collects Source Separated Recyclable Materials at the Curbside, and when the Contractor transports the materials to the Designated Facility for Recycling, the Contractor shall not mix the different types of material together. The Contractor shall place these two different categories of Recyclable Materials into separate compartments in the Contractor's Collection vehicles.

### **7.3 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR BULKY WASTE**

7.3.1 Subject to the limitations herein, the Contractor shall collect all of the Bulky Waste that is Set Out at Curbside by Residential Customers. There is no limit on the size, weight, or quantity of Bulky Waste that shall be collected, except (a) as provided in Section 7.3.2, below, and (b) the Contractor is not obligated to collect any item of Bulky Waste that is too large or too heavy to safely pick-up and transport in a clamshell truck.

7.3.2 If a Residential Customer places Construction and Demolition Debris at the Curbside, the Contractor shall collect the Construction and Demolition Debris as Bulky Waste, but the Contractor is not required to collect more than two (2) cubic yards of Construction and Demolition Debris from any Residential Customer on any Scheduled Collection Day. If a Residential Customer Sets Out more than two (2) cubic yards of Construction and Demolition Debris for Collection, the Contractor may leave all of the Customer's Construction and Demolition Debris at Curbside. If the Contractor elects to leave part or all of the Construction and Demolition Debris at Curbside, the Contractor shall: (a) place a Non-Collection Notice on the Construction and Demolition Debris or on the Customer's door knob, in compliance with Section 15.1, below; (b) take time and date-stamped photographs showing the volume of Construction and Demolition Debris at Curbside; and (c) notify the Administrator about the Construction and Demolition Debris. The Contractor's notice shall be sent to the Administrator via e-mail before the end of the Operating Day when the Construction and Demolition Debris was left at Curbside. The Contractor's notice shall contain the street address where the Construction and Demolition Debris is located, an estimate of the amount of Construction and Demolition Debris at Curbside, and the Contractor's photographs of the Construction and Demolition Debris.

### **7.4 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR YARD WASTE**

7.4.1 Subject to the limitations herein, the Contractor shall collect all of the Yard Waste that is Set Out at Curbside by each Residential Customer. Yard Waste that is Set Out at Curbside shall be collected if it is in Yard Waste Carts, Garbage Cans, biodegradable bags, or Plastic Bags. Yard Waste also shall be collected if it is tied, bundled, or stacked in piles at Curbside.

- 7.4.2 There is no limit on the amount of Yard Waste that may be Set Out at Curbside by Residential Customers. The Contractor shall collect each palm frond, regardless of the length or weight of the palm frond. However, the Contractor is not required to collect any other single piece of Yard Waste that exceeds six (6) feet in length, ten (10) inches in diameter, or fifty (50) pounds in weight. The Contractor is not required to collect Land Clearing Debris.
- 7.4.3 The Contractor shall collect any natural Christmas tree that is Set Out at Curbside, unless the Christmas tree exceeds eight (8) feet in length or fifty (50) pounds in weight.
- 7.4.4 If the Contractor elects to leave any Yard Waste or Land Clearing Debris at Curbside, the Contractor shall place a Non-Collection Notice on the remaining material or on the Customer's doorknob, in compliance with Section 15.1, below.
- 7.4.5 The Contractor shall not collect Yard Waste and Bulky Waste in the same vehicle; Bulky Waste and Yard Waste shall be collected in separate vehicles.

## **7.5 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR TIRES**

The Contractor shall collect automobile tires that are removed from the rim and Set Out at Curbside for Collection as Bulky Waste, but the Contractor is not required to collect more than two (2) automobile tires from any Residential Customer on any Operating Day. The Contractor is not required to collect more than four (4) automobile tires from any Residential Customer in any Operating Year. A Non-Collection Notice shall be provided to the Customer in compliance with Section 15.1 if the Contractor leaves any automobile tires at the Customer's Premises.

## **7.6 RESIDENTIAL COLLECTION SERVICE AT CURBSIDE FOR EXCESS AND OVERSIZED MATERIALS**

This Agreement does not require the Contractor to collect the following materials at Curbside from any Residential Customer on a single Operating Day: (a) Construction and Demolition Debris that exceeds two (2) cubic yards; (b) more than two (2) automobile tires; or (c) any item of Yard Waste that exceeds the size and weight limits in Section 7.4, above. At its option, however, the Contractor may collect such materials as part of its routine Collection Service for Residential Customers. The Contractor also may collect such materials as a Special Collection Service pursuant to Section 7.12, below.

## **7.7 RESIDENTIAL SIDE DOOR SERVICE**

The Contractor shall provide Side Door Service to a Residential Customer, without charging any additional Rate or fee for such service, if the Administrator determines that the Residential Customer is physically unable to deliver its Garbage, Rubbish, and Recyclable Materials to the Curbside and there are no able-bodied people living with the Residential Customer. The Administrator shall require a letter or other documentation from a physician before the Administrator concludes that a Residential Customer is entitled to receive Side Door Service, without paying an additional charge.

## **7.8 RESIDENTIAL COLLECTION SERVICE FOR MULTI-FAMILY DWELLINGS**

Pursuant to Section 11.1, below, the Administrator shall determine whether a Customer residing in a Multi-Family Dwelling must Set Out their Garbage and Rubbish in a Garbage Cart at Curbside or in a Mechanical Container. If a Residential Customer resides in a Multi-Family Dwelling and receives Collection Service at Curbside, the Contractor shall serve that Customer in compliance with the provisions in Sections 7.1 through 7.7, above.

The Contractor shall provide the following services to each Residential Customer that resides in a Multi-Family Dwelling and receives Collection Service with a Mechanical Container:

- 7.8.1 The Contractor shall collect all of the Garbage and Rubbish that the Customer places in the Mechanical Container used to provide Collection Service at the Customer's Premises. This Collection Service shall be provided at least two (2) times each week, unless the Customer requests less frequent Collection Service. In all cases, the Contractor shall provide Collection Services for Garbage and Rubbish at least once each week.
- 7.8.2 The Contractor shall provide centrally located Recycling Carts or other Recycling Containers for those Customers that reside in Multi-Family Dwellings and use Mechanical Containers for the disposal of Garbage and Rubbish. The Contractor shall collect all of the Source Separated Recyclable Materials that are placed into the Recycling Containers, except as otherwise provided in Section 77, below. Source Separated Recyclable Materials shall be collected at least once each week at each Multi-Family Dwelling that uses Mechanical Containers for the disposal of Garbage and Rubbish.
- 7.8.3 The Contractor shall collect all of the Bulky Waste that is placed outside of the Mechanical Containers used at a Multi-Family Dwelling. There is no limit on the size, weight, or quantity of Bulky Waste that may be Set Out. Bulky Waste shall be collected at least once each week at each Multi-Family Dwelling.
- 7.8.4 The Contractor is not obligated by this Agreement to provide a separate Collection Service for Yard Waste that is generated at a Multi-Family Dwelling where Mechanical Containers are used for the Collection of Garbage and Rubbish.

## **7.9 COLLECTION OF GARBAGE AND RUBBISH FROM COMMERCIAL PROPERTY**

- 7.9.1 The Contractor shall collect Garbage and Rubbish from each Commercial Customer in the Service Area. This Collection Service shall be provided at least once each week for each Commercial Customer.
- 7.9.2 The Contractor shall use Mechanical Containers to provide Commercial Collection Service for Garbage and Rubbish. However, the Contractor shall allow a Commercial Customer to Set Out its Garbage and Rubbish in Garbage Carts if the Commercial Customer generates less than two (2) cubic yards of waste each week. The Contractor shall collect all of the Garbage and Rubbish that is Set Out in Mechanical Containers and Garbage Carts by Commercial Customers, but the Contractor is not obligated to collect Garbage or Rubbish that is not placed in a Mechanical Container or Garbage

Cart (i.e., the Contractor does not need to collect such waste materials if they are placed outside the container).

**7.10 COLLECTION OF SOURCE SEPARATED RECYCLABLE MATERIALS FROM COMMERCIAL PROPERTY**

The Contractor shall collect Source Separated Recyclable Materials from Commercial Property when such service is requested by a Commercial Customer, except as otherwise provided in Section 77, below. The Contractor may offer to collect Source Separated Recyclable Materials from any Person that owns or occupies Commercial Property in the Service Area. With regard to such Customers, the Contractor may collect Program Materials, such as Recyclable Containers, Office Paper, Mixed Paper, and corrugated cardboard.

**7.11 COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS, BULKY WASTE AND YARD WASTE FROM COMMERCIAL PROPERTY**

The Contractor shall collect Construction and Demolition Debris, Bulky Waste, and Yard Waste, if a Commercial Customer requests the Contractor to collect one or more of these materials and agrees to pay the applicable Rate. However, the Contractor shall not have the exclusive right to collect Construction and Demolition Debris, Bulky Waste, or Yard Waste from Commercial Customers in the Service Area. The Collection of these materials from Commercial Customers shall be a Special Collection Service.

**7.12 SPECIAL COLLECTION SERVICES**

The Contractor shall provide Special Collection Services for Residential Customers and Commercial Customers. The Special Collection Services for Residential Customers include the Collection of excess and oversized material pursuant to Section 7.6, and the Collection of any type of Solid Waste on a day that is not the Customer's Scheduled Collection Day for that type of waste. Similarly, the Contractor shall provide Special Collection Services for Commercial Customers, including but not limited to the services identified in Section 7.11 and Exhibit 5. The Contractor shall be paid for Special Collection Services pursuant to Section 39.10, below.

**7.13 COLLECTION SERVICES FOR THE VILLAGE**

The Contractor shall provide Collection Services for the Village in compliance with the requirements in Section 36, below.

**8. HOURS AND DAYS OF CONTRACTOR'S COLLECTION SERVICES**

**8.1** The Contractor may provide Collection Service to Residential Customers every day of the year, except Sundays and Holidays (as defined in Section 1.50, above). The Contractor shall offer, and upon request shall provide, Collection Services to Commercial Customers every day of the year, except Sundays and Holidays.

**8.2** The Contractor shall not provide Residential Collection Service at any location before 7:00 a.m. or after 6:30 p.m. The Contractor may provide Commercial Collection Service at any time that is acceptable to the Commercial Customer; however the Contractor shall not provide Collection Service with a Mechanical Container at any location within one hundred fifty (150) yards of a

residential Dwelling Unit before 7:00 a.m. or after 6:30 p.m.

- 8.3** If the Village receives complaints about the noise or disturbance caused by the Contractor's Collection Services at a particular location, the Administrator may restrict the times for the Contractor's Collection Services at that location to the hours between 7:00 a.m. and 6:30 p.m., without increasing the Contractor's Rates.
- 8.4** Notwithstanding anything else contained herein, the hours and days of Collection Service may be extended or modified (a) when such change is requested by the Contractor and approved in advance by the Administrator and (b) when the Administrator determines that such change is necessary or otherwise appropriate to protect the public health, safety, or welfare.

## **9. SCHEDULES AND ROUTES FOR COLLECTION SERVICES**

### **9.1 SCHEDULES AND ROUTES**

The Contractor shall establish Routes and schedules that satisfy the requirements of this Agreement and maximize the efficiency of the Contractor's operations. The Routes established under this Agreement shall be separate from the Routes the Contractor uses for the Collection of Solid Waste generated outside of the Service Area (e.g., in the unincorporated area of Palm Beach County; in another municipality). The Contractor shall submit its proposed Routes and schedules to the Administrator as part of the Collection Plan that is required pursuant to Section 23, below. The proposed Routes and schedules shall be subject to the Administrator's approval. After the Contractor's Collection Plan is approved by the Administrator, the Contractor shall provide Collection Service in accordance with the approved Routes and schedules in the Collection Plan. The Administrator may waive one or more of the requirements in this Section 9.1 if the Administrator concludes that a waiver is in the public interest.

### **9.2 SCHEDULED COLLECTION DAYS FOR BULKY WASTE, YARD WASTE, AND SOURCE SEPARATED RECYCLABLE MATERIALS**

The following requirements apply to the Contractor's Collection of a Residential Customer's materials at Curbside. These requirements do not apply to the Collection of Residential Waste in Mechanical Containers.

- 9.2.1** All of the Residential Customers in the Central Village shall receive Collection Service for Bulky Waste and Yard Waste on one of the Operating Days.
- 9.2.2** The Contractor shall collect a Residential Customer's Source Separated Recyclable Material on either one of the two (2) Scheduled Collection Days each week for the Collection of that Customer's Garbage and Rubbish.

### **9.3 SCHEDULES FOR TWICE WEEKLY SERVICE**

Whenever the Contractor is required to provide a Collection Service two (2) times each week pursuant to this Agreement, the Scheduled Collection Days for that service shall be seventy-two (72) hours apart, unless the Administrator approves a different schedule. For example, a Residential Customer shall receive Collection Service at Curbside for Garbage on Monday and Thursday, or Tuesday and Friday, or Wednesday and Saturday.



## **10. CHANGES TO COLLECTION SCHEDULES AND ROUTES FOR RESIDENTIAL SERVICE**

### **10.1 NO CHANGES WITHOUT ADMINISTRATOR'S APPROVAL**

After the Commencement Date, the Contractor shall not change a Route or a schedule for Residential Collection Service unless the Contractor receives the Administrator's written approval for the proposed change. The Contractor shall submit a description of all proposed Route and schedule changes to the Administrator at least thirty (30) calendar days prior to the implementation of such changes to Residential Collection Services.

### **10.2 HOLIDAY SCHEDULES**

10.2.1 The Contractor is not required to provide Collection Service on a Holiday (e.g., Thanksgiving Day or Christmas Day).

10.2.2 If a Residential Customer receives Collection Service at Curbside, and the Customer's Scheduled Collection Day for Garbage falls on a Holiday, the Contractor may delay the Collection of the Customer's Garbage until the first Scheduled Collection Day for the Collection of the Customer's Garbage following the Holiday. Consequently, the Customer will receive Collection Service for Garbage only one time during the week of the Holiday. If the Residential Customer's Scheduled Collection Day for Source Separated Recyclable Material falls on a Holiday, the Contractor shall collect the Customer's Source Separated Recyclable Material at Curbside on the first Operating Day after the Holiday.

10.2.3 If a Residential Customer receives Collection Services at Curbside and the Customer's Scheduled Collection Day for Bulky Waste or Yard Waste falls on a Holiday, the Contractor may delay the Collection of such waste until the next Scheduled Collection Day for that type of material. Consequently, the Customer will not receive Collection Service for such material until the week after the Holiday.

10.2.4 If a Residential Customer receives Collection Service with a Mechanical Container and the Customer's Scheduled Collection Day for Garbage or Source Separated Recyclable Materials falls on a Holiday, the Contractor shall provide Collection Service to the Customer on the first Operating Day after the Holiday.

10.2.5 Notwithstanding the provisions in Section 10.2.2, 10.2.3, and 10.2.4, the Contractor may propose and the Administrator may approve alternate schedules for the Collection of Residential Waste immediately before and after a Holiday.

### **10.3 PUBLIC NOTICE OF CHANGES**

If the Administrator approves a change in the Contractor's schedules or Routes, the Contractor shall provide all affected Customers with notice of the change and shall comply with the requirements in Section 35, below, unless a different notice is authorized by the Administrator.

#### **10.4 NOTICE OF TEMPORARY DELAYS**

The Contractor shall inform the Administrator about any event (e.g., disabled trucks, accidents, or shortage of staff) that will cause delays in the Contractor's normal Collection Schedule and the Contractor shall provide such notice within two (2) hours of the event.

#### **10.5 NO DELAYS EXCUSED FOR FLUCTUATIONS IN SOLID WASTE QUANTITIES**

The quantity of Solid Waste generated in the Village may fluctuate during an Operating Year and from year-to-year. These fluctuations will not justify or excuse a failure by the Contractor to provide Collection Service in compliance with the approved schedules and Routes. The Contractor is responsible for the timely Collection of all of the Solid Waste and Recyclable Material that is Set Out on the Scheduled Collection Days, subject to the conditions herein, regardless of any fluctuations in the amount of material that is Set Out.

### **11. ADMINISTRATOR'S AUTHORITY TO CHANGE COLLECTION SERVICE**

- 11.1** The Administrator shall have the exclusive authority to determine whether a Multi-Family Dwelling shall receive Collection Service at Curbside or, in the alternative, Collection Service with a Mechanical Container. For example, the Director may require the Contractor to provide Collection Service at Curbside for a Multi-Family Dwelling in cases where the Administrator determines that (a) there is insufficient access or space for a Mechanical Container or (b) other site specific factors make the use of a Mechanical Container inappropriate.
- 11.2** If a Customer will receive Collection Service with a Mechanical Container, the Contractor and Customer initially shall determine the size of the Collection Container that will be used and the frequency of the Collection Service, but Collection Service with Mechanical Containers shall be provided: (a) at least once each week for all Customers; and (b) at least twice each week for all Residential Customers. However, the Administrator may approve less frequent Collection Service if the Contractor or Customer demonstrates to the Administrator's satisfaction that less frequent service will not cause objectionable odors or other nuisance conditions. The Administrator shall authorize less frequent Collection Service for the Collection of Construction and Demolition Debris.
- 11.3** The Administrator shall have the right to increase or decrease the frequency of any Collection Service, and the size and number of the Collection Containers, used by any Customer. The size of the Collection Container and the frequency of Collection Service provided to a Customer shall be sufficient to ensure that the Collection Container is not overfilled, and Solid Waste is not placed outside the Collection Container, between Scheduled Collection Days. If necessary, the Village may initiate a Code enforcement proceeding against the Customer to ensure that the Customer receives an appropriate level of service.
- 11.4** If the Contractor and the Customer cannot agree about the size of the Collection Container or the frequency of Collection Service, the Contractor or the Customer may notify the Administrator about their dispute. In such cases, the Administrator shall determine whether it is necessary to change the frequency of service or the size of the Collection Container, and the Contractor shall provide its service in compliance with the Administrator's determination. The Customer shall pay the appropriate Rates for the Contractor's Collection Service, whether the level of service is increased or decreased.

## **12. THE RESIDENTIAL CUSTOMER LIST**

- 12.1** The Village shall prepare a Residential Customer List, which identifies each Dwelling Unit that is entitled to receive Residential Collection Service from the Contractor pursuant to this Agreement. No later than ninety (90) days before the Commencement Date, the Village shall provide its preliminary Residential Customer List to the Contractor. The preliminary Residential Customer List shall be based on the Village's list of people and Improved Property that currently are included in the assessment roll used by the Authority to assess and collect a non-ad valorem special assessment in the Village for disposal services. The preliminary Residential Customer List shall be subject to any additions or deletions deemed appropriate by the Village. If the Contractor believes the Residential Customer List is inaccurate or incomplete, the Contractor shall promptly notify the Administrator about any proposed additions, deletions, or other revisions to the Residential Customer List. All such additions, deletions, and revisions shall be provided to the Administrator at least thirty (30) days before the Commencement Date.
- 12.2** The Contractor shall have an affirmative duty to help ensure that the Residential Customer List is accurate at all times after the Commencement Date. The Contractor shall notify the Village within five (5) Operating Days if the Contractor begins to provide Residential Collection Service to a parcel of Improved Property that is not on the Residential Customer List. The Contractor also shall notify the Village within five (5) Operating Days if the Contractor identifies a parcel of Improved Property that should be added to or deleted from the Residential Customer List.
- 12.3** The Village shall notify the Contractor promptly after (a) a Certificate of Occupancy is issued by the Village for a new Dwelling Unit that should be added to the Residential Customer List and (b) the Village determines it is time to provide Collection Service to such Dwelling Unit. After receiving this notification, the Contractor shall begin to provide Residential Collection Service to the Dwelling Unit within three (3) Operating Days, except as otherwise provided herein.
- 12.4** The Village shall notify the Contractor if the Village wants the Contractor to terminate its Residential Collection Service to a Dwelling Unit. The Contractor shall terminate its Residential Collection Service within three (3) Operating Days after receiving the Village's notice.
- 12.5** The Village shall update the Residential Customer List at least once each Operating Month. The Village shall adjust the Residential Customer List to correspond with the occupancy of existing and new buildings, as well as the demolition of old buildings. A new Dwelling Unit shall be deemed to be occupied when a Certificate of Occupancy has been issued and the Village requests the Contractor to provide Collection Service to the New Dwelling Unit. At a minimum, the updated Residential Customer List shall identify the changes in occupancy that occurred two (2) months before the update occurred. For example, when the list is updated in June of each Operating Year, the list shall at least reflect the addition of new buildings and the demolition of old buildings in April of the same year.

### **13. PROPER COLLECTION PROCEDURES FOR CONTRACTOR**

- 13.1** When providing Collection Services, the Contractor shall thoroughly empty the Customer's Collection Containers and return them in an upright position to the location where they were placed by the Customer. The Contractor shall not place a Collection Container in a location where the container blocks vehicular access to a driveway.
- 13.2** After the Contractor empties a Collection Container that has a lid, the Contractor shall place the lid back on top of the Collection Container or close it securely.
- 13.3** The Contractor shall handle Collection Containers carefully and in a manner to prevent damage. Garbage Cans, Garbage Carts, Yard Waste Carts, Recycling Containers, and their lids shall not be tossed or thrown by the Contractor.
- 13.4** The Contractor shall provide Collection Service with as little noise and disturbance as possible.
- 13.5** The Contractor shall be responsible for the proper handling of any White Goods and Electronic Equipment that the Contractor collects. The Contractor shall take appropriate steps to minimize the release of Freon, coolants, and other similar materials from White Goods. Among other things, the Contractor shall not crush or compact any White Goods or Electronic Equipment that the Contractor collects, if such materials are Set Out separately for Collection. However, a Customer is not required to remove Freon, coolants, or other similar materials from White Goods before the White Goods are Set Out, and the Contractor is not required to remove such materials from the White Goods before the White Goods are collected.

### **14. RESTRICTIONS ON COLLECTION OF MIXED LOADS**

- 14.1** During the Collection process, Garbage and Rubbish may be combined by the Contractor.
- 14.2** During the Collection process, the Contractor shall not combine Source Separated Recyclable Materials and Electronic Equipment with each other or with any other type of material. However, the Contractor shall have no obligation to separate these materials if the Customer placed them in a Collection Container with Garbage or other types of Solid Waste.
- 14.3** During the Collection process, the Contractor shall collect Source Separated Recyclable Materials in a "dual stream" and shall keep the two different categories of Source Separated Recyclable Materials in separate compartments of the Collection vehicle, as described in Section 7.2, above.
- 14.4** During the Collection process, Bulky Waste and Yard Waste shall be collected separately by the Contractor and shall not be mixed together in the Collection vehicles. The Contractor shall not combine Bulky Waste or Yard Waste with Garbage, Rubbish, Source Separated Recyclable Materials, or Electronic Equipment.
- 14.5** During the Collection process, the Contractor shall not combine Residential Waste collected in the Service Area with Solid Waste or other materials collected outside of the Service Area.
- 14.6** During the Collection process, the Contractor shall not combine Residential Waste collected in the Service Area with Commercial Waste.

- 14.7** The Contractor shall not collect Source Separated Recyclable Materials with a vehicle that is used for the Collection of Solid Waste.
- 14.8** Notwithstanding the foregoing, the Administrator may grant relief from all of the restrictions in this Section 14, and thus allow the Contractor to combine different types of Solid Waste and Recyclable Materials, if the Administrator determines that this practice will be in the public interest. In such cases, the Contractor shall file a request for relief with the Administrator, describing the specific procedures that will be established to properly account and pay for the management of the mixed materials. The Administrator may grant or deny the request, in the Administrator's sole discretion.

## **15. NON-COLLECTION PROCEDURES**

- 15.1** The Contractor shall place a Non-Collection Notice on a Customer's Collection Container if the Contractor decides that the Contractor will not collect the Customer's waste because the waste was not Set Out in compliance with the applicable requirements in this Agreement. If the Contractor does not place a Non-Collection Notice on the Customer's Collection Container, and fails to collect the materials in the Customer's Collection Container, the Administrator may require the Contractor to return to the Customer's Premises promptly and collect the waste. If the Administrator notifies the Contractor before 12 p.m. (noon), the Collection shall be completed before the end of that Operating Day. If the Administrator notifies the Contractor after 12:00 p.m. (noon), the Collection shall be completed before noon on the next Operating Day.
- 15.2** The Contractor is responsible for determining whether a Customer's Recycling Container contains Contaminated Recyclable Material. The Contractor may leave the Contaminated Recyclable Material in the Recycling Container, but if the Contractor does, the Contractor shall immediately place a Non-Collection Notice on the container, explaining why the material was not collected.
- 15.3** The Contractor shall not collect Residential Waste or Commercial Waste from a Customer if the Contractor believes the Residential Waste or Commercial Waste contains Hazardous Waste, Radioactive Waste, or Biomedical Waste. In such cases, the Contractor shall place a Non-Collection Notice on the Collection Container, take photographs of the improper waste (if possible), and immediately notify the Field Supervisor. If the generator of such waste is unknown, the Contractor shall work with the Administrator to identify the generator and identify an appropriate method to remove and dispose of the waste in a lawful manner.
- 15.4** If a Collection Container is temporarily inaccessible, the Contractor shall provide Collection Service later the same Operating Day, whenever feasible. If it is not feasible, the Contractor shall leave a Non-Collection Notice and provide Collection Service on the next Operating Day.
- 15.5** The Contractor shall notify the Administrator about any Customer that routinely fails to comply with the Set Out requirements in this Agreement. For example, the Contractor shall notify the Administrator if a Residential Customer routinely places: (a) Garbage-filled Plastic Bags outside of their Garbage Cart; (b) more waste at the Curbside than is allowed under Section 7.3.2 or Section 7.5; (c) pieces of Yard Waste at Curbside that exceed the limits in Section 7.4.2; or (d) Contaminated Recyclable Material in their Recycling Container.
- 15.6** The design and content of the Non-Collection Notices shall be developed by the Contractor, but shall be subject to the approval of the Administrator. At a minimum, the Non-Collection Notices shall contain the following information: (a) the issuance date; (b) the Contractor's reason for not

providing Collection Service; (c) information advising the Customer how to correct the problem; and (d) the telephone number to call if the Customer has any questions for the Contractor.

- 15.7** The Contractor shall make a good faith effort to collect the Solid Waste that is Set Out for Collection, even if some inappropriate material is comingled with it. For example, if a Residential Customer places Bulky Waste or Yard Trash at the Curbside, but also places a Plastic Bag filled with Garbage on top of the Bulky Waste or Yard Trash, the Contractor shall set aside the Plastic Bag and collect the other materials. However, if a Customer has comingled Garbage with Yard Waste or Bulky Waste to such an extent that it is not practicable to segregate the materials, the Contractor shall place a Non-Collection Notice on the materials and promptly notify the Administrator concerning the location and estimated size of the pile of combined materials. If the Contractor fails to leave a non-Collection Notice and notify the Administrator, the Contractor may be required to collect the pile of combined materials pursuant to Section 15.1, above.

## **16. PROCEDURES FOR MISSED COLLECTIONS**

Whenever the Administrator or a Customer notifies the Contractor about a Missed Collection, the Contractor shall promptly return to the Customer's Premises and collect all of the Residential Waste, Commercial Waste, or Source Separated Recyclable Material (as the case may be) that has been Set Out for Collection. The Contractor shall collect such materials before the end of that Operating Day if the Contractor is notified before 12 p.m. (noon). If the Contractor is notified after noon, the Collection of such materials shall be completed before noon on the next Operating Day. However, the requirements in this Section 16 shall not apply if the Contractor presents photographs, GPS data, or other relevant information and thus demonstrates to the Administrator's reasonable satisfaction that the Contractor provided timely Collection Service to the Customer, but the Customer failed to Set Out their Residential Waste, Commercial Waste, or Source Separated Recyclable Material in a timely manner.

## **17. PROTECTION OF PRIVATE AND PUBLIC PROPERTY**

- 17.1** The Contractor's employees shall not trespass on private property; provided, however, the Contractor's employees may walk on a Customer's property when providing Collection Service (e.g., Side Door Service) pursuant to this Agreement. The Contractor's employees shall follow the sidewalk for pedestrians and shall not cross a Customer's property to an adjoining property, unless the occupants or owners of both properties have given permission. The Contractor's employees shall not loiter on or meddle with any property of any other Person.
- 17.2** The Contractor's employees shall not damage any public or private property, including but not limited to roads, driveways, sidewalks, utilities, mailboxes, trees, flowers, shrubs, grass, and Collection Containers.
- 17.3** The Contractor shall not damage trees in the Village. Among other things, the Contractor shall not drive large vehicles on narrow streets, or drive tall vehicles under overhanging limbs, where the vehicles will break or damage the tree limbs. The Contractor also shall not damage tree trunks or roots when collecting Yard Waste or other materials (e.g., when Collecting Yard Waste with a clamshell bucket).
- 17.4** The Contractor shall promptly restore the soil, sod, and grade at any location where the Contractor's Collection of Yard Waste or other material creates a depression that is six (6) inches or more below the surrounding grade (e.g., when collecting Yard Waste with a clamshell bucket).

The Contractor shall fill such depressions, restore the grade to match the surrounding area, and replace any sod that has been destroyed by the Contractor's actions.

- 17.5** The Contractor shall instruct its employees concerning the proper procedures to be followed when there is an accident involving damages to public or private property. At a minimum, if the Contractor's employee causes such damage, the employee shall immediately notify the Field Supervisor and the property owner. If the property owner is not known or readily identifiable, the driver shall leave a notice that includes the Contractor's name and phone number.
- 17.6** The Contractor shall be responsible for all damages, costs, and liabilities associated with the repair, restoration, or replacement of any property that has been damaged by the Contractor's equipment, employees, or agents, to the extent that such damage was caused by or results from the actions of the Contractor, its employees, or agents. The Contractor shall promptly investigate and respond to any claim concerning property damage. If the Administrator or a Customer notifies the Contractor before 12 p.m. (noon) concerning any such damage, the Contractor shall investigate and respond to the Administrator and Customer before the end of that day. If the Administrator or a Customer notifies the Contractor after noon, the Contractor shall investigate and respond to the Administrator and Customer before noon on the next Operating Day. The Contractor shall repair any damage within three (3) Operating Days, unless the Contractor requests and the Administrator grants approval of an extension of time. If the Contractor uses continuous and diligent efforts to meet the deadlines in this Section 17.6 but nonetheless is unable to comply, the Administrator shall grant reasonable extensions of time for the work required herein. Any disputes concerning the Contractor's obligations for the repair of property damages shall be resolved by the Administrator. In all cases, the Contractor shall be required to restore the public or private property to a condition that is at least equal to the condition that existed before the damage occurred. If the Contractor fails to complete the repair or restoration work within the timetable specified by the Administrator, the Village may hire a third party to perform the work and then deduct the cost of the work from the Village's payments to the Contractor.
- 17.7** In all cases, the Contractor may submit photographs, GPS data, or other relevant information to demonstrate that the Contractor did not cause the damage. The Administrator shall fairly consider all such information before the Administrator decides whether the Contractor must undertake any repairs or other work pursuant to this Section 17.
- 17.8** The Contractor shall not be liable for damages to the Village's streets caused by the weight of the Contractor's trucks and equipment, except to the extent of the Contractor's negligence, wrongful action, or breach of this Agreement. The Contractor shall not be liable for damages to a Customer's driveway, access way, or pad for a Mechanical Container that occur while the Contractor is providing Collection Service to the Mechanical Container, if the damages are caused solely by the weight of the Contractor's truck and/or Mechanical Container, except to the extent of the Contractor's negligence, wrongful action, or breach of this Agreement.

## **18. CONTRACTOR'S ACCESS TO STREETS AND COLLECTION CONTAINERS**

- 18.1** Except as otherwise provided herein, the Contractor shall have the right to use all of the public roadways in the Village.

- 18.2** The Contractor shall use suitable vehicles and equipment (e.g., smaller trucks), as necessary, to provide Collection Service on narrow and dead-end streets, unpaved streets, private roads, and other areas where access is limited.
- 18.3** The Contractor's vehicles shall not enter or drive upon any private driveway or Improved Property, to turn around or for any other purpose, unless the Contractor has received the owner's prior written permission to do so.
- 18.4** The Contractor's vehicles shall not unreasonably interfere with vehicular or pedestrian traffic. The Contractor's vehicles shall not be left unattended on streets or alleys.
- 18.5** The Village reserves the right to deny the Contractor's vehicles access to certain streets, alleys, bridges, and roadways when the Village is repairing such areas or the Village otherwise determines it is in the public's best interest to restrict access. The Village shall provide the Contractor with reasonable notice of such restrictions so that the Village's action does not unduly interfere with the Contractor's normal operations.
- 18.6** If the Contractor cannot provide Collection Service to a Customer because a public or private street is temporarily closed to vehicular traffic, the Contractor shall return no later than the next Operating Day to provide service to the Customer. If the street is still closed at that time, Contractor shall provide Collection Service to the Customer on the next Scheduled Collection Day.
- 18.7** If access to a street, alley, bridge, or public or private roadway becomes impassable or if access is denied for any reason, the Contractor shall work with the Customer to determine a mutually acceptable location for the Collection of the Customer's waste. If a mutual agreement cannot be reached, the Contractor shall provide Collection Service from the nearest public roadway that is accessible by the Contractor's Collection vehicle or from a location specified by the Administrator.
- 18.8** If the Contractor encounters a Customer or situation (e.g., dogs; narrow streets; low-hanging electrical wires) that prevents the Contractor from gaining the access needed to provide the Collection Service required in this Agreement, and the Contractor is unable to resolve the issue with the Customer, then the Contractor shall report the problem to the Administrator and the Administrator shall resolve the problem. The Contractor and the Customer shall take such action as the Administrator deems necessary and appropriate to enable the Contractor to provide Collection Service to the Customer.

## **19. THE VILLAGE'S DESIGNATED FACILITIES**

- 19.1** The Contractor shall deliver all of the Residential Waste, Commercial Waste, and Source Separated Recyclable Materials collected pursuant to this Agreement to a Designated Facility.
- 19.2** The Designated Facilities for Residential Waste, Commercial Waste, and Source Separated Recyclable Materials shall be the Solid Waste Management Facilities that are described in the Interlocal Agreement. In general, such facilities are operated by, on behalf of, or for the benefit of the Authority and licensed to accept such waste and materials.
- 19.3** The requirements in this Section 19 do not apply to: (a) Recovered Materials that the Contractor collects from Commercial Customers; or (b) Exempt Waste, as described in Section 21, below.



## **20. SPILLAGE AND LITTER BY CONTRACTOR**

- 20.1** The Contractor shall not cause or allow any Solid Waste, liquid, or other material to be spilled, released, or otherwise dispersed in the Village as a result of the Contractor's activities.
- 20.2** The Contractor shall immediately pick up any spillage or litter from Collection Containers that is caused by the Contractor.
- 20.3** When hauling or transporting any material over public roads in the Village, the Contractor shall use a covered or enclosed vehicle or other device to prevent the material from falling, blowing, or escaping from the vehicle. If Solid Waste or any other material escapes from or is scattered by Contractor's vehicle for any reason, Contractor shall immediately stop and pick up such material.
- 20.4** The Contractor's vehicles shall not release or cause litter in violation of the Florida Litter Law (Section 403.413, Florida Statutes) or the Ordinances. If litter is released or falls from the Contractor's vehicle for any reason, the Contractor shall immediately stop the vehicle and retrieve the litter.
- 20.5** The Contractor shall immediately clean up any oil, hydraulic fluid, or other liquid that leaks or spills from Contractor's vehicles. The Contractor also shall repair any damage associated with such leaks or spills. The Contractor shall repave the damaged area if the Administrator concludes such action is necessary to repair the damage caused by the Contractor. The requirements in Section 17.6 shall apply to the Contractor's actions under this Section 20.5.
- 20.6** If the Administrator or a Customer notifies the Contractor before 12 p.m. (noon) that the Contractor has caused litter, or caused a leak or spill of Solid Waste, oil, hydraulic fluid, or other liquids or materials, the Contractor shall clean up the liquids and materials before the end of that Operating Day, unless the Contractor demonstrates to the Administrator's reasonable satisfaction that the Contractor did not cause the letter, leak, or spill. If the Administrator or a Customer notifies the Contractor after noon, the Contractor shall clean up the liquid or material before noon on the next Operating Day.

## **21. EXEMPT WASTES AND RECOVERED MATERIALS**

- 21.1** The following types of Exempt Waste are not subject to the Contractor's exclusive franchise under this Agreement. These Exempt Wastes may be collected by the owner or occupant of the Improved Property where the Exempt Waste is generated, or by their agent, and taken to any Solid Waste Management Facility or other facility that is licensed to receive such materials. This Agreement does not prohibit the Contractor from collecting Exempt Waste as a Special Collection Service or otherwise, provided that the Contractor complies with all Applicable Law when collecting such material.
  - (a) Land Clearing Debris.
  - (b) Roofing materials generated, collected, and transported by a roofing company.
  - (c) Construction and Demolition Debris.
  - (d) Recovered Materials that are generated and Source Separated on Commercial Property.

- (e) Excavated fill and earthen material.
- (f) Solid Waste and by-products generated from an industrial process.
- (g) Liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.
- (h) Trash, debris, animal bedding, animal wastes, and other materials resulting from farming, equestrian, or agricultural operations.
- (i) Wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts, including used oil, tires (except as provided in Section 7.5), and lead-acid batteries.
- (j) Boats, boat motors, and boat trailers.
- (k) Disaster Debris.
- (l) Hazardous Waste, Biomedical Waste, and Radioactive Waste.
- (m) Sludge.
- (n) Materials and wastes similar to those listed above, when designated by the Administrator.

**21.2** Pursuant to Section 403.7046(3), Florida Statutes, nothing in this Agreement requires a commercial establishment to sell or convey its Source Separated Recovered Materials to the Village or a facility designated by the Village. Nothing contained in this Agreement restricts the right of a commercial establishment to sell or convey the establishment's Source Separated Recovered Materials to a properly certified Recovered Materials dealer that has satisfied the requirements in Section 403.7046, Florida Statutes.

## **22. THE CONTRACTOR'S SAFETY PROGRAM**

- 22.1** The Contractor shall develop, implement and maintain a written safety plan for all of its operations under this Agreement. The safety plan shall comply with all OSHA requirements and other Applicable Laws. A written copy and an electronic copy of the safety plan shall be provided to the Administrator for informational purposes. The Village's receipt of the safety plan shall not constitute the Village's approval of the plan or the Village's acquiescence concerning the appropriateness of such plan. The Contractor shall comply with its safety plan at all times.
- 22.2** The Contractor shall appoint an employee who is qualified and authorized, as defined by OSHA, to supervise and enforce safety compliance.
- 22.3** The Contractor shall provide routine safety training to all of its employees, in compliance with OSHA requirements and all Applicable Laws. Refresher courses and supplemental training shall be provided as necessary. Documentation of the Contractor's training programs, and documentation of the successful training of each employee, shall be maintained on file and shall be provided to the Administrator upon request.

- 22.4** The Contractor shall follow all OSHA regulations and Applicable Laws regarding personal protective equipment.
- 22.5** The Contractor's employees shall be trained and instructed to drive in a safe, defensive manner. Among other things, the drivers of the Contractor's Collection vehicles shall be instructed that they shall not "text" or talk on their telephones while they are driving a Collection vehicle that is moving.
- 22.6** The Contractor's safety plan shall include a written procedure for the immediate removal to a hospital or a doctor's care of any employee or other Person that is injured and requires medical assistance.
- 22.7** Contractor shall regularly update its safety plan to reflect any changes in Contractor's operations. The Contractor shall deliver an updated safety plan to the Administrator with the Contractor's annual report, pursuant to Section 34.4, below.

## **23. THE CONTRACTOR'S COLLECTION PLAN**

- 23.1** The Contractor shall prepare a Collection Plan that describes in detail how the Contractor will provide Collection Service in compliance with the requirements in this Agreement. At a minimum, the Collection Plan shall identify and describe the vehicles, equipment, personnel, Routes, and schedules the Contractor will use for each type of Collection Service. The Collection Plan shall include a legible map for each Route. The map shall identify: (a) the Operating Days when Collection Service will be provided on each Route; (b) the starting and ending points for each Route; and (c) the type of Collection Service that will be provided on each Route on each Scheduled Collection Day.
- 23.2** The Collection Plan shall identify each Designated Facility that will receive the materials collected by the Contractor pursuant to this Agreement.
- 23.3** The Collection Plan shall identify the procedures that will be used by the Contractor to ensure that the Village is not billed inappropriately for the Collection, disposal, or Recycling of Solid Waste or other materials. Among other things, the Collection Plan shall identify the procedures that will be used by the Contractor to ensure that each Designated Facility is fully informed whenever the Contractor delivers Solid Waste or other material for which the Contractor, rather than the Village, must pay the applicable Tipping Fee (e.g., when Solid Waste is collected from a Person that is not a Residential Customer under this Agreement).
- 23.4** If requested by the Administrator, the Collection Plan shall include the manufacturer's specification sheets for the Collection Containers provided by the Contractor under this Agreement.
- 23.5** An updated Collection Plan shall be submitted to the Administrator within ten (10) days whenever the Contractor changes a Route or other component of the plan.
- 23.6** At least seven (7) days before the Commencement Date, the Collection Plan shall be updated to include all of the information required pursuant to Section 5.2(l), above. Thereafter, the Collection Plan shall be updated whenever the Contractor adds or permanently removes a Collection vehicle or Mechanical Container from service in the Village.
- 23.7** The Collection Plan and all revisions to the plan are subject to the Administrator's prior written approval.

## **24. OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS**

For the purposes of this Agreement, Solid Waste and Source Separated Recyclable Material belongs to the Person generating such waste or material, until the Solid Waste or material is Set Out by that Person (i.e., the generator) and collected by the Contractor. When the Contractor takes possession of the Solid Waste and Source Separated Recyclable Material on behalf of the Village, title to the waste and material shall pass to the Village. Nonetheless, the Contractor shall be solely responsible and liable for the proper handling and lawful management of such waste and material until it is delivered to and accepted by a Designated Facility. Upon acceptance, title to the waste and material shall pass to the owner of such facility.

Notwithstanding anything else contained herein: (a) the Contractor shall not take, keep, process, alter, sell, remove, or otherwise dispose of any such waste or material without the prior written consent of the Village; (b) the generator shall at all times retain title to and liability for Hazardous Waste, Biomedical Waste, and Radioactive Waste; and (c) the Contractor shall not be responsible for the actions of a Designated Facility that has accepted the Village's Solid Waste and Source Separated Recyclable Material from the Contractor.

## **25. RESERVED**

## **26. SET OUT PROCEDURES FOR CUSTOMERS**

The procedures and requirements established in this Section 26 shall be followed by the Contractor's Customers. However, the Contractor shall collect a Customer's Solid Waste and Source Separated Recyclable Materials, even if the Customer fails to comply with one or more of the requirements in this Section 26, unless (a) the Administrator concurs in advance that the Contractor does not need to provide Collection Service to the Customer or (b) the Contractor places a Non-Collection Notice on the Customer's Collection Container and complies with the requirements in Section 15, above. The requirements in the Village's Ordinances, including but not limited to Chapter 46 ("Solid Waste") of the Village's Ordinances, shall supplement the requirements contained herein.

### **26.1 GENERAL PROCEDURES FOR ALL CUSTOMERS**

The following procedures shall apply to all Customers:

- 26.1.1 Garbage and other putrescible waste shall not be collected, stored, or Set Out in an open, uncovered box, bag, or Collection Container.
- 26.1.2 Source Separated Recyclable Materials shall be Set Out in a Recycling Container. Source Separated Recyclable Materials shall not be placed in the same Collection Container with Solid Waste.
- 26.1.3 Source Separated Recyclable Materials shall not be Set Out in a Plastic Bag.
- 26.1.4 A Customer shall not overfill a Collection Container; the lid on a Collection Container shall be closed securely by the Customer.
- 26.1.5 A Customer shall not place their Solid Waste in another Person's Collection Container, unless they have received prior approval to do.

- 26.1.6 A Customer shall only Set Out for Collection the Solid Waste that the Customer generated on their own Premises. A Customer shall not Set Out for Collection any Solid Waste that was generated by another Person or generated on another Person's property.
- 26.1.7 A Customer's Solid Waste shall be Set Out for Collection on the Premises where the Solid Waste was generated.
- 26.1.8 A Customer shall not Set Out Solid Waste for Collection on property that is not owned or occupied by the Customer, unless the Customer has received the prior approval of the owner or occupant of such property.
- 26.1.9 The weight of the materials placed in a Garbage Cart or Recycling Cart by a Customer shall not exceed the cart's rated capacity (as shown on the lid of the cart). A Customer shall not place more than fifty (50) pounds of material in a Garbage Can.
- 26.1.10 If the Customer and Contractor cannot agree upon an appropriate location to Set Out a Collection Container or non-containerized waste, the Administrator shall designate the point of Collection.
- 26.1.11 When necessary to carry out the purpose and intent of this Agreement, the Administrator may authorize the placement of a Collection Container at a location that is not on the Customer's Premises.
- 26.1.12 Each Customer shall use due care and diligence to avoid causing damage to any Collection Container or other equipment provided by the Village or the Contractor. The Collection Containers and equipment provided by the Village and/or Contractor shall not be altered by the Customer and shall only be used for their intended purpose.
- 26.1.13 Each Customer shall provide unobstructed access to their Collection Containers on the Customer's Scheduled Collection Days.

## **26.2 SPECIFIC PROCEDURES FOR RESIDENTIAL CUSTOMERS RECEIVING COLLECTION SERVICE AT CURBSIDE**

The following procedures shall apply to Residential Customers that receive Collection Service at Curbside.

- 26.2.1 Each Residential Customer receiving Collection Service at Curbside shall Set Out their Garbage and Rubbish in one or more Garbage Carts.
- 26.2.2 Residential Customers shall place their Yard Waste at Curbside for Collection. Leaves, twigs, and other small pieces of Yard Waste shall be placed in a Yard Waste Cart, biodegradable bag or Plastic Bag. If the Customer wishes to Set Out larger pieces of Yard Waste that will not fit into the Customer's Yard Waste Cart, the Yard Waste shall be stacked neatly in a pile at Curbside. A Residential Customer may, but is not required to, tie larger pieces of Yard Waste in a bundle. There is no limit on the quantity of Yard Waste that may be Set Out at Curbside by a Residential Customer.

- 26.2.3 Source Separated Recyclable Materials shall be Set Out for Collection in a Recycling Bin, paper bag, or container that is similar to a Recycling Bin. Cardboard also may be Set Out next to a Recycling Bin.
- 26.2.4 Each Residential Customer shall place their Garbage, Rubbish, Yard Waste, Bulky Waste and Source Separated Recyclable Materials at the Curbside prior to 7:00 a.m. on the Scheduled Collection Day for such materials.
- 26.2.5 Any carpet Set Out for Collection at Curbside shall be rolled and tied or otherwise bound.
- 26.2.6 Each Garbage Can used by a Customer shall: be constructed so as to prevent intrusion by water and animals, and the expulsion of its contents; have a cover that is free from sharp edges; and not have inside structures that prevent the free discharge of the container's contents.
- 26.2.7 Residential Customers shall not comingle Yard Waste with other types of Residential Waste.
- 26.2.8 Plastic Bags and biodegradable bags shall not be loaded with materials weighing more than fifty (50) pounds or the rated capacity of the bag, whichever is less.
- 26.2.9 A Residential Customer shall not place more than two (2) cubic yards of Construction and Demolition Debris at Curbside in any week (i.e., between the Scheduled Collection Days for Bulk Waste).

### **26.3 SPECIFIC PROCEDURES FOR CUSTOMERS IN MULTI-FAMILY DWELLINGS THAT USE MECHANICAL CONTAINERS**

The following requirements apply to Customers that reside in Multi-Family Dwellings and receive Collection Service with Mechanical Containers.

- 26.3.1 Each Customer in a Multi-Family Dwelling that uses Mechanical Containers shall comply with the following Set Out Procedures: (a) Garbage and Rubbish shall be placed in a Mechanical Container located on the Customer's Premises; and (b) Source Separated Recyclable Materials shall be placed in a Recycling Container located on the Customer's Premises.
- 26.3.2 The Contractor and the Customer shall select mutually acceptable locations for the placement of the Mechanical Container(s) and Recycling Container(s) that will be used by the Customer and serviced by the Contractor at a Multi-Family Dwelling. These locations are subject to the Administrator's approval. Whenever possible, the Recycling Containers shall be placed adjacent to the Mechanical Container at the Multi-Family Dwelling.
- 26.3.3 A Customer residing at a Multi-Family Dwelling shall call the Contractor and schedule a time for the Collection of their Bulky Waste if the Customer does not have a Scheduled Collection Day for Bulky Waste. A Customer shall not Set Out their Bulky Waste more than one (1) day before the Scheduled Collection Day or the date that the Customer scheduled with the Contractor for the Collection of Bulky Waste.

A Customer shall not place their Bulky Waste in a location that blocks the Contractor's access to a Mechanical Container.

## **26.4 PROCEDURES FOR COMMERCIAL CUSTOMERS**

- 26.4.1 Each Commercial Customer must have a Mechanical Container or Garbage Cart for the Collection of their Garbage and Rubbish; however, two (2) or more Commercial Customers may share the use of a Mechanical Container, subject to the requirements herein. Each Commercial Customer shall place their Garbage and Rubbish in their Mechanical Container or Garbage Cart, as applicable. If a Commercial Customer receives Collection Service for Source Separated Recyclable Materials or Recovered Materials, the Customer must place those materials in a separate cart or container (i.e., not the cart or container used for Garbage and Rubbish).
- 26.4.2 Commercial Customers shall not place or commingle Construction and Demolition Debris with any other type of Solid Waste in a Collection Container.
- 26.4.3 All Collection Containers shall be placed in locations that are safely and readily accessible to the Customer and the Contractor's vehicles.
- 26.4.4 Each Mechanical Container shall be placed on a paved level surface. The approaches to the Mechanical Container shall be capable of supporting the weight of the Collection vehicle.
- 26.4.5 A Commercial Customer shall call the Contractor and schedule a time for the Collection of their Bulky Waste, if the Commercial Customer wishes to have the Contractor collect Bulky Waste. A Commercial Customer shall not Set Out their Bulky Waste more than one (1) day before such materials are to be collected by the Contractor. A Commercial Customer shall not place their Bulky Waste in a location that blocks the Contractor's access to a Mechanical Container serving the Commercial Customer or any other Person.

## **27. COLLECTION CONTAINERS**

### **27.1 PURCHASE AND OWNERSHIP OF CONTAINERS**

- 27.1.1 Reserved.
- 27.1.2 Recycling Bins – Recycling Bins are provided to the Village by the Authority. After the Recycling Bins are received by the Village, the Recycling Bins become and shall remain the property of the Village.
- 27.1.3 Garbage Carts and Yard Waste Carts – Garbage Carts and Yard Waste Carts for Residential Customers shall be purchased by the Village and distributed to Residential Customers by the Village. The Village also has an inventory of spare Garbage Carts and Yard Waste Carts. All of these carts are and shall remain the property of the Village.
- 27.1.4 New Garbage Carts, Yard Waste Carts, Recycling Carts, and Recycling Bins for New and Existing Customers – The Village will purchase and receive Garbage Carts and

Yard Waste Carts from the manufacturer. The Village will assemble the carts and deliver them, when the Administrator deems it appropriate, to Residential Customers that receive Collection Service at Curbside.

The Village plans to deliver a Garbage Cart and two (2) new Recycling Bins to each New Customer.

If a Residential Customer wants to replace a Recycling Bin or obtain additional bins, the Village shall obtain and deliver the bins pursuant to Section 27.3.2, below.

Notwithstanding the foregoing provisions in this Section 27.1.4, the Village may require the Contractor to obtain Recycling Bins from the Authority and then deliver those bins to Residential Customers. In such cases, the Contractor shall deliver the Recycling Bin(s) to the Residential Customers within five (5) Operating Days after the Administrator issues a written work order for the delivery services.

During the term of this Agreement, the Village plans to purchase, assemble and deliver: (a) new or refurbished Garbage Carts and new or refurbished Yard Waste Carts to Residential Customers that need to replace a cart because their cart has been stolen, or damaged or worn beyond repair; (b) a new or refurbished Garbage Cart and/or Yard Waste Cart for each Residential Customer that wishes to purchase a cart; and (c) a new or refurbished Garbage Cart for each Residential Customer that wishes to exchange their cart pursuant to Section 27.4, below. For the purposes of this Section 27.1.4, a “refurbished” cart shall mean a cart that was cleaned and repaired to “like new” condition.

The Village shall purchase, assemble, and deliver Garbage Carts to Commercial Customers that are allowed to use Garbage Carts pursuant to Sections 7.9, above. The Village also shall purchase, assemble, and deliver Garbage Carts to any Multi-Family Dwelling that uses Garbage Carts pursuant to Section 11.1, above.

The Contractor may elect to provide Recycling Carts to some or all of its Commercial Customers. The Contractor shall provide Recycling Carts to Residential Customers that do not receive Collection Service at Curbside (i.e., Residential Customers at Multi-Family Dwellings that receive Collection Service with Mechanical Containers). The Contractor shall be responsible for obtaining the Recycling Carts from the Authority and delivering the Recycling Carts to such Customers.

27.1.5 Mechanical Containers – The Contractor shall provide Mechanical Containers to any Customer that wishes to use them, and has a location where such equipment can be used in compliance with this Agreement and the Ordinances, but the Contractor may charge the applicable Rate for the use of its Mechanical Containers. The Contractor also may negotiate and charge a fee for the use of the Contractor’s Compactors. The Contractor shall be responsible for the purchase or lease of all Mechanical Containers that the Contractor is required to provide under this Agreement. Mechanical Containers purchased by the Contractor shall remain the property of the Contractor, unless sold.

A Customer may own its Compactor and attached Roll-Off Container, or lease a Compactor and attached Roll-Off Container from a Person other than the Contractor,



if the Compactor and Roll-Off Container are compatible with and can be serviced by the Contractor's equipment. In such cases, the Compactor and attached Roll-Off Container shall remain the property of the Customer. Notwithstanding the provisions of Section 33.1, below, the term of the Contractor's lease agreements for Compactors may extend beyond the term of this Agreement.

## **27.2 MAINTENANCE AND REPAIR OF CONTAINERS**

27.2.1 Garbage Cans – Each Customer shall be responsible for cleaning, maintaining, and repairing their Garbage Can (if any). Garbage Cans shall be maintained in good condition and shall be free from sharp edges or other hindrances to efficient Collection Services.

27.2.2 Recycling Bins – Each Customer shall be responsible for cleaning their Recycling Bins and maintaining them in a sanitary condition.

27.2.3 Garbage Carts, Yard Waste Carts, and Recycling Carts – Each Customer shall be responsible for cleaning their Garbage Cart(s), Yard Waste Cart(s), and Recycling Cart(s), if any, and keeping the carts in a sanitary condition.

The Village shall be responsible for repairing the Garbage Carts and Yard Waste Carts used by Residential Customers that receive Collection Service at Curbside.

The Contractor shall be responsible for repairing and, if necessary, replacing all of the Recycling Carts that the Contractor provides to Commercial Customers, and to Residential Customers at Multi-Family Dwellings that do not receive Collection Service at Curbside. The Contractor shall repair or replace such carts within two (2) Operating Days after the Contractor is informed in writing (e-mail) by the Customer or the Administrator that the cart needs to be repaired or replaced.

27.2.4 Mechanical Containers – The Contractor shall maintain each of its Mechanical Containers in good working order at all times to ensure continuous and efficient Collection Services. The Contractor shall procure, and maintain at all times, an adequate supply of spare parts for its Mechanical Containers. The Contractor shall maintain and repair each Mechanical Container as needed to ensure that the container is free from holes, broken hinges, broken doors or door fasteners, broken wheels, broken lids, or other defects. Mechanical Containers shall be kept painted (with the exception of containers made of plastic, aluminum, stainless steel, or other materials that do not readily accept paint), and shall be kept free from graffiti, at all times so they do not become a detriment to the community. Mechanical Containers shall be washed by the Contractor on a regular basis, as necessary, to minimize the potential for odors and nuisance conditions. The Contractor shall promptly replace, repair, paint, clean, wash, and otherwise maintain its Mechanical Containers when requested to do so by the Administrator, pursuant to Section 28.9.2, below.

Each Customer shall be responsible for cleaning, maintaining, and repairing every Mechanical Container that the Customer owns, as well as every Mechanical Container the Customer leases from a Person other than the Contractor.

If a Mechanical Container is damaged or otherwise in need of repair, the Contractor shall provide a front-load Mechanical Container within twenty-four (24) hours of receiving a request for service from a Customer. In the alternative, the Contractor may provide a Roll-Off Container, if the use of such container is approved by the Administrator. In all cases, the Contractor shall provide assistance to ensure uninterrupted service to the Customer, and the Contractor may charge the Customer in accordance with the Rates set forth in Exhibit 4.

## **27.3 STORAGE, DISTRIBUTION AND REPLACEMENT OF CONTAINERS**

27.3.1 Garbage Cans – Each Customer shall be responsible for storing and replacing their own Garbage Cans (if any).

27.3.2 Recycling Bins – Each Customer shall be responsible for storing their Recycling Bin(s). Residential Customers may obtain new Recycling Bins, to replace or supplement their existing bins, by calling the Village. The new Recycling Bins shall be obtained from the Authority and delivered to the Residential Customer by the Village, unless the Administrator requests the Contractor to deliver the bins pursuant to Section 27.1.4, above.

27.3.3 Garbage Carts, Yard Waste Carts, and Recycling Carts – Each Customer shall be responsible for storing their Garbage Cart(s), Yard Waste Cart(s), and Recycling Cart(s), if any.

As previously indicated in this Section 27, the Village shall be responsible for purchasing certain Garbage Carts, Yard Waste Carts, and Recycling Carts. The Village shall be responsible for the storage of all of the carts that the Village purchases from the manufacturer.

Upon request, the Village shall deliver replacement carts to Residential Customers and Commercial Customers.

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

27.3.5 Collection Containers Damaged by Contractor – The Contractor shall repair or replace a Customer's Collection Container within three (3) Operating Days after being notified by the Administrator or Customer that the Customer's Collection Container was damaged by the Contractor. Any replacement shall be similar in style, material, quality, and capacity to the Customer's original container.

## **27.4 EXCHANGE OF CARTS AND CONTAINERS**

The Village, in its discretion, may allow one or more Residential Customers receiving Collection Service at Curbside to exchange their Garbage Carts for carts that are a different size. The terms and conditions for any such exchanges shall be determined by the Administrator. If a Residential Customer receiving Collection Service at Curbside requests the Contractor to exchange the Customer's cart, the Contractor shall transmit the Customer's request to the Administrator. The

Village shall be responsible for exchanging Garbage Carts provided to Residential Customers that receive Collection Service at Curbside.

The Contractor shall exchange a Mechanical Container when requested by the Village or a Customer. The Contractor shall deliver the requested container within three (3) Operating Days after receiving the request from a Customer or the Village. There shall be no charge for exchanging a Mechanical Container, unless the Customer already has exchanged its Mechanical Container more than two (2) times during the current Operating Year.

## **27.5 TECHNICAL SPECIFICATIONS FOR COLLECTION CONTAINERS**

27.5.1 Garbage Carts and Recycling Carts – The Garbage Carts and Recycling Carts provided by the Village and the Contractor shall comply with the size, color, and technical specifications established by the Administrator. In general, the Garbage Carts shall: (a) have a nominal rated capacity of approximately thirty-two (32) or ninety-six (96) gallons, as applicable; (b) be hot-stamped or labeled with the Village's logo, in accordance with the specifications provided by the Administrator; and (c) be compatible with the hydraulic lifting and dumping mechanism mounted on the Contractor's Collection vehicles. Each Garbage Cart shall have a flat area on the top (outside) of the lid, which shall be at least eight (8) inches by sixteen (16) inches in size and suitable for the placement of informative stickers or decals.

Each Garbage Cart shall be uniform with regard to color, volumetric capacity, dimensions, finished surfaces, and hot stamping/labeling. Garbage Carts shall be black or dark grey.

Recycling Carts shall be in the size and color provided by the Authority or, if not provided by the Authority, as required by the Administrator.

27.5.2 Mechanical Containers – Mechanical Containers supplied by the Contractor shall be in good condition and shall be subject to the approval of the Administrator. Mechanical Containers shall have attached lids, unless the Administrator approves a different design for a particular use or they are open top Roll-Off Containers used for the Collection of Construction and Demolition Debris. Mechanical Containers shall have solid, durable sides and bottoms. Each Mechanical Container (except open top Roll-off Containers) shall have a heavy-duty removable plug in the bottom. The Contractor shall provide and install casters and locking devices for a Mechanical Container, upon the request of the Administrator or a Customer. Mechanical Containers used for Recycling shall be painted a different color than Mechanical Containers used to collect Garbage and Rubbish. In the alternative, Mechanical Containers used for Recycling shall have distinctive labeling or other features to readily identify their use for Recycling. The colors and labeling for such Mechanical Containers shall be subject to approval by the Administrator.

## **28. CONTRACTOR'S VEHICLES AND COLLECTION EQUIPMENT**

### **28.1 GENERAL REQUIREMENTS FOR CONTRACTOR'S VEHICLES AND**

## COLLECTION EQUIPMENT

- 28.1.1 In general, the Contractor shall use clean, safe, well-maintained, and relatively new trucks whenever providing Collection Service pursuant to this Agreement. The Contractor shall purchase or lease, and maintain and repair, all of the vehicles and equipment necessary to provide Collection Service in compliance with the approved Collection schedules and otherwise promptly and efficiently comply with the requirements in this Agreement. The Contractor's vehicles and equipment shall be compatible (in size and weight) with, and appropriate for, the areas where such vehicles and equipment are utilized. Smaller vehicles or specialty equipment shall be used in areas where narrow streets, low hanging limbs or electrical wires, or other obstructions preclude the use of the Contractor's normal vehicles and equipment.
- 28.1.2 The Contractor's Collection vehicles and equipment shall be a standard product of a reputable manufacturer so that continuing service, and the supply and delivery of spare parts, may be ensured. Replacement parts do not need to be a product of the same manufacturer as the original parts.
- 28.1.3 All of Contractor's Collection vehicles shall have waterproof seals and shall be watertight to a depth sufficient to prevent the discharge or leaking of liquids that have accumulated in the vehicle's cargo area during loading and transport operations.
- 28.1.4 Each Collection vehicle shall fully enclose the Contractor's Load. A Collection vehicle shall have a fully enclosed metal top, a tarpaulin, or a net cover with mesh openings not greater than one and one-half (1½) inches in size. The top, tarpaulin, or cover shall be kept in good working condition and shall be free from tears and holes. The Contractor shall use the cover and shall fully enclose the Contractor's Load at all times when the vehicle's speed exceeds 20 miles per hour and at other times when necessary to prevent the Contractor's Load from blowing out of the vehicle.
- 28.1.5 All Collection vehicles shall be painted a uniform color. All Collection vehicles shall have painted sides, wraps, or signs affixed on two (2) sides, stating "Proudly Serving the Village of Wellington." At the Administrator's request, vehicles used to collect Source Separated Recyclable Materials shall have signs with the Contractor's toll-free telephone number for requesting new Recycling Bins.
- 28.1.6 Advertising shall not be allowed on the Contractor's vehicles, Collection Containers, or equipment used to provide Collection Service in the Village.
- 28.1.7 Vehicles used for the Collection of Source Separated Recyclable Materials at Curbside shall be designed with two (2) or more separate compartments so that the Contractor can separately store and transport the different types of Recyclable Materials (e.g., paper and fiber products; glass, metal, plastic and other). Packer trucks may be used, but the compartment used to collect glass bottles and containers shall not compress or compact the contents in that compartment to a level that exceeds fifty (50) pounds per square inch.

## **28.2 DEDICATED FLEET FOR VILLAGE**

The Contractor shall maintain a dedicated fleet of front-line vehicles for the Village's benefit. The front-line vehicles used to provide Collection Services under this Agreement shall not be used to collect Solid Waste or Recyclable Materials outside of the Service Area, and vehicles used outside of the Service Area shall not be used to provide Collection Service pursuant to this Agreement, unless the Contractor receives the Administrator's prior written approval for such activity. However, the Contractor's reserve (spare) vehicles do not have to be dedicated to the exclusive use of the Village.

## **28.3 AGE OF CONTRACTOR'S COLLECTION VEHICLES**

None of the front-line Collection vehicles used by the Contractor under this Agreement shall be more than ten (10) years old. The age of the vehicle shall be calculated from the model year of the vehicle. There is no age limit on reserve vehicles. All of the vehicles used by the Contractor to provide Collection Services shall be maintained in good operating condition at all times. The Administrator may waive the ten (10) year age limit in this Section 28.3 if the Contractor demonstrates to the Administrator's reasonable satisfaction that a Collection vehicle is capable of providing safe and reliable service (e.g., the vehicle recently was refurbished satisfactorily or the vehicle has relatively little wear and tear). The age of the vehicle shall be calculated from the model year of the vehicle.

## **28.4 ANCILLARY EQUIPMENT IN CONTRACTOR'S VEHICLES**

- 28.4.1 All vehicles used to provide Collection Services under this Agreement shall be equipped at all times with: (a) all safety equipment required by Applicable Laws; (b) a functional fire extinguisher; (c) a shovel and broom; (d) a spill response kit; (e) a functional and audible back-up warning device; and (f) a functional back-up camera. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from Contractor's Collection vehicles.
- 28.4.2 All vehicles used to provide Collection Services under this Agreement shall be equipped with a two-way radio, cellular telephone, or other equipment appropriate for communications between the vehicle operator, the Field Supervisor, and the District Manager.
- 28.4.3 All of the Contractor's Collection vehicles shall be equipped with Global Positioning Systems ("GPS") that identify and record the locations of the vehicles when they are being used to provide Collection Services under this Agreement. The vehicle locations shall be recorded at least once every five (5) seconds. The Contractor shall provide its GPS logs and records to the Administrator, upon request, in compliance with Section 34.2.9 and 34.6, below.
- 28.4.4 All of the Contractor's Collection vehicles shall be equipped with a "3<sup>rd</sup> Eye" or comparable camera system that takes pictures of the area surrounding the vehicle. The camera system shall be operated continuously when the Collection vehicle is being used to provide Collection Service. The photographs shall be stamped or otherwise marked to show the time and date when they were recorded. The photographs shall be preserved and maintained by the Contractor for at least thirty (30) days after they

are recorded. Notwithstanding anything to the contrary in this Agreement, the requirements in this Section 28.4.4 do not apply to any vehicle used to collect waste from Commercial Customers.

## **28.5 RESERVE VEHICLES AND EQUIPMENT**

- 28.5.1 The Contractor shall have sufficient reserve vehicles and equipment available to complete daily Collection Routes according to the schedules established pursuant to this Agreement. The use of reserve vehicles and equipment shall include, but not be limited to occasions when front-line vehicles and equipment are out of service, or when delays will prevent front-line vehicles and equipment from completing their Collection Route(s) within the established hours of Collection.
- 28.5.2 The reserve vehicles and equipment shall be ready to go into service within two (2) hours of any breakdown or delay experienced by a front-line vehicle. The reserve vehicles and equipment shall be similar in size and capacity to the vehicles and equipment being replaced.

## **28.6 MAINTENANCE AND CLEANING**

- 28.6.1 The Contractor shall keep all Collection vehicles, Mechanical Containers, and equipment cleaned and painted to present a pleasing appearance at all times. All Collection vehicles and Mechanical Containers used primarily for the Collection of Garbage shall be emptied, washed (if needed), and sanitized with a suitable disinfectant and deodorant at least once each week, unless the Administrator approves an alternate cleaning schedule. Other Collection vehicles and Mechanical Containers shall be cleaned and washed, as necessary, to minimize the potential for odors and nuisance conditions.
- 28.6.2 The Contractor's Collection Plan must include a schedule for cleaning, painting and maintaining each Collection vehicle and Mechanical Container. At a minimum, the Contractor shall maintain each Collection vehicle and Mechanical Container in compliance with the manufacturer's recommendations. The Collection Plan also must explain and demonstrate how the Contractor shall comply with the requirements in Section 28.6.3, below.
- 28.6.3 The Contractor shall monitor, maintain and repair its Collection vehicles and equipment to prevent fuel, lubricants, and other liquids from leaking or spilling. Oil and hydraulic systems, and waterproof seals and enclosures, on the Contractor's vehicles and equipment shall be kept in good repair at all times to prevent leaks and spills.
- 28.6.4 Upon the request of a Customer or the Administrator, the Contractor shall provide a new or reconditioned Mechanical Container to replace a Mechanical Container used by the Village or a Customer. This requirement applies to all Mechanical Containers, including Roll-Off Containers. To demonstrate compliance with this requirement, the Contractor shall paint by stencil or use other permanent means to mark the date (i.e., month and year) on each Mechanical Container when the Mechanical Container is placed into service. This date shall be marked on the front upper left corner of the Mechanical Container. The size of the Mechanical Container, measured in cubic

yards, shall be marked in the same manner on the front upper right corner of the Mechanical Container. Notwithstanding the foregoing, the Contractor is not required to provide a new Mechanical Container to a Customer more than one time during any term of this Agreement, unless the Administrator instructs the Contractor to do so.

## **28.7 IDENTIFICATION OF CONTRACTOR'S VEHICLES AND EQUIPMENT**

- 28.7.1 The Contractor's name and telephone number shall be displayed at all times, in letters at least five (5) inches high, on the driver's side and the passenger's side of each of the Contractor's vehicles used to provide Collection Service. Truck identification numbers shall be displayed at all times, in letters at least five (5) inches high, on all four (4) sides of all vehicles used to provide Collection Services.
- 28.7.2 All of the Contractor's vehicles used to provide Collection Services shall display information identifying the type of material (e.g., Solid Waste or Recyclable Materials) being collected. The information shall be displayed at all times, on the driver's side and the passenger's side of the vehicle body, in letters at least five (5) inches high. Upon the Administrator's request, the Contractor's vehicles also shall display information promoting the Village's Solid Waste or Recycling programs. The information displayed on the Contractor's vehicles shall be subject to the approval of the Administrator and the Contractor, which approval shall not be unreasonably withheld.
- 28.7.3 The Contractor shall label each one of its Mechanical Containers with the Contractor's name and telephone number, and the identification number for the Mechanical Container. The labels shall be comprised of letters and numbers that are at least five (5) inches high. The labels shall be placed on at least two (2) sides of each Mechanical Container. At least one label must be readily visible when the Mechanical Container is placed at a Customer's site.
- 28.7.4 All Compactors owned or collected by the Contractor pursuant to this Agreement must be labeled in compliance with the requirements in Section 28.7.3, above. If a Compactor is used to provide Collection Service to a Multi-Family Dwelling, a subdivision, or other community, the label on that Compactor must identify the name of the Multi-Family Dwelling, subdivision, or community where the Compactor is used. The label also must identify the owner of the Compactor. The Contractor shall not collect or use any Compactor that fails to comply with the requirements in this Section 28.7.4.

## **28.8 COMPLIANCE WITH THE LAW APPLICABLE TO VEHICLES**

- 28.8.1 At all times, the Contractor and its employees shall operate and maintain all Collection vehicles and equipment in compliance with all Applicable Laws.
- 28.8.2 At all times, the Contractor shall maintain all necessary licenses and registrations, and shall timely pay all fees and taxes, on all vehicles and equipment, as required under Applicable Laws.
- 28.8.3 All equipment shall be operated in compliance with the Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes, and the Ordinance.

## **28.9 VILLAGE'S RIGHT TO INSPECT CONTRACTOR'S VEHICLES AND EQUIPMENT**

- 28.9.1 The Administrator may inspect the Contractor's vehicles, equipment, licenses, and registrations at any reasonable time, without providing advance notice of the inspections. The Village has the right, but not the obligation, to inspect each Collection vehicle, each day, prior to its use in the Village.
- 28.9.2 The Administrator shall have the authority to require the Contractor to immediately remove from service any Collection vehicle, Collection Container, or equipment that is leaking or spilling fluids, Solid Waste, or other materials. The Administrator also may require the Contractor to immediately clean, wash, paint, repair or otherwise maintain any Collection vehicle, Collection Container, or other equipment when the Administrator concludes that such action is necessary to comply with the high standards established in this Agreement. If the Administrator requests such action, the Contractor shall comply with the Administrator's request within one (1) Operating Day or the Contractor shall take the vehicle, container, or equipment out of service until the requested work can be completed. Further, the Administrator may require the Contractor to pressure spray and promptly clean any location where one of the Contractor's Mechanical Containers has leaked fluids or spilled Solid Waste and thereby stained soils or pavement or created an odorous or nuisance condition.

## **28.10 LOCAL STORAGE AND REPAIR OF CONTRACTOR'S VEHICLES**

Throughout the term of this Agreement, the Contractor shall provide a storage yard, garage, and maintenance facility that enables all-weather, year-round maintenance operations for the vehicles and equipment used pursuant to this Agreement. By April 30, 2022, the Contractor's storage yard, garage, and maintenance facility must be located within twenty-five (25) miles of the Village. The Contractor shall not use Village property to store, wash, repair, or maintain any vehicles or equipment.

## **28.11 SPILL CLEAN-UP MATERIALS**

Before the Commencement Date, the Contractor shall install and thereafter maintain a lockable storage unit in a designated area of the Village's public works yard for the storage of absorbent materials used to contain and clean-up spills of fuel, hydraulic fluid, leachate, or other liquids from the Contractor's vehicles. The Contractor shall store and at all times maintain a sufficient quantity of absorbent material in the storage unit to ensure the prompt and effective clean-up of any spill involving up to fifty (50) gallons of fluid. The Contractor also shall provide and maintain at all times a sufficient number of bags of gray Portland cement to cover an area twenty-five (25) feet wide and forty (40) feet long. Further, the storage unit shall be equipped with heavy-duty brush brooms suitable for use during a clean-up operation following a spill of fluids from the Contractor's vehicles.

The Contractor shall provide the Administrator with a key to the storage unit. If the Contractor fails to promptly respond to a spill, the Village shall have the right, but not the obligation, to use the materials stored in the storage unit for the clean-up of any spill caused by the Contractor.

## **29. CONTRACTOR'S PERSONNEL**



## **29.1 GENERAL REQUIREMENTS**

The Contractor shall use competent, qualified personnel to provide the services required by this Agreement. The Contractor shall devote sufficient personnel, time, and attention to its operations under this Agreement to ensure that its performance will be satisfactory to the Village.

## **29.2 DISTRICT MANAGER**

The Contractor shall appoint an employee to serve as the District Manager. The District Manager shall be the Contractor's primary point of contact with the Village for all technical and administrative matters pertaining to this Agreement. The District Manager and the Field Supervisor(s) must have at least five (5) years of prior managerial experience providing for the Collection of Residential Waste in a community that has at least twenty thousand (20,000) single family Dwelling Units. The District Manager must have the authority to make significant decisions relevant to the day-to-day operation of Contractor's program under this Agreement. The District Manager must have direct access to the Contractor's management for resolving problems beyond the District Manager's authority. At all times during the term of this Agreement, the District Manager must be immediately accessible to the Administrator by telephone and electronic mail. The District Manager shall be responsible for overseeing and implementing the Contractor's performance under this Agreement.

## **29.3 FIELD SUPERVISOR**

The Contractor shall designate one or more Field Supervisors, who shall directly oversee the Collection Service provided under this Agreement each Operating Day. The Field Supervisor(s) must have at least five (5) years of prior experience supervising drivers and other employees that are responsible for collecting the Solid Waste in a community that has at least twenty thousand (20,000) single family Dwelling Units. The Field Supervisor(s) shall have immediate access to an automobile or truck between 7:00 a.m. and 7:00 p.m., every Operating Day. At all times during the term of this Agreement, the Administrator shall have immediate access to the Field Supervisor(s) by telephone and electronic mail.

## **29.4 EMPLOYEE CONDUCT**

The Contractor's personnel shall maintain a courteous and respectful attitude at all times toward the public and the Village's representatives. The Contractor shall instruct its employees to avoid loud or profane language during the performance of their duties under this Agreement. The Contractor's employees shall not cause any disturbance, interference, or delay to any work or service rendered to the Village or by the Village. Contractor's employees shall not conduct themselves in a negligent, disorderly or dishonest manner.

## **29.5 EMPLOYEE IDENTIFICATION**

The Contractor shall furnish each employee with an appropriate means of identifying him or her as an employee of the Contractor (e.g., a shirt or uniform with a name tag and company logo). The Contractor's employees shall wear the identification at all times while on duty. The Administrator has the right to approve the identifiers or identification furnished by the Contractor.

## **29.6 ATTIRE FOR EMPLOYEES**

Employees and subcontractors of the Contractor shall wear proper attire at all times when working for the Village under this Agreement. Proper attire shall consist of appropriate pants or shorts, a shirt with the Contractor's name or logo, and boots or similar footwear. The Contractor's employees shall wear reflective vests, back braces, goggles, and other safety equipment, if required by Applicable Law.

## **29.7 REMOVAL OF EMPLOYEES**

The Administrator reserves the right to disapprove and request removal of any Contractor personnel assigned to the Village's work. Such disapproval or request shall be for good cause only and shall be addressed in writing to the Contractor's District Manager. Notwithstanding the foregoing, the Contractor shall not be required to take any action with regard to the Contractor's personnel that would violate any Applicable Law or employment contract. The Contractor shall defend, save, and hold the Village harmless from and against legal actions by any employees so removed.

## **29.8 EMPLOYEE TRAINING AND LICENSES**

- 29.8.1 All of the Contractor's employees shall be qualified and appropriately trained for the tasks assigned to them. The Contractor shall provide refresher courses and additional training to its employees, as needed, to ensure compliance with the requirements of this Agreement and all Applicable Laws.
- 29.8.2 At all times when operating vehicles or equipment pursuant to this Agreement, the Contractor's employees shall carry a valid Florida driver's license for the type of vehicle or equipment being operated.
- 29.8.3 The Administrator may request the Contractor's employees to produce their driver's license for inspection at any time when the employee is on duty.

## **29.9 CONTRACTOR'S COMPLIANCE WITH LABOR LAWS**

The Contractor shall comply with all Applicable Laws concerning the protection and rights of employees, including but not limited to equal employment opportunity laws, minimum wage laws, immigration laws, the Americans with Disabilities Act, and the Fair Labor Standards Act.

## **29.10 LEGAL STATUS OF CONTRACTOR'S EMPLOYEES**

The Village shall have no obligation to pay or provide any salary or employment benefits to the Contractor's employees. A Person employed by the Contractor shall have no right or claim to any pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the Village's officers and employees. The Contractor shall have the sole responsibility for paying any wages and providing any employment benefits to such Person.

## **29.11 SUBCONTRACTORS AND TEMPORARY LABOR**

To the greatest extent practicable, the Contractor shall provide all of its Collection Services within the Village by using permanent employees of the Contractor and its subcontractors. The Contractor shall minimize and, if possible, eliminate the use of temporary labor for the provision of Collection

Services. However, the Contractor shall be allowed to use temporary labor to provide Collection Services if the Contractor concludes that the use of temporary labor is necessary or otherwise appropriate.

No subcontractors shall be used to provide Collection Services without the prior approval of the Administrator, which approval shall not be unreasonably withheld. However, Jet Hauling, Inc., was identified in the Contractor's response to the Village's RFP (No. 202108) and, therefore, Jet Hauling, Inc., shall be deemed to be approved, without any further action by the Administrator.

#### **29.12 COMPLIANCE WITH E-VERIFY SYSTEM**

Wellington requires the Contractor and its subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired employees. Within five (5) Operating Days after receiving a written request from the Administrator, the Contractor shall provide proof of registration with the E-Verify System and an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

### **30. CONTRACTOR'S LOCAL OFFICE**

- 30.1** The Contractor shall maintain a local customer service and dispatch office within twenty-five (25) miles of the Village. The Contractor's office shall be open for business at least from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays. However, the Contractor's office does not need to be open on Holidays.
- 30.2** The Contractor's office shall be equipped with sufficient personnel and equipment to document and timely respond to all inquiries, issues, and Legitimate Complaints raised by the Village or Customers. A responsible, experienced person shall be present and in charge of the office during all business hours. The Contractor's office staff shall be familiar with the Village and the Contractor's obligations under this Agreement. The Contractor shall have extra staff working in the Contractor's office on the Commencement Date and as long as necessary thereafter to ensure the Contractor's compliance with the requirements in this Section 30, as well as Sections 31.1.4 and 31.1.5, below.
- 30.3** The Contractor shall have a toll-free telephone number for calls from Customers in the Village. The Contractor's telephone number shall be listed in the Contractor's webpage, the Contractor's invoices to customers, and the notices provided pursuant to Section 35.1, 35.2, 36.3, and 35.4, below. The Contractor's telephone system shall have the capacity to receive multiple telephone calls simultaneously. All calls concerning complaints shall be answered by a Person located in the Contractor's local office. The Contractor shall have extra staff working in the Contractor's office whenever necessary to ensure Contractor's compliance with the requirements in this Agreement. The Contractor shall use an answering machine or answering service to receive and record messages when the office is closed or the Contractor is receiving more calls than its staff can answer. The answering machine or service shall give Customers the telephone number that the Customers may use to report an emergency.
- 30.4** The Contractor shall establish a process for receiving and handling emergency calls, both during and after normal operating hours. The Contractor's process shall ensure that a Customer receives an immediate response after reporting an emergency. Such process shall be subject to the

Administrator's approval. For the purposes of this Section 30.4, an "emergency" means an accident, event, or condition that requires immediate action because it has caused an injury or poses and immediate threat of injury to human health, the public welfare, or the environment. An emergency does not include Missed Collections.

- 30.5** All of the people answering the telephones for the Contractor must be fluent in English or Spanish. At all times the Contractor must have a sufficient number of English-speaking employees and a sufficient number of Spanish-speaking employees in its local office or call center to respond promptly to all telephone calls from Customers, regardless of whether the Customer speaks English or Spanish. All of the messages on the Contractor's answering machines must be provided in English and Spanish.
- 30.6** The Contractor's office shall be equipped with cellular telephones and computers or other devices that can be used to promptly contact the Administrator, the Contractor's District Manager, the Contractor's Field Supervisor, and all of the Contractor's Collection vehicles via telephone calls and electronic mail (e-mail).

## **31. CUSTOMER RELATIONS**

### **31.1 HANDLING CUSTOMER COMPLAINTS AND REQUESTS**

- 31.1.1** The Village shall be responsible for receiving all complaints and requests from Customers. If the Village receives a complaint or a request from a Customer, the Village shall notify the Contractor's District Manager or their designee via electronic mail or facsimile. After the Village notifies the Contractor, the Contractor shall enter the complaint or request into the Contractor's electronic tracking system pursuant to Section 31.1.4 and then the Contractor shall promptly initiate its response.

If a Customer delivers a written complaint or request to the Contractor (e.g., via electronic mail), the Contractor shall send the written complaint or request to the Administrator or the Administrator's designee via electronic mail or facsimile within four (4) hours after the complaint or request is received. If a Customer tells the Contractor that the Customer has a complaint or wants to request additional service from the Contractor, the Contractor shall: (a) advise the Customer that the Customer must call the Administrator or the Administrator's designee; and (b) provide the Customer with the telephone number for the Administrator or the Administrator's designee.

- 31.1.2** The District Manager or their designee shall determine initially whether a Customer's complaint is a Legitimate Complaint. If there is a dispute with the Customer or uncertainty, the Contractor shall notify the Administrator who shall make the final determination as to whether a Customer's complaint is a Legitimate Complaint. In all such cases, the Contractor shall have the right to present photographs, GPS data, and any other relevant information to demonstrate that the complaint is unfounded and thus not legitimate. Legitimate Complaints include but are not limited to:

- Missed Collections;
- Failure to respond to Missed Collections in compliance with the requirements of this Agreement;
- Mishandling of Solid Waste, Recyclable Materials, or Collection

Containers;

- Failure to maintain vehicles, Collection Containers, or equipment in compliance with this Agreement;
- Damage to public or private property;
- Failure to pick up litter;
- Failure to obey traffic regulations; and
- Discourteous treatment of Customers.

31.1.3 The Contractor shall take whatever steps are necessary to promptly remedy the cause of a Legitimate Complaint. If the Contractor is informed about a Legitimate Complaint before noon on an Operating Day, the Contractor must remedy the complaint before the end of that day. If the Contractor is notified about a Legitimate Complaint after noon on an Operating Day, or at any time on a Sunday or Holiday, the Contractor must remedy the complaint before noon on the next Operating Day. The Contractor may request and the Administrator shall grant additional time to remedy a Legitimate Complaint when the Contractor uses its best efforts to correct the problem, but is unable to do so within the time provided herein.

31.1.4 The Contractor must establish a real-time, web-based system for tracking all complaints. The Contractor shall enter each complaint into the Contractor's electronic tracking system within one hour after the Contractor receives the complaint; however, if complaints are received when the Contractor's local office is closed, the complaint shall be entered into the electronic tracking system within two (2) hours after the office reopens on the next Operating Day. The Contractor's system shall be designed to provide immediate notice to the Administrator when a complaint is entered into the Contractor's tracking system. The Administrator does not need the ability to enter or delete data in the electronic tracking system. The format of the information collected in the electronic tracking system shall be subject to the Administrator's approval. With the Administrator's approval, the electronic tracking system may be used as the Contractor's complaint log, pursuant to Section 34.2.6, below. This tracking system shall be fully operational no later than the deadline set forth in Section 5.2(i), above.

## **31.2 DISPUTE RESOLUTION PROCESS FOR CUSTOMERS**

31.2.1 The Contractor shall promptly notify the Administrator whenever the Administrator needs to resolve a dispute between a Customer and the Contractor, including but not limited to disputes concerning the proper interpretation and implementation of this Agreement and the Ordinances. The Contractor also shall promptly notify the Administrator about any disputes with a Customer that the Contractor has not been able to resolve within two (2) Operating Days after receiving the Customer's complaint.

31.2.2 The Administrator shall evaluate the facts concerning such disputes and shall make a fair and impartial determination about such matters. The Administrator shall notify the Contractor and the Customer in writing concerning the Administrator's decision about the disputed issues.

- 31.2.3 The Contractor and Customer shall have three (3) Operating Days to comply with the Administrator's decision or, in the alternative, provide the Administrator with a written request for a hearing before the Manager.
- 31.2.4 If a request is filed, the Manager shall act upon such request within thirty (30) days. The Manager shall provide the parties an opportunity to present their arguments and evidence concerning the relevant issues. The Manager shall notify the Customer, the Contractor, and the Administrator in writing concerning the Manager's decision. The Manager may: (a) confirm, in whole or in part, the Administrator's findings; (b) grant relief to the Customer or the Contractor; or (c) take whatever other action the Manager deems necessary and appropriate. The Manager's decision shall be final and shall not be subject to further appeal within the Village.

## **32. CONTRACTOR'S RELATIONSHIP WITH THE VILLAGE**

### **32.1 AVAILABILITY OF CONTRACTOR'S REPRESENTATIVES**

The Contractor shall cooperate with the Village in every reasonable way to facilitate the successful completion of the activities contemplated under this Agreement. The Village shall have twenty-four (24) hour access to the Contractor's District Manager and Field Supervisor via telephone and electronic mail from the Village. Answering machines, pagers, or other devices that do not provide for immediate contact with the Contractor's District Manager and Field Supervisor shall not satisfy the requirements of this paragraph. The Contractor's District Manager shall meet with the Administrator within five (5) Operating Days after receiving a request for a meeting to discuss the Contractor's performance under this Agreement or other issues of concern to the Administrator.

### **32.2 ADMINISTRATOR'S REVIEW OF CONTRACTOR'S PERFORMANCE**

The Administrator is hereby designated as the public official responsible for the day-to-day administration of this Agreement by the Village. The Contractor shall diligently work with the Administrator to formulate and adopt procedures that will facilitate the Contractor's performance under this Agreement and the Administrator's review of the Contractor's work.

### **32.3 VILLAGE'S RIGHT TO INSPECT CONTRACTOR'S OPERATIONS**

The Village shall have the right to inspect the Contractor's facilities and operations at any reasonable time to determine whether the Contractor's performance complies with the requirements of this Agreement. The Contractor shall make its facilities and operations available for the Village's inspection and shall cooperate fully. The Village is not obligated to provide advance notice of its inspections.

### **32.4 VILLAGE'S RIGHT TO APPROVE**

Whenever this Agreement authorizes the Village or one of its representatives (e.g., the Administrator) to approve a request by the Contractor, the Village shall have the right to withhold its approval until the Contractor submits all of the information needed to evaluate the Contractor's request. The Village shall fairly and objectively evaluate the information provided by the Contractor, as well as any other relevant facts. The consent of the Village shall not be unreasonably withheld or delayed, except as otherwise explicitly provided herein. However, the Village shall

have the exclusive right to weigh the relevant facts and determine whether the approval of the Contractor's request is consistent with the requirements in this Agreement and the public interest.

### **32.5 THE VILLAGE'S RIGHT TO REQUIRE PERFORMANCE**

The Village shall have the right to take all steps necessary to ensure the Collection of Solid Waste in the Service Area. If the Administrator instructs the Contractor to collect Solid Waste pursuant to this Agreement and the Contractor fails to do so within twenty-four (24) hours after the Contractor receives the Administrator's request, the Village may collect such material using its own resources or by using a third party vendor. The Village may deduct the cost of collecting such material from the Village's monthly payments to the Contractor if the Contractor was obligated under this Agreement to collect the Solid Waste. If the Contractor collects the Solid Waste pursuant to the request of the Administrator and it is subsequently determined that the Contractor was not obligated to do so under this Agreement, the Village shall pay the reasonable, documented, out-of-pocket costs incurred by the Contractor for such services.

## **33. CONTRACTS FOR COMMERCIAL COLLECTION SERVICE**

### **33.1 CONTRACTS FOR COMMERCIAL COLLECTION SERVICE**

The Contractor shall enter into a service contract with each New Customer before the Contractor provides Commercial Collection Service to that Customer. During the Transition Period, the Contractor shall use its best efforts to enter into service contracts with all existing Commercial Customers (i.e., Customers receiving Collection Service from the Village's franchised hauler before the Commencement Date).

The Contractor shall prepare a standard form that the Contractor shall use as its service contract with Commercial Customers. The proposed form shall be provided to the Administrator for approval on or before the deadline set forth in in Section 5.2(f), above, and whenever the Contractor proposes to change its content. The terms and conditions contained in the form shall be consistent with the requirements in this Agreement; the service contract shall not contain any requirements or fees that are not authorized in this Agreement. The term of the service contract shall not extend beyond the term of this Agreement. The Administrator shall have the authority to approve the Contractor's service contract, or require additions, deletions, or changes to the language therein, including changes to the disclosure statement provided below. The Contractor's service contract shall identify: (a) the service(s) that will be provided to the Customer; (b) the size and type(s) of Collection Container(s) that will be used; (c) the frequency of Collection Service; (d) the Scheduled Collection Day(s); (e) the Rates for the services that will be provided to the Customer; and (f) the total amount to be paid each month by the Customer. The service contract also shall contain the following disclosure statement, unless alternate language is approved by the Administrator:

#### **REGULATION BY WELLINGTON**

This contract for the collection of solid waste is regulated by the Village of Wellington. If you have questions or concerns regarding the terms in this contract, you may call the Contractor at (561)-XXX-XXXX or the Village's contract administrator at (561) 791-4003 for assistance.

## COMPACTORS AND ATTACHED ROLL-OFF CONTAINERS

You may provide your own compactor and mechanical container for the collection of solid waste, if the compactor and container are the type that can be serviced by the Contractor's collection equipment. In the alternative, you may obtain a compactor and mechanical container from the Contractor. In all cases, the compactor and mechanical container must be maintained in a safe, sanitary, serviceable condition by the owner of the compactor and mechanical container.

## RATES FOR SERVICES

The Village has approved standard rates for the collection of solid waste and recyclable materials. Under this contract, you will pay the following rates for the Contractor's services. You may call the Contractor or the Village's contract administrator if you have questions about any of the Contractor's rates.

On or before October 1<sup>st</sup> of each Operating Year, the Contractor shall provide each Commercial Customer with a copy of the disclosure statement. The disclosure statement may be incorporated into the Contractor's invoices to its Commercial Customers or it may be distributed as a separate document.

### **33.2 DISCLOSURE OF FEES FOR COMMERCIAL COLLECTION SERVICE**

The Contractor's service contract shall identify all of the services that the Contractor will provide to the Commercial Customer and all of the associated Rates. No fees or charges may be collected from any Commercial Customer unless such fees and charges were disclosed to that Customer before the Contractor provided its services. With regard to existing Commercial Customers, the Contractor shall be presumed to have disclosed its Rates if the Contractor provided notice in compliance with Section 35 prior to the Commencement Date. This presumption shall expire six (6) months after the Commencement Date. Thereafter, if a dispute arises with a Customer concerning the Contractor's Rates, the Contractor will not be entitled to payment unless the Contractor demonstrates that it has a service contract with the Customer and the Contractor fully disclosed its Rates to the Customer prior to providing its Collection Service.

### **33.3 RESERVED**

### **33.4 INITIATION OF SERVICE TO A COMMERCIAL CUSTOMER**

On the Commencement Date, the Contractor shall begin to provide its Collection Services to each Commercial Customer in the Service Area. Thereafter, the Contractor shall provide its Collection Services for Commercial Waste within three (3) Operating Days after the Contractor receives a request for service from a New Customer that has signed a service contract with the Contractor.

### **33.5 TERMINATION OF SERVICE TO A COMMERCIAL CUSTOMER**

The Contractor may terminate Collection Service to a Commercial Customer based on the Customer's failure to pay the Contractor's bills for Collection Service. The Contractor shall notify the Administrator at least fifteen (15) calendar days before service is terminated to a Commercial Customer. Upon being notified, the Village shall take whatever action it deems appropriate to enforce compliance with the Village's Ordinances.



If Collection Service is terminated, the Contractor may remove its Collection Containers and other equipment from the Customer's Premises. The Contractor may charge Interest on delinquent accounts with Commercial Customers, and may charge a reasonable fee for the resumption of service to Commercial Customers, subject to Applicable Laws. Any fee for the resumption of service shall be subject to the Administrator's approval. The Collection of delinquent accounts with Commercial Customers is solely the responsibility of Contractor and Contractor shall comply with all federal and state laws governing collection of debts.

### **33.6 REQUIREMENTS FOR MULTI-FAMILY DWELLINGS**

All of the requirements in Section 33.1 through 31.5, above, also shall apply to the Contractor when dealing with Customers that own or manage Multi-Family Dwellings. For the purposes of this Section 33.6, such Customers shall have the same rights, remedies, and obligations as Commercial Customers.

## **34. RECORD KEEPING AND REPORTING**

### **34.1 GENERAL RECORD KEEPING AND REPORTING REQUIREMENTS**

- 34.1.1 The Contractor shall be solely responsible for keeping all of the records and documents necessary to demonstrate that Contractor has performed its duties in compliance with the requirements in this Agreement. The Contractor's records shall be accurate, well-organized and up-to-date at all times. The Contractor's records concerning its performance under this Agreement shall be kept in the Contractor's local office, or in another location approved by the Village throughout the term of this Agreement. Following the expiration or termination of this Agreement, the Contractor shall retain all such records for at least seven (7) years or the Contractor shall provide digital copies of the records to the Village.
- 34.1.2 The Contractor shall prepare and maintain records, reports, and other information in compliance with the requirements in this Agreement and consistent with generally accepted management practices and principles. All of the Contractor's reports to the Village shall be submitted in an electronic (digital) format that is compatible with the Village's software (currently Microsoft). Hard copies also shall be provided, if requested by the Administrator or if they are expressly required herein. The format and content of the Contractor's reports are subject to the Administrator's approval. The reports shall be signed by the District Manager or other duly authorized representative of the Contractor.
- 34.1.3 All of the Contractor's records shall be maintained in an electronic database. The database shall be available for inspection by the Village at any time during normal business hours. Upon request, the information in the logs shall be provided to the Administrator on-line (e.g., via e-mail) within five (5) Operating Days.

### **34.2 SPECIFIC RECORD KEEPING REQUIREMENTS**

- 34.2.1 Collection Service Log – The Contractor shall maintain records and a log concerning all of the Collection Services the Contractor provides to each Customer in the Service Area. At a minimum, the records shall identify: the type of service provided to each Customer; the date(s) when service was provided; the size of, and frequency of

Collection for, the Mechanical Containers (if any) used by the Customer; and the Collection Services (e.g., Special Collection Services), if any, for which the Customer paid a fee directly to the Contractor, including the amount billed to each Commercial Customer. The Contractor shall maintain the same records with the same information for all of the Collection Services that the Contractor provides to the Village pursuant to Section 36. The Contractor shall summarize its records in a log.

- 34.2.2 Solid Waste Disposal Log – The Contractor shall maintain records and a log concerning all of the Solid Waste it collects in the Service Area, including the materials collected for the Village pursuant to Section 36. The records shall identify the amount of Solid Waste collected and the locations where the Solid Waste was taken for disposal, as documented by scale house tickets and receipts. The records shall address each Load of Solid Waste for each Collection vehicle for each Operating Day. These records shall be summarized in a log.
- 34.2.3 Recyclable Materials Log – The Contractor shall maintain records and a log concerning all of the Source Separated Recyclable Materials it collects in the Service Area, including the materials collected for the Village pursuant to Section 36. The records shall identify the amount of Source Separated Recyclable Materials collected and the locations where the Source Separated Recyclable Materials were taken for processing, as documented by scale house tickets and receipts. The records shall address each Load of Source Separated Recyclable Materials for each Collection Vehicle for each Operating Day. These records shall be summarized in a log.
- 34.2.4 Vehicle Maintenance Log – Upon request, the Contractor shall keep maintenance records and a log for each vehicle used for Collection Service. At a minimum, the log shall show: the identification number for the vehicle; the date and description of all routine maintenance activities; and the date and description of all repair activities.
- 34.2.5 Non-Collection Notice Log – Upon request, the Contractor shall maintain records and a log of all occasions when the Contractor issued Non-Collection Notices. The log shall include: the date when the notice was issued; the Customer's street address; and the reason for the Non-Collection Notice.
- 34.2.6 Complaint Log – The Contractor shall maintain records and a log of all complaints. The log shall include: the date and time when the Contractor was notified by the Village or Customer; the Customer's street address; a description of the complaint; whether the complaint was a Legitimate Complaint; the date and time when the complaint was resolved; and a description of how the complaint was resolved.
- 34.2.7 Property Damage Log – The Contractor shall maintain records and a log concerning all accidents and events when Contractor's employees, vehicles, or equipment caused an injury to any Person or domestic animal, or damage to any public or private property. At a minimum, the log shall include: the date and time when the event occurred; the address where the event occurred; the name of the Person that reported the event; the names of any persons who witnessed the event; a description of the event; the vehicle or equipment number, and/or the name of the employee involved in the event; the name and address of the Person suffering the injury or damage; a description of the injury or damage suffered; and a description of how and when the matter was resolved.

34.2.8 Reserved.

34.2.9 GPS Records and Photographs -- The Contractor shall maintain records and a log concerning the Global Positioning Systems (“GPS”) data that is obtained from the Collection vehicles used by the Contractor to provide Collection Services under this Agreement. The Contractor also shall maintain the photographs obtained from the video-camera system mounted on the Collection vehicles. The Contractor shall maintain the GPS logs, photographs, and related records for each Collection vehicle for at least thirty (30) days after the GPS data and photographs were created.

### **34.3 QUARTERLY REPORT**

34.3.1 The Contractor shall submit a quarterly report to the Administrator no later than the fifteenth (15th) day of each calendar quarter (i.e., January 15; April 15, July 15; October 15) during each Operating Year. The report shall be submitted electronically (digitally) via e-mail. At a minimum, the quarterly report shall contain the following information for the previous quarter: (a) the total quantity of each type of Residential Waste (e.g., Garbage; Bulky Waste, Yard Waste) delivered to each Designated Facility pursuant to this Agreement; (b) the total quantity of Source Separated Recyclable Material delivered to each Designated Facility; (c) the amount of Solid Waste and Source Separated Recyclable Material (if any) delivered to other facilities; (d) the number of Missed Collections; (e) a summary of each accident involving personal injuries or property damage; (f) the total number of Legitimate Complaints; (g) the total number of Garbage Carts and Yard Waste Carts delivered to the Village; and (h) the total number of Garbage Carts and Yard Waste Carts delivered to Residential Customers by the Contractor. The quarterly report also shall include the Contractor’s records for its monthly billings to each Multi-Family Dwelling that uses Mechanical Containers.

34.3.2 Upon request, the quarterly report shall include any information that is needed by the Village to comply with the Village’s reporting obligations under Chapter 403, Florida Statutes, or other Applicable Laws concerning Recycling rates, Recycling goals, Solid Waste management programs, or similar matters.

34.3.3 Whenever the Contractor submits a quarterly report to the Village, the Contractor also shall submit a signed written statement from the District Manager or their designee, verifying that the quarterly report is accurate in all respects. The District Manager or their designee also shall verify in each quarterly report that (a) all of the Solid Waste and Source Separated Recyclable Material collected by the Contractor under this Agreement has been delivered to a Designated Facility, and (b) the Contractor’s quarterly report accurately accounts for all such deliveries.

### **34.4 ANNUAL REPORT**

The Contractor shall submit an annual report to the Administrator no later than sixty (60) calendar days after the end of each Operating Year. At a minimum, the annual report shall include the following information: (a) annualized information for all items required in the quarterly reports; (b) updated lists of all vehicles and equipment used to provide Collection Service under this Agreement; (c) a description and inventory of the equipment, facilities, manpower, and other resources available for emergency conditions; (d) a trend analysis and overall evaluation of the number and types of Legitimate Complaints received by the Contractor on a monthly and annual basis during the term of this Agreement; (e) a corrective action plan for systemic and chronic problems, if any; (f) an updated Collection Plan; (g) an updated Contingency Plan; (h) an updated Safety Plan; (i) a summary of all accidents and Legitimate Complaints involving personal injuries or damage to public or private property during the prior year; and (j) a list of the vehicles, if any, that will be replaced in the upcoming year to comply with the requirements in Section 28.3 herein. The first annual report shall be submitted to the Village on or before December 1, 2022.

#### **34.5 ACCIDENT REPORTS**

The Contractor shall notify the Administrator of all OSHA reportable events and serious accidents involving the Contractor's staff, vehicles, or equipment that occur while the Contractor is performing services under this Agreement and: (a) result in personal injuries, or damage to public or private property that exceeds Five Hundred Dollars (\$500) in value; or (b) require notification to OSHA or another regulatory agency under Applicable Laws. In all such cases, oral notice shall be provided within six (6) hours of the accident and a written report shall be provided to the Administrator within one (1) Operating Day of the accident. If any issues are unresolved at that time, a subsequent report shall be provided to the Administrator within two (2) Operating Days following the ultimate disposition of the case. The oral and written reports shall include the date and time of the event, a description of the event, the names of any persons who witnessed the event, an estimate of the damages and injuries (if any) caused by the event, and a description of how the event and any associated damages and injuries were handled or will be handled.

#### **34.6 VILLAGE'S RIGHT TO INSPECT AND AUDIT CONTRACTOR'S RECORDS**

The Contractor shall cooperate with the Administrator and provide every reasonable opportunity for the Village to ascertain whether the duties of the Contractor are being performed properly. In addition to the information explicitly required by this Agreement, the Contractor shall promptly provide any information regarding the services provided by the Contractor under this Agreement that the Administrator or the Contractor deem relevant under the circumstances.

The Village shall have the right to inspect, copy, and audit, at the Village's expense, all of the Contractor's records concerning the Contractor's services under this Agreement, except documents that are exempt from disclosure under Florida law. The Contractor's records shall be made available for inspection in the Village during normal business hours, within five (5) Operating Days after the Village requests the records. The Contractor may provide electronic copies of the records, in lieu of hard copies.

#### **34.7 PUBLIC'S RIGHT TO INSPECT CONTRACTOR'S RECORDS**

In accordance with Chapter 119, Florida Statutes, any written documents that are submitted to the Village will become the property of the Village and will not be returned. All information contained within such documents shall be available for public inspection, except as otherwise provided under Chapter 119, Florida Statutes, or other Applicable Laws.

The Parties acknowledge and agree that the statements and provisions below are required to be included in this Agreement pursuant to Section 119.0701(2), Florida Statutes. The inclusion of this statement and the provisions below shall not be construed to imply that the Contractor has been delegated any governmental decision-making authority, governmental responsibility, or governmental function, or that the Contractor is acting on behalf of the Village as provided under Section 119.011(2), Florida Statutes, or that the statements or provisions are otherwise applicable to the Contractor. As stated below, the Contractor may contact the Village's custodian of public records with questions regarding the application of the public records law; however, the Contractor is advised to seek independent legal counsel as to its legal obligations. The Village cannot provide the Contractor advice regarding its legal rights or obligations. The Village shall provide the Contractor with written notice if the name or contact information for the public records custodian changes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACTOR'S WORK UNDER THIS AGREEMENT, CONTACT THE VILLAGE'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NO. 561-791-4118; E-MAIL: CADDIE@VILLAGE; MAILING ADDRESS: 12300 FOREST HILL BLVD., WELLINGTON, FL 33414.**

If the Contractor is providing services and is acting on behalf of the County as provided under Section 119.011(2), Florida Statutes, the Contractor shall comply with the public records law and shall:

- (a) Keep and maintain public records required by the Village to perform the services.
- (b) Upon request from the County's custodian of public records, provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the Contractor does not transfer the records to the Village.
- (d) Upon completion of the Contractor's work under this Agreement, transfer at no cost to the Village, all public records in the possession of the Contractor or keep and maintain public records required by the Village to perform the service. If the Contractor transfers all public records to the Village upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Village, upon request from the Village's custodian of public records, in a

format that is compatible with the information technology systems of the Village.

Failure of the Contractor to comply with Chapter 119, Florida Statutes, or the requirements of this Section 34.7 shall constitute a default under this Agreement and shall be grounds for termination of this Agreement.

## **35. PUBLIC NOTICES AND EDUCATIONAL SERVICES**

The Contractor shall provide the following notices and educational services to help inform the public about the Village's Solid Waste management system. The Contractor shall work closely with the Village when preparing the notices, educational materials, and promotional information required pursuant to this Section 35. The design and content of the notices, educational materials, and promotional information shall be subject to the Administrator's prior approval. The Contractor shall be responsible for all expenses associated designing, printing, publishing, and delivering the notices and otherwise providing the educational services required herein.

### **35.1 NOTICE FOR COMMENCEMENT OF SERVICE**

At least thirty (30) calendar days before the Commencement Date, the Contractor shall design, print, and deliver a notice to each Commercial Customer concerning the Contractor's Collection Services. Notice shall be provided to all Residential Customers approximately two (2) weeks before the Commencement Date. Notice shall be provided again to Residential Customers, approximately one week before the Commencement Date, unless the Administrator confirms in writing that a second notice is not necessary. The notice shall be delivered by the U.S. Postal Service or hand delivered via door hangers. At a minimum, the notice to Residential Customers shall (a) identify each of the Scheduled Collection Days for the Customer receiving the notice, (b) summarize the applicable Set Out requirements, and (c) include other educational and promotional information provided to the Contractor by the Village. The notice also may provide other relevant information concerning the Contractor's services. The notice also shall be posted to the Contractor's website at least thirty (30) days before the Commencement Date.

### **35.2 NOTICES FOR NEW CUSTOMERS**

The Contractor shall design, print, and mail or deliver appropriate informational materials for each New Customer. At a minimum, the notice shall include the same general information that is contained in the notice pursuant to Section 35.1. The notice shall be provided no later than the date when the Contractor begins to provide Collection Service to the New Customer.

### **35.3 NOTICES CONCERNING PERMANENT CHANGES IN COLLECTION SCHEDULES**

The Contractor shall design, print, and deliver a notice to each Residential Customer and each Commercial Customer that will be affected by a permanent change in the Scheduled Collection Days occurring after the Commencement Date. An electronic (digital) copy of the draft notice shall be submitted to the Administrator for review and approval at least thirty (30) days prior to the printing and delivery of the notice. The approved notice shall be delivered to the affected Customers at least five (5) days before the Contractor changes its Scheduled Collection Days. Notice shall be provided twice to Residential Customers that receive Collection Service at Curbside. Such Customers shall receive notice at least two (2) weeks prior to the change and they shall receive notice again at least one (1) week prior to the change. The Contractor also shall place

the notice on the Contractor's website at least fifteen (15) days before the permanent change occurs.

#### **35.4 NOTICES FOR HOLIDAYS**

The Contractor shall provide notice to each Customer that will be affected by a change in their Scheduled Collection Days because of a Holiday. Specifically, the Contractor shall publish notice in the newspaper of general circulation that has the largest number of subscriptions in Palm Beach County. In the alternative, the Contractor may use e-mails and telephone calls to provide such notice, if the Contractor demonstrates to the Administrator's reasonable satisfaction that this method of providing notice will be effective. The Contractor also shall place a notice on the Contractor's website. The newspaper notice shall be published at least three (3) days before the Holiday. The notice on the Contractor's website shall be in place at least ten (10) days before the Holiday.

### **36. CONTRACTOR'S COLLECTION SERVICES FOR THE VILLAGE**

#### **36.1 GENERAL REQUIREMENTS**

Subject to the conditions contained herein, the Contractor shall provide Collection Services for the Village at certain Village facilities and public locations designated by the Village. The Contractor shall be solely responsible for all of the costs and expenses associated with these services, including but not limited to the cost of Collection and disposal (Tipping Fees), and the cost of purchasing, delivering, maintaining, and using Mechanical Containers. The Village will purchase and provide any Garbage Carts or Recycling Carts needed to provide Collection Service pursuant to this Section 36.

With regard to the Contractor's services for the Village, the Village shall determine: (a) the size of the Collection Containers that shall be provided by the Contractor; (b) the frequency of Collection Service for each Collection Container; (c) the location where the Collection Container will be placed by Contractor; and (d) the types of Collection Containers to be used. The Village shall have the right to increase or decrease the number of Collection Containers at any location, as well as the right to add new locations for the placement of Collection Containers.

At a minimum, the Contractor's Collection Services for the Village's properties and facilities shall be provided in compliance with the following requirements:

- (a) Garbage shall be collected twice each week;
- (b) Source Separated Recyclable Materials shall be collected once each week; and
- (c) Mechanical Containers used for the Collection of Yard Waste or Construction and Demolition Debris shall be emptied by the Contractor whenever the Mechanical Containers are full.

If the Administrator notifies the Contractor before 12 p.m. (noon) that a Mechanical Container used by the Village is full, the Contractor shall empty the container on the same day. If the Administrator notifies the Contractor after noon, the Contractor shall empty the Mechanical Container before noon on the next Operating Day. The Contractor shall increase the size of the

Collection Container or the frequency of Collection Service for any Collection Container if the Administrator determines the current level of service is inadequate.

**36.2 COLLECTION OF SOLID WASTE AND SOURCE SEPARATED RECYCLABLE MATERIALS AT VILLAGE FACILITIES**

The Contractor shall provide for the Collection of Solid Waste and Source Separated Recyclable Materials from any property that is owned, occupied, leased, or controlled by the Village at any time during the term of this Agreement. Exhibit 9 identifies the Village properties that, as of the Effective Date, shall receive Collection Service. Exhibit 9 also identifies the type and level of Collection Service to be provided to each Village property, beginning on the Commencement Date. The Contractor's obligations under this Section 36.2 includes the Collection of Solid Waste and Source Separated Recyclable Materials that are collected by the Village at other locations as a result of Village operations and then transported to the Village properties identified in Exhibit 9. The Village may add properties to Exhibit 9, if they are acquired, occupied, leased, or controlled by the Village after the Effective Date.

**36.3 RESERVED**

**36.4 RESERVED**

**36.5 COLLECTION OF BULKY WASTE AND YARD WASTE**

The Contractor shall assign a driver and a clamshell truck to be available to work with the Administrator on an "on call" basis from 8:00 a.m. until 5:00 p.m., five (5) days each week. If the Administrator calls the Contractor pursuant to this Section 36.5, the Administrator will instruct the driver where to go and what to collect. The Administrator will use this driver and vehicle primarily to collect piles of Bulky Waste and Yard Waste that have been left at the Curbside as a result of a Missed Collection. This driver and vehicle also may be used by the Administrator to collect debris from illegal dumping. The driver shall arrive at the designated location within two (2) hours after the Administrator contacts the Contractor. When this driver and vehicle are not working for the Administrator, the driver and vehicle may be used by the Contractor to collect Bulky Waste and Yard Waste as part of the Contractor's regular Collection Service on Scheduled Collection Days

If the Administrator calls the Contractor pursuant to this Section 36.5, the Contractor shall collect the piles of Bulky Waste and Yard Waste in compliance with the deadlines in Section 31.1.3, above. The Administrator also may request, and the Contractor shall provide, immediate Collection Service for Bulky Waste and Yard Waste if the Administrator concludes that the waste materials pose an imminent threat to the public health, safety and welfare (e.g., due to glass or sharp objects in the Bulky Waste). The Contractor shall dispatch its driver and Collection vehicle immediately if the Administrator requests immediate service to prevent injuries. However, nothing herein requires the Contractor to collect Hazardous Waste; the management of such material shall be governed by Section 15.3, above.

**36.6 RESERVED**

**36.7 COLLECTIONS FOR SPECIAL PROJECTS**

The Contractor shall collect and dispose of the Construction and Demolition Debris and other Solid Waste generated by the Village's employees when the Village's employees undertake special



construction projects in the Village's parks or undertake similar projects on other Village properties. However, the Contractor is not obligated to collect or dispose of Solid Waste generated by a third party contractor when the third party contractor is constructing or renovating the Village's buildings or performing other work for the Village.

### **36.8 COLLECTION FOR COMMUNITY EVENTS**

The Contractor shall provide Collection Service for up to six (6) Community Events that are designated by the Administrator each Operating Year, including but not limited to the Village's Fourth of July festival. The Contractor shall provide up to nine hundred sixty (960) cubic yards of capacity in Roll-Off Containers each year for Community Events, without charge. The Administrator shall designate the number and size of the containers required for each event. If the Village requests Collection Service for more than six (6) events in any Operating Year, or requests more capacity than is authorized in this Section 36.8, the Contractor shall provide the requested service and may charge the Village for its services, but the Contractor's charges shall not exceed the applicable Rates in Exhibit 4 for Commercial Collection Service.

The Contractor shall provide Recycling Containers for each of the six (6) Community Events, without charge, in the quantities and at the locations selected by the Administrator.

### **36.9 VILLAGE'S INTEGRATED SOLID WASTE MANAGEMENT PROGRAM AND PUBLIC EDUCATIONAL ACTIVITIES**

The Village supports the integrated Solid Waste management plan adopted by the Authority and the Village wishes to implement the plan in the Service Area. The Village also wants to enhance the Village's Recycling programs. The Contractor shall help the Village by providing technical advice and assistance concerning these activities. The Contractor also shall help the Village develop educational programs and materials concerning integrated Solid Waste management practices, including Recycling. Further, the Contractor shall make presentations to schools, civic groups, homeowners' associations, and other similar groups, when requested to do so by the Administrator. However, the Contractor is not obligated to make any out-of-pocket expenditures to comply with the requirements in this Section 36.9.

## **37. CONTRACTOR'S EMERGENCY SERVICES**

### **37.1 COLLECTION OF GARBAGE AFTER A DISASTER**

When severe weather (e.g., a hurricane or tropical storm) is approaching or a natural or manmade disaster is anticipated, the Contractor shall continue to provide Collection Service in compliance with this Agreement until: (a) the Village or the State of Florida declares a "State of Emergency" for the Service Area; (b) the Administrator and the Contractor agree that Collection Services should be suspended due to unsafe operating conditions; (c) sustained winds exceed thirty (30) miles per hour, as determined by the local or national weather service; or (d) Collection Services must be suspended pursuant to Applicable Law. Following a hurricane, tornado, or other natural or human event that is declared a federal disaster, the Contractor shall use its best efforts to immediately collect, by any means available, all of the Garbage that is Set Out by Customers. This shall be the Contractor's primary responsibility until the Contractor is able to provide Collection Services on a routine basis, as mutually determined by the Administrator and Contractor. The Contractor shall use its best efforts to resume its Collection Services for Bulky Waste, Yard Waste, and Source Separated Recyclable Materials on the Scheduled Collection Days as soon as possible after being

directed to do so by the Administrator. Until the Contractor resumes normal Collection Service, the Contractor's work for the Village shall be the Contractor's highest priority and it shall take priority over the Contractor's work for Commercial Customers and other members of the private sector. All of the vehicles and other equipment that the Contractor and its subcontractors (if any) have dedicated to serving the Village during normal operations under this Agreement shall continue to be dedicated to the Village following a disaster. When the Administrator is determining whether to suspend or resume the Contractor's Collection Service, the Administrator shall carefully consider the safety of the Contractor's employees and equipment, in addition to the safety of the other members of the community.

### **37.2 EMERGENCY VARIANCES IN ROUTES AND SCHEDULES**

If a hurricane, tropical storm, tornado, or other natural or human event is declared a federal disaster, the Administrator may grant the Contractor a variance from the Contractor's regular Routes and schedules. Requests for a variance shall be submitted in writing to the Administrator. If the Contractor's request is granted, the Contractor shall furnish a map depicting the revised Routes and shall provide the revised schedules in writing. Thereafter, the Contractor shall contact the Administrator on a daily basis and describe the status of the Contractor's efforts to provide Collection Service and resume the use of normal Routes and schedules.

### **37.3 COLLECTION OF DISASTER DEBRIS**

This Agreement does not give the Contractor the right to collect Disaster Debris. The Village will enter into a separate contract with the Contractor if the Village wishes to utilize the Contractor's services for the Collection of Disaster Debris. Nothing herein shall require the Village to utilize the services of Contractor, or prevent the Village from hiring another Person, to collect Disaster Debris. Among other things, the Village may utilize the Village's Disaster Debris Contract in accordance with the Village's emergency management plan, or the Village may utilize Village personnel and equipment, for the Collection of Disaster Debris.

If the Federal Emergency Management Agency declares that the Village is a federal disaster area, the Village shall be primarily responsible for the Collection of Disaster Debris in the Service Area, subject to the conditions contained herein. The Village may use its staff and/or any other Person to assist the Village with the Collection of Disaster Debris. The Village shall make a good faith effort to collect and remove the Disaster Debris generated by the federally declared disaster. The Village shall have the sole authority to determine the extent of the clean-up that will be conducted by the Village and its agents. When the Village's tasks under this paragraph have been completed, as determined by the Administrator, the Administrator shall notify the Contractor to resume all of its normal Collection Services. Thereafter, the Contractor shall collect the Solid Waste that is Set Out for Collection and the Contractor shall be paid the Rates set forth in Exhibits 3, 4, and 5 for Collection Services.

### **37.4 CONTRACTOR'S CONTINGENCY PLAN**

The Contractor shall develop a Contingency Plan, which shall describe the Contractor's plan of action in the event that an emergency or other situation disrupts the Contractor's normal operations (e.g., renders the Contractor's operations yard or equipment unusable, or prevents the Contractor's drivers from reporting for work). The Contingency Plan shall describe the steps that the Contractor shall take to avoid interruptions or reductions in Collection Service under such circumstances. The Contingency Plan shall be submitted to the Administrator in compliance with the schedule in

Section 5.2(f). The Contingency Plan shall be updated annually and resubmitted to the Administrator (a) with the Contractor's annual report and (b) within ten (10) Operating Days after the plan is revised by the Contractor. The Administrator shall have the right, but not the obligation, to approve the Contingency Plan and all revisions to the plan.

### **37.5 VILLAGE'S EMERGENCY MANAGEMENT MEETINGS**

If requested by the Administrator, the Contractor shall attend the Village's emergency management and disaster preparedness meetings and shall provide the Village with any materials that may be useful to the Village's efforts, including but not limited to Collection schedules and Routes. The Administrator shall notify the Contractor of the date, time, and location of the meetings, and shall identify any necessary materials that are to be provided by the Contractor.

## **38. RATES FOR CONTRACTOR'S SERVICES**

### **38.1 UNIFORM RATES FOR ALL COLLECTION SERVICES**

The Rates in Exhibits 3, 4, and 5 are the maximum amounts that shall be charged for the Collection Services provided by the Contractor pursuant to this Agreement. The Rates shall be applied uniformly to all Customers receiving Collection Services from the Contractor within the Village after the Commencement Date. The Contractor shall utilize the Rates in Exhibits 3, 4, and 5 and no others, when billing its Customers or the Village.

The Contractor shall charge the same Rate for all Residential Customers, regardless of the number of Garbage Carts, Recycling Bins, and Yard Waste Carts a Customer uses. The Contractor shall not charge an additional fee or increased Rate simply because a Residential Customer uses multiple Garbage Carts, Recycling Bins, or Yard Waste Carts.

### **38.2 RATES FOR SPECIFIC COLLECTION SERVICES**

The Rates for Residential Collection Services are set forth in Exhibit 3. The Rates for Commercial Collection Services are set forth in Exhibit 4. The Rates for Special Collection Services are set forth in Exhibit 5. The Rates identify the Collection component and the disposal component, if any, that are applicable to each Collection Service. Additionally, to compensate the Village for the cost of administration, supervision and inspection rendered for the effective performance of the Agreement, as well as other costs related to Collection, the Contractor shall pay to the Village a fee of five percent (5%) of all gross billings arising out of any services or operations (excluding disposal costs) conducted in the Service Area pursuant to the Agreement. How the Contractor elects to fund the five percent franchise fee is up to the discretion of the Contractor. However, invoices for residential customers must include the unit price multiplied by the number of units. The five percent (5%) franchise fee will be calculated and paid to the Village based on the invoice amount. A sample invoice form is attached in Exhibit X.

### **38.3 CPI ADJUSTMENTS TO COLLECTION COMPONENT OF RATES**

Subject to the conditions herein, on October 1, 2022 and each October 1 thereafter during the term of this Agreement, the Collection component of the Rates shall be adjusted, upward or downward, to reflect the change in the cost of Collection during the previous year due to inflation or deflation. Specifically, the Collection component of the Rates in Exhibits 3 and 4 shall be adjusted, upward

or downward, by an amount that is equal to the percentage change that occurred in the Consumer Price Index (as defined in Section 1.26, above) during the most recent twelve (12) consecutive month period beginning on April 1 and ending on March 31. For example, with regard to the CPI adjustment on October 1, 2022, the relevant period will be April 1, 2021 through March 31, 2022.

The percentage change in the CPI shall be calculated by using the following formula:

$$PC = \text{CPI 1 divided by CPI 2, minus 1.0, multiplied by 100}$$

Where:

PC is the percentage change in the CPI from one year to the next

CPI 1 is the CPI index number for the most recent April (e.g., April 2016)

CPI 2 is the CPI index number for April in the year before CPI 1 (e.g., 2015)

Notwithstanding anything else contained herein, a single CPI adjustment to the Rates shall not exceed five percent (5%) and there shall be no “catch up” adjustment to the Rates in future years (i.e., there will not be an adjustment to the Rates in the future to offset or mitigate the effect of the five percent (5%) “cap” in a year when the CPI adjustment would exceed five percent (5%), but for the five percent (5%) limitation contained herein).

Notwithstanding anything else contained herein, there will not be a CPI adjustment to increase the Rates unless the Contractor delivers a written request for a CPI adjustment to the Administrator on or before July 1 of the then current Operating Year. For example, the Contractor must request a CPI adjustment to the Rates on or before July 1, 2022 if the Contractor wants an adjustment to occur on October 1, 2022. If the Contractor fails to make a timely request for a CPI adjustment, there shall be no CPI adjustment on October 1 of the next Operating Year. Further, there shall be no “catch up” adjustment to the Rates in future years to off-set or mitigate the effect of failing to request the adjustment. The foregoing provisions in this paragraph only apply to CPI adjustments that increase the Rates. No notice is required, and the CPI adjustment shall occur, if the CPI adjustment will reduce the Rates.

If the CPI is discontinued or substantially altered, the Village may select another relevant price index published by the United States government or by a reputable publisher of financial and economic indices.

Exhibit 10 contains sample calculations that demonstrate how the CPI adjustments will be calculated under hypothetical circumstances.

#### **38.4 RESERVED**

#### **38.5 ADJUSTMENTS TO DISPOSAL COMPONENT OF COMMERCIAL RATES**

The disposal component of the Rates for Commercial Customers shall be adjusted, upward or downward, by the Administrator whenever there is a change in the Tipping Fees charged at the Designated Facility. The Contractor shall provide the Village and its Customers with advance notice of any pending changes in the Tipping Fees. The Rate adjustment shall be effective on the date of the change in the Tipping Fee at the Designated Facility or the date when the Contractor gave notice of the Rate adjustment to its Customers and the Village, whichever occurs later.

### **38.6 RATE ADJUSTMENTS FOR CHANGES IN LAW**

If a Change in Law will directly and materially affect the Contractor's cost of providing its services under this Agreement, the Contractor may request the Village to adjust the Rates. If the Contractor wishes to exercise this option, the Contractor shall prepare and submit a schedule of proposed Rates that will distribute the increased costs in a fair and non-discriminatory manner. The Contractor's request shall be accompanied by all data and analyses necessary for the Village to fairly evaluate the proposed Rate increase. The Manager may request, and upon request the Contractor shall provide, additional information as necessary. After receiving the requested information, the Manager shall present the Contractor's request and the Manager's recommendations to the Council. The Contractor shall be given a reasonable opportunity to explain the basis for its request at a duly noticed public meeting of the Council.

The Manager and the Council shall fairly evaluate the Contractor's request in a timely manner and in compliance with the requirements in Section 32.4, above. Subject to the provisions of Section 32.4, the Contractor's request shall be approved if the request complies with the requirements in this Section 38.6 and the Agreement. The Council's decision to grant, grant in part, or deny the Contractor's request shall constitute final action by the Village.

If any adjustments to the Rates are approved, the adjusted Rates shall become effective upon the date designated by the Council. Adjustments (if any) to the Rates shall be designed to compensate the Contractor for the increased costs incurred by the Contractor after the Change in Law took effect.

If a Rate adjustment is approved pursuant to this Section 38.6 and the adjustment will cause the Rate for any Collection Service to increase by an amount that is equal to or greater than twenty percent (20%) of the Rate in effect before the adjustment took effect, or cause the Rate for any Collection Service to be greater than one hundred fifty percent (150%) of the Rate on the Effective Date, the Council may terminate this Agreement at any time after providing one hundred eighty (180) days' notice to the Contractor.

### **38.7 EXTRAORDINARY RATE ADJUSTMENTS**

38.7.1 Once each Operating Year, before April 1, the Contractor may petition the Manager for a Rate adjustment on the basis of extraordinary or unusual changes in the cost of its operations that could not reasonably be foreseen by a prudent Person. The Contractor's petition shall contain a detailed justification for the Rate adjustment. Among other things, the Contractor's petition shall include an audited statement of Contractor's historical and current expenses, demonstrating that Contractor has incurred an extraordinary increase in Contractor's costs due to factors beyond the Contractor's control, which have occurred through no fault or negligence of the Contractor. The audited statement shall be prepared by a certified public accountant that is licensed in the State of Florida and not an employee of the Contractor or its affiliates. At its expense, the Village may audit the Contractor's records to evaluate the Contractor's request. The Manager may request from the Contractor, and the Contractor shall provide, all of the information that is reasonably necessary for the Manager to evaluate the Contractor's petition. After receiving the necessary information, the Administrator shall place the Contractor's request and the Administrator's recommendations on the agenda for one of the Council's public meetings.

- 38.7.2 The Contractor shall be given a reasonable opportunity to explain the grounds for its petition at the public meeting conducted by the Council. The Council shall grant, grant in part, or deny the Contractor's request in a timely manner after the Manager receives all of the information requested from the Contractor. The Council may deny the Contractor's request for any reason or no reason, in its sole discretion, as the Council deems appropriate. The Council's decision shall constitute final action by the Village.
- 38.7.3 If the Contractor's request is granted in whole or in part, the Council shall have the right to reduce the Contractor's Rates, if and to the extent that the factors causing the Contractor's price increase have been ameliorated or eliminated. Every twelve (12) months after a request is granted, the Manager shall have the right to request, and the Contractor shall prepare promptly upon request, an updated audit and explanation of whether the extraordinary Rate increase should remain in effect. The Manager may reduce the Contractor's Rates to the levels that were in effect before the extraordinary Rate increase was granted, or to an appropriate intermediate level, unless the Contractor demonstrates that the Village should continue to pay the extraordinary Rate increase. The Council shall provide at least thirty (30) days advance notice and a reasonable opportunity for the Contractor to be heard by the Council before the Council reduces the Contractor's Rates.

### **38.8 RATES FOR DISASTER DEBRIS**

If the Administrator wishes to have the Contractor collect Disaster Debris following a federally declared disaster, the Village and the Contractor shall enter into a separate contract and the Village shall pay the Contractor in accordance with the terms, conditions, and Rates that are mutually agreed upon by the Village and Contractor before the commencement of the Contractor's work under that contract. The Rates for the Collection of Disaster Debris shall not exceed the Rates in Exhibit 5 for the same or similar services. This Agreement does not authorize any payments for the Collection of Disaster Debris.

### **38.9 ADJUSTMENTS TO FRANCHISE FEE**

Whenever any Rate is adjusted, the Franchise Fee shall be recalculated and then paid based on the adjusted Rate. If the Franchise Fee is adjusted, the Rates shall be adjusted. The adjusted Rate shall include the Franchise Fee. When the adjusted Rate (including the Franchise Fee) takes effect, the Contractor may bill and collect the adjusted Rate from its Customers. It is intended that the Franchise Fee will be set by the Village and then passed through to the Contractor's Customers as part of the Rates.

### **38.10 PAYMENTS FOR SHARED MECHANICAL CONTAINERS**

The Contractor may prorate its charges to accommodate Customers that share a Mechanical Container; however, the charges collectively shall not be more than the amounts set forth in the approved Rates, unless the Administrator approves the Contractor's charges in advance, based on special circumstances. Similarly, the Administrator may require a shopping center to receive and pay for Collection Service that is greater than the sum of the needs of the individual shops sharing a Mechanical Container, if the public also is using the Mechanical Containers in the shopping center.

## **39. PAYMENTS TO CONTRACTOR FOR COLLECTION SERVICES**

### **39.1 GENERAL BILLING AND PAYMENT PROVISIONS**

Subject to the conditions and limitations contained herein, the Village and the Customers shall pay the Contractor for the services that the Contractor provides in compliance with the requirements in this Agreement. However, the Village and the Customers shall have no obligation to pay any fee, charge, cost, or other sum to the Contractor unless such payment is explicitly authorized in this Agreement and (a) the fee is identified in Exhibit 3, 4, or 5 or (b) the Agreement explicitly provides that the fee shall be negotiated between the Contractor and the Customer. The Rates for Collection Services in Exhibits 3, 4, and 5 shall constitute full and complete compensation to the Contractor for the services provided by the Contractor under this Agreement. The Rates shown in Exhibits 3 and 4 include the Franchise Fee that must be paid to the Village pursuant to Section 40.1, below. In all cases, the Village shall have the sole authority to determine whether and the extent to which the Contractor is entitled to payment for services it provided under this Agreement.

### **39.2 PROHIBITIONS ON PAYMENTS FROM CUSTOMERS TO CONTRACTORS**

Neither the Contractor nor its agents, subcontractors, employees or other representatives shall solicit or accept any payment or monetary remuneration from any Customer for the provision of any Service described in this Agreement, unless such payments are explicitly authorized in this Agreement and the payments are less than or equal to the amounts authorized. If a Customer or other Person delivers any money to the Contractor for any service provided in the Service Area, and such payment is not explicitly required in this Agreement, the Contractor shall return the money to the Customer within five (5) Operating Days after the money is received by the Contractor.

### **39.3 PAYMENTS FROM VILLAGE FOR RESIDENTIAL COLLECTION SERVICE**

Subject to the conditions and limitations contained herein, the Village shall pay the Contractor for the Residential Collection Service that is provided by the Contractor in compliance with this Agreement. The Village's payments will be based on the Rates set forth in Exhibit 3.

On or before the tenth day of each Operating Month, the Contractor shall provide the Village with an invoice for the Residential Collection Services that were provided by the Contractor during the prior Operating Month. The format and content of the Contractor's invoice shall be subject to the approval of the Village's Chief Financial Officer. The Contractor's invoice shall identify the type of Residential Collection Service provided (i.e., Curbside Collection with Garbage Carts; Collection with Mechanical Containers) and the number of Dwelling Units that received each type of Collection Service. The amount of the Village's payments to the Contractor shall be calculated by multiplying the applicable monthly Rate for a Residential Service times the number of Dwelling Units on the Residential Customer List receiving that specific type of Collection Service. For the purposes of calculating the amount of the Village's payments, the Contractor shall use the Residential Customer List as it existed on the first day of the Operating Month for which payment is being made.

The Contractor's monthly invoice also shall include the following information for the previous Operating Month: (a) the total quantity of each type of Residential Waste (e.g., Garbage; Yard Waste; Bulky Waste) delivered to each Designated Facility pursuant to this Agreement; and (b) the total quantity of Source Separated Recyclable Material delivered to each Designated Facility pursuant to this Agreement; The information provided with the invoice may be included in the report submitted by the Contractor pursuant to Section 40.1 for Franchise Fees.

The Village shall pay the Contractor within thirty (30) days after the Village receives the Contractor's invoice, but the Village may deduct any unpaid Franchise Fees from its payment, pursuant to Section 40.1, below. The Village shall have the right to request and obtain additional information from the Contractor concerning the Contractor's invoice. The Village also has the right to contest the amounts requested in the Contractor's invoice. However, the Village shall pay all undisputed amounts within thirty (30) days after receiving the Contractor's invoice.

#### **39.4 VILLAGE'S PAYMENTS FOR COLLECTION SERVICES PROVIDED TO THE VILLAGE**

The Contractor shall not bill the Village, and the Village shall not pay the Contractor, for the services provided to the Village pursuant to Section 36 of this Agreement, except as expressly provided in Section 36.8. The Village's payments (if any) will be based on the Rates set forth in Exhibit 4. The Contractor's invoice shall identify the specific services that were provided and the applicable Rate for each service. The invoice shall be submitted with the Contractor's invoice for Residential Collection Services and it shall be reviewed and paid in the same manner, subject to the requirements and limitations set forth above in Section 39.3.

#### **39.5 VILLAGE'S PAYMENTS FOR DISPOSAL COSTS**

The Authority collects non-ad valorem special assessments to pay for the disposal of Solid Waste generated on Residential Property and the Village's property. The Authority then issues "disposal credits" that the Village may use to pay the Authority's Tipping Fees when the Village delivers its Solid Waste to the Authority's facilities for disposal. Under this Agreement, the Village shall give and assign its rights in the disposal credits to the Contractor, but the credits shall be used only for the disposal of the Solid Waste generated in the Village. Accordingly, for each Operating Year, the Contractor shall receive the Village's disposal credits for the Solid Waste generated on the Residential Property in the Service Area, as well as the disposal credits for the Solid Waste that is generated on the Village's property and delivered to the Authority's facilities. Except for the assignment of its disposal credits, the Village shall have no obligation to pay the Contractor for the disposal of any Solid Waste collected when providing Residential Collection Service or when providing the Collection Services required pursuant to Section 36 of this Agreement. The Village also shall have no obligation to pay the Tipping Fee for any Contaminated Recyclable Material that is rejected by the Designated Facility for Recyclable Materials.

#### **39.6 VILLAGE'S UNDERPAYMENTS AND OVERPAYMENTS TO CONTRACTOR**

If the Village pays the Contractor in error, for whatever reason, the Contractor shall promptly notify the Administrator to rectify the mistake. The Village shall make appropriate adjustments to the Contractor's payments under this Agreement to off-set past underpayments and overpayments resulting from any error. However, the Village shall not be obligated to make any adjustments to correct for underpayments that occurred more than three (3) months before the Village received



the Contractor's notice of the error. The Parties agree that this limitation on the Contractor's remedies is reasonable and necessary to prevent untimely claims.

### **39.7 LIMITATIONS ON CONTRACTOR'S RIGHT TO PAYMENT FROM VILLAGE**

The Village shall have no obligation to pay for any of the Collection Services provided by the Contractor, except as provided in Sections 39.3 and 39.4, above. The Contractor shall have no right to any revenues or funds obtained by the Village from any other sources, including but not limited to funds distributed to the Village by the Florida Department of Environmental Protection or any other Person.

### **39.8 PAYMENT FOR COMMERCIAL COLLECTION SERVICES**

The Contractor shall be solely responsible for billing its Commercial Customers and collecting the Rates, fees, and other charges for the Commercial Collection Services the Contractor provides under this Agreement. The Contractor also shall be responsible for the payment of all Tipping Fees associated with the disposal of the Solid Waste and other material collected by the Contractor when providing its Commercial Collection Services. The Contractor may bill its Commercial Customers in advance for the Commercial Collection Services the Contractor will provide during the Operating Month.

Part of the cost of disposing of Commercial Waste will be billed and collected by the Authority through the use of non-ad valorem special assessments. Any disposal costs for Commercial Waste that are not covered by the Authority's special assessment may be billed by the Contractor to its Commercial Customers. The Contractor shall be solely responsible for paying the Authority for any Tipping Fees or other disposal costs incurred by the Contractor when providing Commercial Collection Services.

The Contractor may bill a Commercial Customer the applicable Rates set forth in Exhibits 4 and 5, including: (a) a fee for the disposal of the Solid Waste generated by the Commercial Customer; (b) a fee for the Collection of the Commercial Customer's Solid Waste and/or Source Separated Recyclable Materials; (c) a fee for each Special Collection Service; (d) a fee for the lease of a Compactor; and (e) a Franchise Fee.

The Contractor's charges for waste disposal shall be based on the Tipping Fees established by the Authority. The Contractor's disposal charges shall increase or decrease whenever the Authority's fees increase or decrease.

### **39.9 PAYMENTS FOR GARBAGE CARTS AND YARD WASTE CARTS**

The Village will purchase and provide the Garbage Carts and Yard Waste Carts used by Residential Customers and Commercial Customers. The Village shall have no obligation to pay any fees to the Contractor for any such carts.

### **39.10 PAYMENTS FOR SPECIAL COLLECTION SERVICES**

The Rates for Special Collection Service shall be paid in addition to the Rates for the routine Collection Service received by the Customer. The Contractor shall be solely responsible for billing its Customers and collecting the applicable Rates for any Special Collection Services the Contractor provides pursuant to this Agreement. The Contractor also shall be responsible for the payment of

all Tipping Fees associated with the disposal or processing of Solid Waste collected by the Contractor when providing Special Collection Services. In cases where there are no established Rates in this Agreement for the requested Special Collection Service, the Contractor and the Customer shall negotiate a mutually acceptable Rate for the Contractor's services. With regard to Special Collection Services provided to Residential Customers, the negotiated Rate shall not exceed the Rate in Exhibit 4 for Commercial Customers receiving the same type or level of service. The Contractor shall not be entitled to any compensation for a Special Collection Service unless the Customer agreed to pay the applicable Rate before the Contractor provided its service.

## **40. PAYMENTS TO THE VILLAGE**

### **40.1 FRANCHISE FEES**

The Contractor shall pay Franchise Fees to the Village in exchange for the rights and privileges granted to the Contractor pursuant to this Agreement, as described in Section 1.45, above. Among other things, the Contractor shall pay a Franchise Fee for the Contractor's exclusive right to provide Residential Collection Services and Commercial Services in the Village. The Franchise Fees also compensate the Village for the cost of the administration, supervision, and inspection services rendered by the City for the effective performance of the Agreement, as well as other costs related to Collection.

The Franchise Fee for Residential Collection Services shall be equal to five percent (5%) of the Contractor's gross billings for all of the Collection Services provided by the Contractor to Residential Customers pursuant to this Agreement. With regard to Residential Collection Services, gross billings include the Contractor's billings for Collection costs, but do not include disposal costs (e.g., Tipping Fees) or Franchise Fees. The Franchise Fee for Commercial Collection Services shall be equal to five percent (5%) of the Contractor's gross billings for all of the Collection Services provided to Commercial Customers by the Contractor pursuant to this Agreement. With regard to Commercial Collection Services, gross billings include the Contractor's Collection Costs, but do not include disposal costs (e.g., Tipping Fees) or Franchise Fees. The Contractor shall not be required to pay Franchise Fees for billings that are based on: (a) the Collection Services provided to the Village pursuant to Section 36 of this Agreement; or (b) the Collection of Source Separated Recyclable Materials or Source Separated Recovered Materials from Commercial Customers. The Contractor's gross billings shall include the billings for Special Collection Services. Gross billings means the amount billed in the invoices sent to the Contractor's Customers, not the revenues received by the Contractor.

On or before the tenth (10<sup>th</sup>) day of each Operating Month, the Contractor shall deliver to the Village's Chief Financial Officer or their designee a report that summarizes the Contractor's Residential Collection Services and Commercial Collection Services during the prior Operating Month and shows the amount of the Franchise Fee to be paid by the Contractor to the Village. The format and content of the report shall be subject to the approval of the Village's Chief Financial Officer or their designee. The report shall include, but is not limited to: the name of each Commercial Customer; the service address of each Commercial Customer; the account number of each Commercial Customer; the exact services rendered to each Commercial Customer, including the size of each Collection Container used by the Customer and the frequency of Collection Service; the amount billed to each Commercial Customer; the Special Collection Services (if any) provided to each Residential Customer; and the amount billed to each Residential Customer for Special Collection Services. The report shall be submitted with an Excel spreadsheet or in another format that is compatible with the Village's computer software programs.

The Contractor shall pay the Franchise Fees for Residential Collection Services and Commercial Collection Services each month, within ten (10) days after the end of the month in which the Residential Collection Service and Commercial Collection Service were provided. If the Contractor fails to timely pay the Franchise Fees for Residential Collection Service and Commercial Collection Service, the Village may deduct those Franchise Fees from the Village's monthly payment to the Contractor for Residential Collection Services or withhold the Village's monthly payment until the Franchise Fees are paid.

The exact nature and amount of the Franchise Fees for Residential and Commercial Collection Services may be changed by the Council from time-to-time, but any changes shall warrant a corresponding change in any Rates or calculations that include the Franchise Fee.

The Village may hire an independent, third party accountant to conduct an audit of the Contractor's records concerning the Franchise Fees paid to the Village during a prior Operating Year. The cost of the audit will be paid by the Village. However, the Contractor shall pay the cost of the audit if the audit reveals that the Contractor's payments of Franchise Fees during the Operating Year were less than ninety-five percent (95%) of the total amount actually owed for such services for the year.

#### **40.2 PAYMENTS FOR COMPETITIVE PROCUREMENT PROCESS**

The Village has expended substantial amounts of staff time and has incurred significant out-of-pocket costs related to the preparation and negotiation of this Agreement pursuant to a public procurement process. The Village's procurement process resulted in a direct economic benefit to the Contractor (i.e., the award of this Agreement). Accordingly, the Contractor shall reimburse the Village for part of its costs and efforts by making a one-time, lump sum payment of Fifty Thousand Dollars (\$50,000) to the Village no later than sixty (60) days before the Commencement Date.

#### **40.3 OTHER PAYMENTS**

The Village shall submit invoices to the Contractor for any fee or charge that is due and owed to the Village from the Contractor, except for the payments otherwise addressed in this Section 40. The Contractor shall pay the Village's invoice within thirty (30) calendar days after receipt.

### **41. RECYCLING REVENUES FOR VILLAGE**

The Contractor shall not receive any revenues derived from the sale of Source Separated Recyclable Materials that the Contractor collects from any Residential Customers. The Village and the Designated Facility for Source Separated Recyclable Materials shall decide whether, and the extent to which, they will share the revenues derived from the sale of such materials. The current revenue sharing arrangement is described in the Interlocal Agreement. However, the provisions of this Section 41 do not apply to the sale of Recovered Materials that are generated and Source Separated on Commercial Property.

### **42. PAYMENT OF TIPPING FEES**

- 42.1** Subject to the conditions and limitations contained herein, the Contractor shall pay the Tipping Fees for the disposal of any Solid Waste that is collected by the Contractor under this Agreement, including the Tipping Fees charged by the Authority for the disposal of Contaminated Recyclable Material. The Contractor shall receive the Village's disposal credits from the Village pursuant to Section 39.5, but if these credits are insufficient to pay the Tipping Fees or other costs of disposal,

the Contractor shall pay those costs. Among other things, the Contractor also shall pay the Tipping Fees and disposal costs for any Solid Waste that: (a) is collected from a Commercial Customer; (b) is collected outside of the Service Area; (c) is not Residential Waste; or (d) is not collected pursuant to this Agreement.

- 42.2** When the Contractor delivers any Solid Waste to a Designated Facility, the Contractor shall tell the scale house operator whether the Tipping Fees shall be paid by the Contractor or the Village. The Contractor shall use its best efforts to ensure that the scale house operator is properly informed so that the Disposal Facility will charge the Village for Tipping Fees only when such charges are appropriate. Among other things, the Contractor shall not tell the scale house operator to charge the Village for the disposal of any Solid Waste (a) that was generated outside of the Service Area; (b) that was generated by a Person who is not a Residential Customer; or (c) when the Contractor is obligated by this Agreement to pay the Tipping Fees.
- 42.3** Pursuant to the interlocal agreement that is attached hereto in Exhibit 11, the Authority may require the Village to pay the Tipping Fees for the disposal of any Load of Contaminated Recyclable Material that the Contractor delivers to the Authority's Solid Waste Management Facilities or Recovered Materials Processing Facilities. If the Village pays such Tipping Fees to the Authority, the Village shall deduct an equal sum from the Village's next monthly payment to the Contractor pursuant to Section 39.3, above.

## **43. VERIFICATION OF PAYMENT AMOUNTS**

- 43.1** The Village's acceptance of any payment from the Contractor, or the Village's deduction of any amount from any payment due to the Contractor, shall not be construed as an accord that the amount paid is the correct amount, nor shall it be construed as a release or satisfaction of any claim the Village may have for additional sums payable from the Contractor.
- 43.2** At any time within the applicable statute of limitations, the Village may recalculate and collect any amounts that are payable to the Village under this Agreement, plus Interest, and all costs of collection, including attorneys' fees at all trial and appellate levels, and court costs.
- 43.3** At its expense, the Village may inspect, copy and audit any books, records and documents of the Contractor, whether kept in an electronic (digital) format or otherwise, that are relevant to the calculation of the amounts due and payable under this Agreement.

## **44. ADMINISTRATIVE CHARGES**

### **44.1 BASIS FOR ADMINISTRATIVE CHARGES**

The Village and Contractor acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would or might be incurred by the Village due to those failures or circumstances described in this Section 44 and for which the Contractor would otherwise be liable. Accordingly, the Contractor and the Village have established the terms and amounts of the administrative charges set forth herein, and the Parties agree that the administrative charges are reasonable under the circumstances. The Contractor and Village also have consulted with their legal counsel and confirmed that these administrative charges are appropriate and will help the Parties accomplish their mutual goal of providing certainty about such matters. Therefore, the following administrative assessments shall constitute liquidated damages, not penalties, for the Contractor's breach of this Agreement.

## **44.2 PROCEDURE FOR ASSESSING ADMINISTRATIVE CHARGES**

- 44.2.1 The Administrator shall conduct a preliminary evaluation of the relevant facts before the Administrator decides whether administrative charges should be assessed against the Contractor. At a minimum, the Administrator shall provide written notice to the Contractor, and offer to discuss the relevant facts with the Contractor within five (5) Operating Days after the date of the notice. In all cases, the Contractor shall have the right to present photographs, GPS data, and other relevant information to the Administrator and thus demonstrate that administrative charges should not be imposed. Following this discussion (if any) or the expiration of the five (5) Operating Day period, whichever occurs first, the Administrator shall determine whether administrative charges should be assessed. The Village shall not assess and the Contractor shall not be required to pay administrative charges in those cases where the delay or failure in the Contractor's performance was (a) excused in advance by the Administrator or (b) due to unforeseeable causes that were beyond the Contractor's reasonable control, and without any fault or negligence of the Contractor.
- 44.2.2 Prior to assessing administrative charges, the Administrator shall provide written notice to the Contractor, indicating the Village's intent to assess administrative charges and the basis for the Village's position.
- 44.2.3 After receiving the Administrator's letter, Contractor shall have ten (10) Operating Days to file a written letter of protest with the Administrator.
- 44.2.4 If a protest is timely filed, the matter shall be referred to the Manager for resolution. The Manager shall review the issues in a timely manner and then provide a written decision to the Contractor. The Manager's decision shall be final and non-appealable, except as provided in Section 44.2.6.
- 44.2.5 If a protest or petition is not timely filed by the Contractor, or if the Manager concludes that administrative charges should be assessed, the Contractor shall deliver its payment of administrative charges to the Administrator within twenty (20) days of receiving the written decision of the Administrator or Manager, as applicable. If the Contractor fails to pay an administrative charge when due, the Village may deduct the administrative charge from the Village's monthly payments to the Contractor or withhold the monthly payment until the administrative charge is paid.
- 44.2.6 The procedures in this Section 44 shall be used in lieu of the procedures in Section 49 when resolving disputes concerning administrative charges, unless the administrative charges assessed in one month will exceed Ten Thousand Dollars (\$10,000). If the administrative charges will exceed this threshold, then the Contractor may use the procedures in Section 49, at the Contractor's option.

## **44.3 ADMINISTRATIVE CHARGES BEFORE COMMENCEMENT DATE**

In addition to the administrative charges authorized pursuant to Section 44.4, below, the Administrator shall impose administrative charges for the Contractor's actions during the Transition Period in the amounts set forth in Sections 44.3.1 through 44.3.5, below:

- 44.3.1 Reserved.

- 44.3.2 Failure to provide purchase orders or other documentation to the Village by the deadline in Section 5.2(d) confirming that all necessary Collection vehicles, equipment, and Collection Containers have been ordered and are scheduled to be delivered to the Contractor's equipment yard no later than the deadline in Section 5.2(d). For each calendar day of delay, Five Hundred Dollars (\$500) shall be assessed against the Contractor.
- 44.3.3 Failure to mail or deliver the Village-approved brochures and informational materials to all Customers in compliance with the schedules in Section 35.1. For each calendar day of delay, Twenty-Five Dollars (\$25) shall be assessed against the Contractor for each Customer that did not receive the appropriate materials in compliance with the schedules herein, but the maximum assessment shall not exceed Three Thousand Dollars (\$3,000) per day.
- 44.3.4 Failure to have all of the necessary Collection vehicles delivered to the Contractor's equipment yard by the deadline in Section 5.2(d). For each calendar day of delay, Four Thousand Dollars (\$4,000) shall be assessed against the Contractor.
- 44.3.5 Failure to timely file any report, plan, or other document (collectively, "Document") required pursuant to Section 5.2 shall result in the imposition of a One Hundred Dollar (\$100) assessment for each calendar day that such Document is late. A separate assessment shall be imposed for each Document that is late. For the purposes of this Section 44.3.5 only, a Document shall be deemed late if (a) the Administrator gives written notice to the Contractor that the Document was not filed in compliance with the schedule in Section 5.2 and (b) the Contractor fails to submit the Document within five (5) Operating Days after the Administrator provides notice.

#### **44.4 ADMINISTRATIVE CHARGES DURING TERM OF AGREEMENT**

On the Commencement Date and throughout the remainder of the term of the Agreement, the Administrator shall assess administrative charges as follows:

- 44.4.1 Failure to clean up Solid Waste, litter, or other material in compliance with the requirements in this Agreement, within the deadlines set forth herein, after receiving written notification by the Administrator or a Customer. Each failure shall result in the imposition of a One Hundred Fifty Dollar (\$150) assessment per event.
- 44.4.2 Failure to collect the Garbage, Rubbish, Yard Waste, Bulky Waste, or Source Separated Recyclable Material that was properly Set Out for Collection by a Customer on the Scheduled Collection Day, within the deadlines set forth herein, after receiving written notification from the Village or Customer. Each failure shall result in the imposition of a One Hundred Dollar (\$100) assessment. After the initial failure, if the Contractor fails to meet the deadlines contained in this Agreement, each additional Operating Day of delay shall result in the imposition of an additional assessment of Two Hundred Fifty Dollars (\$250).
- 44.4.3 Failure to complete a Route on the Scheduled Collection Day, within the deadlines set forth herein, after receiving written notification by the Village or the Customer. A Route shall be considered incomplete if ten (10) or more Dwelling Units or two (2) or

more streets or roadways on the Route are not provided Collection Service. Each failure shall result in an assessment of One Thousand Dollars (\$1,000) per Route, per Operating Day. This assessment shall be used in lieu of Section 44.4.2 in cases involving incomplete Routes.

- 44.4.4 Mixing Source Separated Recyclable Materials with Solid Waste, or mixing any other materials that are required to be collected separately, shall result in the imposition of a Five Hundred Dollar (\$500) assessment per occurrence. This assessment shall only be imposed in cases where the Contractor mixed such materials together. An assessment shall not be imposed in cases where the Contractor merely collected materials that already had been mixed together by a Customer.
- 44.4.5 Failure to maintain a Collection vehicle or equipment in a clean and sanitary manner within the deadlines set forth herein, after receiving written notification from the Administrator, shall result in the imposition of an assessment of One Hundred Dollars (\$100) per incident per Operating Day.
- 44.4.6 Failure to respond to a Legitimate Complaint, within the time frame specified herein, after receiving written notification from the Administrator or a Customer, shall result in a Fifty Dollar (\$50) assessment per occurrence.
- 44.4.7 Failure to resolve a Legitimate Complaint, other than a Missed Collection, within seven (7) Operating Days after receiving written notification from a Customer or the Administrator, shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment per Operating Day until such complaint is resolved to the reasonable satisfaction of the Administrator. The deadline for resolving the complaint shall be extended where such extension is authorized by other provisions of this Agreement.
- 44.4.8 Failure to timely file any report, plan, or other document (collectively, "Document") required herein shall result in the imposition of a One Hundred Dollar (\$100) assessment for each Operating Day that such Document is late. A separate assessment shall be imposed for each Document that is late. For the purposes of this Section 44.4.8 only, a Document shall be deemed late if (a) the Administrator gives written notice to the Contractor that the Document was not filed in compliance with the schedule in this Agreement and (b) the Contractor fails to submit the Document within five (5) Operating Days after the Administrator provides notice.
- 44.4.9 Failure to dispose of any Residential Waste or Commercial Waste collected in the Service Area at a Designated Facility shall result in the imposition of an assessment equal to the current Tipping Fee at the Designated Facility times the amount (tonnage) disposed at the non-Designated Facility. If the tonnage is unknown, the assessment shall be Two Thousand Dollars (\$2,000) per occurrence.
- 44.4.10 Failure to deliver Source Separated Recyclable Materials to a Designated Facility for such materials pursuant to Section 19, or delivering Source Separated Recyclable Materials to a facility for disposal, shall result in the imposition of an assessment of Two Thousand Dollars (\$2,000) per occurrence.
- 44.4.11 Failure to correct chronic Collection problems shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment per occurrence. Chronic shall mean three (3)

or more Legitimate Complaints at the same Premises for the same issue within a twelve (12) month period. The first assessment shall be imposed for the third Legitimate Complaint. An additional assessment in the same amount shall be imposed for each Legitimate Complaint thereafter. If the Contractor has more than five (5) Customers with chronic problems within one Operating Year, there shall be an additional Five Hundred Dollar (\$500) assessment.

- 44.4.12 Failure to correct chronic problems with a Collection Vehicle shall result in the imposition of a Two Hundred Fifty Dollar (\$250) assessment. Chronic shall mean three (3) instances of the same or similar problem with the same vehicle within a twelve (12) month period. The first assessment shall be imposed for the third problem. An additional assessment in the same amount shall be imposed for each problem thereafter.
- 44.4.13 Failure to properly and legibly label a Collection Vehicle or Collection Container in the manner required herein, within five (5) Operating Days after receiving notice from the Administrator, shall result in the imposition of a One Hundred Dollar (\$100) assessment for each vehicle and each container that is not properly labeled.
- 44.4.14 Failure to have a vehicle operator properly licensed, or failure of the operator to carry his license while on duty, shall result in a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.15 Failure to maintain office hours in the manner specified in this Agreement shall result in a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.16 Failure to replace or repair a damaged Collection Container, or failure to replace a stolen Collection Container, or failure to exchange a Collection Container, within the deadlines specified in this Agreement after receiving written notice from the Administrator or a Customer, shall result in a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.17 If the Contractor notifies the Administrator that a complaint has been resolved, when the complaint has not been resolved, there shall be a Two Hundred Dollar (\$200) assessment per occurrence.
- 44.4.18 Collecting Solid Waste or Source Separated Recyclable Materials at times that are outside of the hours specified in this Agreement, without prior approval of the Administrator, shall result in a One Hundred Dollar (\$100) assessment per occurrence per vehicle.
- 44.4.19 Leaving Collection Containers where they block driveways, streets, or roads shall result in the imposition of a One Hundred Dollar (\$100) assessment per occurrence.
- 44.4.20 Failure to provide timely notices and educational materials to a Customer, as required pursuant to Section 35, shall result in the imposition of an assessment in the amount of Twenty-Five Dollars (\$25) per Customer per occurrence, but the maximum assessment shall not exceed One Thousand Dollars (\$1,000) per occurrence.



- 44.4.21 Failure to repair damage to public or private roadways, including but not limited to damage resulting from spills of oil, hydraulic fluids, or other liquids, within the deadlines in Section 17.6, shall result in the imposition of a One Thousand Dollar (\$1,000) assessment per occurrence.
- 44.4.22 Failure to repair damage to a Customer's property within the deadlines set forth in this Agreement, after receiving written notice from the Customer or Administrator, shall result in the imposition of an assessment of Two Hundred Fifty Dollars (\$250) per occurrence per Operating Day.
- 44.4.23 Soliciting or accepting an unauthorized fee or monetary compensation from a Customer shall result in the imposition of a Five Hundred Dollar (\$500) assessment per occurrence.
- 44.4.24 Failure to respond to the Administrator by 5:00 p.m. on the first Operating Day following a telephone call, voice message, facsimile transmission, or electronic message requesting a response from the District Manager, shall result in the imposition of an assessment of One Hundred Dollars (\$100), which shall be increased by another One Hundred Dollars (\$100) per day for each additional Operating Day of delay. For the purposes of this Section 44.4.24, a response from the District Manager's designee (e.g., a supervisor) shall be sufficient.
- 44.4.25 Failure to comply with the deadlines and requirements in Section 50 concerning the Contractor's obligations prior to the termination of this Agreement, shall result in the imposition of an assessment of Two Thousand Dollars (\$2,000) per Operating Day per occurrence.
- 44.4.26 Failure to pay the applicable Tipping Fee for Solid Waste the Contractor delivered to a Designated Facility, in each instance where the Contractor was obligated to pay the Tipping Fee pursuant to this Agreement, shall result in an assessment of One Thousand Dollars (\$1,000) per occurrence.
- 44.4.27 Failure to follow the procedures in the Contractor's Collection Plan for notifying a Designated Facility that the Contractor is obligated to pay the applicable Tipping Fee, in each instance where the Contractor delivered Solid Waste to the Designated Facility but failed to follow the approved procedures in the Collection Plan. Each failure shall result in an assessment of Two Hundred Dollars (\$200).
- 44.4.28 Failure to follow an approved Route in the Collection Plan, without receiving the Administrator's prior approval for the deviation. Each failure shall result in an assessment of Five Hundred Dollars (\$500) per occurrence.
- 44.4.29 Failure to cover or enclose Solid Waste and Source Separated Recyclable Materials in the Contractor's Collection vehicles, as required herein, shall result in an assessment of Two Hundred Fifty Dollars (\$250) per occurrence.
- 44.4.30 Reserved.
- 44.4.31 Willful, negligent, or fraudulent failure to provide accurate information to the Village concerning the Contractor's Collection Services or the calculation of the Franchise

Fees for such Services, shall result in the imposition of an assessment of One Thousand Dollars (\$1,000) per occurrence.

- 44.4.32 Failure to close the gate on an enclosure for a Mechanical Container, or failing to close the lid on a Mechanical Container, or failing to lock all of the locks on a Commercial Customer's Mechanical Container, shall result in an imposition of an assessment of One Hundred Dollars (\$100) per occurrence.
- 44.4.33 Failure to collect Biological Waste, within two (2) hours after the Administrator requests such service, shall result in the imposition of an assessment of One Hundred Dollars (\$100) per occurrence.
- 44.4.34 Failure to respond to a request for service, within the deadline set forth in Section 31.1.5, shall result in the imposition of an assessment of Fifty Dollars (\$50) per occurrence.
- 44.4.35 Failure to clean up spilled liquids, including but not limited to leachate, oil, and hydraulic fluids, within the deadlines set forth in Section 20.6, shall result in the imposition of an assessment of Five Hundred Dollars (\$500) per occurrence for each Operating Day of delay.
- 44.4.36 Failure to provide front-line Collection Vehicles that comply with the age limits in Section 28.3 shall result in the imposition of an assessment in the amount of One Thousand Dollars (\$1,000) per non-compliant vehicle per Operating Day.
- 44.4.37 Failure to repair or replace a Recycling Cart within the deadline set forth in Section 27.2.3, above, shall result in the imposition of an assessment of One Hundred Dollars (\$100) per occurrence for each Operating Day of delay.
- 44.4.38 Failure to deliver a Recycling Bin in compliance with the deadline and requirements set forth in Section 27.1.4 or Section 27.3.2, above, shall result in the imposition of an assessment of One Hundred Dollars (\$100) per occurrence for each Operating Day of delay.

Solely for the purposes of this Section 44, the following provisions shall apply: (a) written notice includes electronic mail that is sent to the Contractor, including electronic mail that is sent pursuant to Sections 31.1.4 and 31.1.5; and (b) written notice must be provided under Sections 44.3 and 44.4 only in those cases where it is expressly required.

## **45. PAYMENTS WITHHELD FROM CONTRACTOR**

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

- (a) The Contractor's failure to carry out lawful instructions or orders from the Administrator, when required by this Agreement;
- (b) Failure of the Contractor to make payments to any subcontractor, which results in a claim against the Village;

- (c) Unsafe working conditions allowed to persist by the Contractor, after receiving notice from the Village or OSHA;
- (d) Failure of the Contractor to provide Routes, schedules, data, documents or reports requested by the Village in compliance with this Agreement; or
- (e) Failure to pay an administrative charge when due.

If the foregoing problems are corrected, payment shall be made to the Contractor for the amounts withheld, but the Village shall not be liable to the Contractor for Interest on any delayed payment. The Administrator shall not exercise the Village's right to withhold payments under this Section 45 unless the Administrator concludes that such action is reasonable and necessary in light of the Contractor's repeated problems or persistent failure to perform in compliance with the requirements herein. The Village shall not withhold more than a total of Fifty Thousand Dollars (\$50,000) from any single payment.

## **46. NO LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO FORCE MAJEURE EVENTS**

- 46.1** If the Village or the Contractor is unable to perform or is delayed in the performance of any obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused for any time during which compliance is prevented by such event and during such period thereafter as may be reasonably necessary for the Village or the Contractor to correct the adverse effect of such event of Force Majeure.
- 46.2** Although a failure of performance shall be excused when caused by a Force Majeure event, Multi-Family Customers using Mechanical Containers and Commercial Customers shall only be required to pay for the services they receive and, therefore, the Contractor shall not be paid by such Customers for services that were not provided due to a Force Majeure event. The Village shall continue to pay the Contractor for all Residential Collection Services, notwithstanding the interruption or failure of performance caused by the Force Majeure event, unless the Contractor fails to provide a Residential Collection Service (e.g., Collection of Source Separated Recyclable Materials) for a cumulative total of five (5) or more Operating Days, in which case the Village's monthly payment to the Contractor for that Collection Service shall be reduced proportionately. Stated differently, the Village shall not be obligated to pay for any Residential Collection Service that is not provided for five (5) or more Operating Days. The Village shall not be liable for any loss suffered by Contractor as a result of an event of Force Majeure.
- 46.3** Labor disputes, labor shortages, changing economic conditions, and the economic hardship of the Contractor shall not be considered an event of Force Majeure.
- 46.4** To be entitled to the benefit of this Section 46, a Party claiming an event of Force Majeure shall give prompt written notice to the other Party, specifying in detail the event of Force Majeure, and shall diligently proceed to correct the adverse effect of any Force Majeure. The Parties agree that, as to this Section 46, time is of the essence.

## **47. BREACH AND TERMINATION OF AGREEMENT**

### **47.1 TERMINATION BY EITHER PARTY FOR CAUSE**

Subject to the other provisions contained herein, either Party may terminate this Agreement if the other Party fails to perform any of its material obligations hereunder. A default by the Contractor shall include but not be limited to the following:

- 47.1.1 Refusing to comply with any lawful order of the Manager.
- 47.1.2 Failing to begin work within the time specified in this Agreement.
- 47.1.3 Discontinuing operations without prior authorization from the Administrator.
- 47.1.4 Failing to resume work that has been suspended within a reasonable time, not to exceed two (2) Operating Days, after being notified to do so.
- 47.1.5 Failing to obey any Applicable Law.
- 47.1.6 Soliciting or accepting any Rates, charges or fees from Customers for the Collection, disposal, or processing of Solid Waste or Source Separated Recyclable Materials collected within the Service Area, except when such actions are explicitly authorized herein.
- 47.1.7 Failing to deliver Residential Waste, Commercial Waste, or Source Separated Recyclable Materials collected in the Service Area to a Designated Facility.
- 47.1.8 Failing to pay or circumventing the payment of any Tipping Fee that the Contractor is obligated to pay to a Designated Facility pursuant to this Agreement.
- 47.1.9 Failing to comply with the procedures in the Contractor's Collection Plan.
- 47.1.10 Failing to obtain or continuously maintain insurance policies in the manner required herein.
- 47.1.11 Failing to pay, when due, any sums owed to a subcontractor for services or materials provided pursuant to this Agreement.
- 47.1.12 Failing to provide or continuously maintain the Performance Bond required pursuant to Section 53.
- 47.1.13 A Parent Corporation Guarantee provided pursuant to Section 54 is revoked.
- 47.1.14 A representation or warranty provided by the Contractor in this Agreement is or becomes inaccurate in any material respect.

Before a party may terminate this Agreement pursuant to this Section 47.1, the non-defaulting party shall give written notice to the other party that a default exists which will, unless corrected, constitute an event of default on the part of the defaulting party. The notice shall inform the

defaulting party that this Agreement shall be terminated unless the default is cured within seven (7) calendar days following the defaulting party's receipt of the notice. If a cure cannot reasonably be effected within seven (7) days despite the exercise of due diligence, the defaulting Party may request an extension of time to cure the default. In such circumstances, the defaulting Party shall submit a written request to the non-defaulting Party, explaining in detail why the cure cannot be completed within seven (7) days. The request shall be delivered prior to the expiration of the cure period. If the defaulting Party's request is reasonable, as determined by the Administrator in cases where the defaulting Party is the Contractor, the time to cure the default shall be extended to include such additional time as is reasonably necessary to effect a cure, provided that the defaulting party exercises continuous diligent efforts to cure the default during the extended cure period. If the defaulting party fails to cure the default within the cure period, the non-defaulting party may terminate this Agreement. The termination shall take effect as of the date specified by the non-defaulting party. Upon termination, the non-defaulting party may cure the default at the expense of the defaulting party, and shall have recourse to any other right or remedy to which the non-defaulting party may be entitled under this Agreement, at law, or in equity.

Notwithstanding anything else contained herein, each of the events described in Sections 47.1.15, 47.1.16, 47.1.17, and 47.1.18, below, shall constitute an event of default for which there shall be no opportunity to cure. For such events, termination shall be effective three (3) calendar days after the non-defaulting party gives notice to the defaulting party or at such other time designated by the non-defaulting party.

47.1.15      Voluntary Bankruptcy

Written admission by a party that it is bankrupt; or filing by a party of a voluntary petition under the Federal Bankruptcy Act; or consent by a party to the court appointment of a receiver or trustee for all or a substantial portion of its property or business; or the making of any arrangement by a party with, or for the benefit of, its creditors or assigning to a trustee, receiver, or similar functionary (regardless of how designated) all or a substantial portion of a party's property or business; or by becoming insolvent.

47.1.16      Involuntary Bankruptcy

Final adjudication of a party as bankrupt under the Federal Bankruptcy Act.

47.1.17      Public Entity Crime

The Contractor is placed on a convicted vendor list following a conviction for a public entity crime; or

47.1.18      Fraud

The Contractor commits an act or omission constituting fraud, gross negligence, misfeasance, or willful malfeasance toward the Village.

**47.2      RESERVED**

### **47.3 INTERIM OPERATIONS**

In the event that this Agreement is terminated before the end of any term, the Contractor shall continue its operations for an interim period of up to six (6) Operating Months if requested to do so by the Village. The Contractor shall be paid for its services during said interim period at the rates in effect prior to issuance of the notice of termination.

Notwithstanding anything else contained herein, the Village may hire an alternate Person to provide Collection Services in the Village if the Contractor fails to provide Collection Service for a period of two (2) consecutive Operating Days. The Village's interim service provider shall continue to provide Collection Service until the Contractor demonstrates to the Village's satisfaction that the Contractor is able to resume work in compliance with the requirements in this Agreement. However, if the Contractor is unable for any reason to resume performance within thirty (30) calendar days, the Village may terminate this Agreement, effective as of the date designated by the Village. The Contractor shall reimburse the Village for any and all reasonable costs incurred by the Village related to or arising from the use of an alternate Person to provide Collection Service.

### **47.4 EFFECT OF TERMINATION**

If this Agreement is terminated pursuant to the provisions of this Section 47, neither the Village nor the Contractor shall have any further duty, right, liability, or obligation under this Agreement, except that: (a) a party will not be relieved from liability for a breach of a warranty, obligation, or representation under this Agreement that occurred before the effective date of the termination; (b) the Village shall pay all amounts owed to the Contractor, and the Contractor shall pay all amounts owed to the Village, pursuant to this Agreement, through the date of the termination; (c) the Contractor shall deliver to the Village all reports concerning the Contractor's activities through the end of the month in which termination occurs; (d) at a minimum, the provisions of Sections 34.1, 34.6, and 51 shall survive the expiration or termination of this Agreement; and (e) any term, condition, covenant, or obligation which requires performance by a party subsequent to the termination of this Agreement shall remain enforceable against such party subsequent to such termination.

## **48. OPERATIONS DURING DISPUTE**

If a dispute arises between the Village, the Contractor, or any other Person concerning the Contractor's performance, rights, or compensation under this Agreement, the Contractor shall continue to perform its duties in strict compliance with the requirements of this Agreement, regardless of the pending dispute.

## **49. DISPUTE RESOLUTION PROCESS**

- 49.1** The Village and the Contractor agree to cooperate and act in good faith at all times when dealing with each other. If a dispute arises between the parties, the parties shall attempt to resolve their differences quickly and informally. If they are unable to do so, they shall seek relief by following the procedures set forth below.
- 49.2** All claims, disputes and controversies arising out of or related to the performance, interpretation, application or enforcement of this Agreement, including but not limited to claims for payment and claims for breach of this Agreement, shall be referred to non-binding mediation before initiation of any adjudicative action or proceeding at law or in equity, unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise. All applicable statutes of limitations and

defenses based on the passage of time shall be tolled while the mediation process is pending. The parties will take all reasonable measures necessary to effectuate such tolling.

- 49.3** Either party may initiate the mediation process by delivering written notice to the other party that sets forth with particularity the nature of the party's claim or demand, the authority for making the claim or demand, a proposed remedy, the nature and extent of any monetary claim, and a request for mediation. The Contractor and Village shall then participate fully in the mediation process and conscientiously attempt to resolve their dispute. The mediation shall be conducted in Palm Beach County, Florida, in accordance with the Florida Supreme Court's mediation rules and Chapter 44, Florida Statutes, within sixty (60) days after the selection of a certified civil mediator who is mutually acceptable to the parties. After consultation with the parties and their counsel, the mediator shall fix a reasonable time and place in Palm Beach County for the mediation conference within the time limits prescribed by this Section 49.3. The mediation conference shall be scheduled for no less than one full working day, and each party and its primary counsel shall attend the mediation conference. If either a party or its primary legal counsel fails to attend the mediation conference, that party shall be liable for the other party's reasonable cost of attending the mediation conference, including the mediator's fee and the other party's attorney fees and costs. Except as provided in the preceding sentence, the parties shall share equally the costs of mediation, including the fees of the mediator and any rental or other cost of obtaining a place for the mediation, but excluding their own expenses and attorney fees. The parties recognize that any proposed settlement of their dispute may need to be approved by the Village Council. If the parties reach a mutually acceptable settlement of the dispute during the mediation, and the settlement is approved by the appropriate representatives of the parties, the parties shall memorialize the settlement in a written settlement agreement that will be binding on both of them. Mediation discussions between parties and opinions of the mediator are confidential and are not permitted to be relied on, referred to, or introduced as evidence in any subsequent litigation or other legal proceeding. If a dispute is not resolved pursuant to mediation within sixty (60) days after the initiation of the mediation conference, either party to the dispute may elect to resolve the dispute by initiating litigation, after providing ten (10) days' advance written notice to the other party.
- 49.4** Notwithstanding the foregoing, if either party terminates this Agreement for cause, the terminating party shall have the right, in its sole discretion, to proceed directly with litigation of any claims or disputes relating to the termination for cause and may include other claims and disputes unrelated to the termination, and shall not be required to submit such claims or disputes to mediation.
- 49.5** The parties agree that any claim filed in state or federal court concerning this Agreement shall be heard by a judge, sitting without a jury.
- 49.6** AFTER CONSULTING WITH THEIR OWN LEGAL COUNSEL, THE VILLAGE AND THE CONTRACTOR HEREBY KNOWINGLY, VOLUNTARILY, AND PERMANENTLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL CONCERNING THE PERFORMANCE, INTERPRETATION, APPLICATION OR ENFORCEMENT OF THIS AGREEMENT.

IF A PARTY REQUESTS A JURY TRIAL IN ANY CASE IN WHICH THE RIGHT TO A JURY TRIAL HAS BEEN WAIVED PURSUANT TO THIS SECTION 49.6, THAT PARTY SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS INCURRED BY THE OTHER PARTY IN OPPOSING THE REQUEST FOR A JURY TRIAL, PROVIDED: (A) THE PARTY OPPOSING THE REQUEST NOTIFIED THE OTHER PARTY IN WRITING THAT THE RIGHT TO A JURY TRIAL HAD BEEN WAIVED PURSUANT TO THIS SECTION 49.6; (B) THE PARTY REQUESTING THE JURY TRIAL FAILED TO WITHDRAW

ITS REQUEST WITHIN THIRTY (30) DAYS AFTER RECEIVING SUCH NOTICE; AND (C) THE COURT RULED THAT THE REQUEST FOR A JURY TRIAL HAD BEEN WAIVED PURSUANT TO THIS SECTION 49.6. IN SUCH CASES, THE COURT SHALL AWARD REASONABLE ATTORNEYS' FEES AND COSTS TO THE PARTY OPPOSING THE JURY TRIAL.

- 49.7** When a dispute between the Village and the Contractor is pending or threatened, the Contractor shall attempt to resolve the dispute with the Administrator. If this attempt is unsuccessful, either party may initiate a non-binding mediation process, in accordance with the provisions of Sections 49.2 and 49.3, above.

## **50. CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF THIS AGREEMENT**

### **50.1 CONTINUATION OF CONTRACTOR'S SERVICE**

The Village will attempt to award a new franchise agreement to a Person at least six (6) months prior to the expiration of this Agreement to help ensure that there is a smooth transition in services when this Agreement expires. If the Village concludes that it will be unable to award and implement a new agreement in a timely manner, the Village may extend this Agreement for up to an additional six (6) Operating Months, subject to the terms and conditions in effect at that time. However, the Contractor shall not be obligated to provide its services under this Section 50.1, or Section 47.3, or both, for more than a total of six (6) Operating Months.

### **50.2 SALE OR LEASE OF CONTRACTOR'S MECHANICAL CONTAINERS**

Upon request, the Contractor shall enter into good faith negotiations to allow the Village or the Village's newly selected franchise hauler to purchase, or rent for up to three (3) Operating Months, the Mechanical Containers (if any) used and owned by the Contractor in the Service Area. The purchase price and rental fee shall be negotiated, but the purchase price shall not be greater than the fair market value.

### **50.3 SCHEDULE FOR TERMINATION OF CONTRACTOR'S SERVICE**

Prior to the termination of this Agreement, the Contractor shall work with the Village to ensure that there is no interruption or reduction of service when the Contractor ends its services to the Village. If a new franchise agreement is awarded to a Person other than the Contractor, the Contractor shall coordinate and cooperate with the newly selected franchise hauler, as well as the Village, to minimize any disruptions in the service provided to the public. At a minimum, the Contractor shall comply with the following performance requirements and deadlines:

180 calendar days prior to expiration of Agreement	If requested, the Contractor shall provide to the Administrator and the selected franchise hauler a Mechanical Container inventory, in a format acceptable to the Village that includes each container's location (street address), capacity, identification number, and Collection frequency. Thereafter, the Contractor shall not replace or exchange any Contractor-owned Mechanical Container listed in the inventory, without the Administrator's approval.
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150 calendar days prior to expiration of Agreement	The Contractor shall attend a coordination meeting with the selected franchise hauler and the Village. At or before the coordination meeting, the Contractor shall provide the Village with a list of Contractor-owned containers that may be purchased by the Village or the selected franchise hauler.
120 calendar days prior to expiration of Agreement	The Contractor shall work with the selected franchise hauler to develop a mutually agreeable schedule for the removal of Contractor-owned Collection Containers and placement of the selected franchise hauler's containers.
30 calendar days prior to expiration of Agreement	The Contractor shall begin to implement the schedule in cooperation with the selected franchise hauler. The Contractor shall take all steps necessary to ensure there is no interruption in the Collection Service provided to Customers.

#### **50.4 VILLAGE'S RIGHT TO PROCURE NEW SERVICES**

At any time, the Village may issue a request for proposals, or commence negotiations with a Person other than the Contractor, or take any other step deemed necessary by the Village to obtain the services of a Person who will collect Solid Waste for the Village after this Agreement expires or is terminated.

### **51. DAMAGES AND INDEMNIFICATION**

#### **51.1 LIABILITY**

The Contractor shall be liable for all injuries and conditions to the extent that are caused by or result from the Contractor's actions or omissions, including but not limited to the Contractor's negligence, willful misconduct, or failure to perform in accordance with the terms of this Agreement. To the extent that the Village and the Contractor are found to be joint tortfeasors, losses shall be apportioned in the manner described in Section 51.3, below.

#### **51.2 CONTRACTOR'S INDEMNIFICATION OF VILLAGE**

To the greatest extent allowed by Applicable Law, the Contractor releases and shall indemnify, hold harmless, and, if requested by the Village, defend, each of the Village Indemnified Parties from and against every Indemnified Loss. The obligation of the Contractor under this Section 51.2 is absolute and unconditional; to the extent allowed by Applicable Law and not otherwise prohibited, it is not conditioned in any way on any attempt by a Village Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contractor might have against the Village Indemnified Party.

It is the intent of this Section 51.2 that the Contractor's indemnification obligations include all joint and several liability of the Contractor, any subcontractor to the Contractor, or any subcontractor to a subcontractor of the Contractor, and anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

The Village may employ any attorney of its choice or may use its in-house counsel to enforce or defend the Village's right to indemnity provided by this Agreement. If a Village Indemnified Party requests that the Contractor defend it with respect to any Indemnified Loss, the Village Indemnified

Party may participate in the defense at its sole cost and expense. The Contractor shall advance or promptly reimburse to a Village Indemnified Party any and all costs and expenses incurred by the Village Indemnified Party in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which the Village Indemnified Party is entitled to indemnification under this Agreement, whether or not the Village Indemnified Party is a party or potential party to such proceeding.

### **51.3 CONTRIBUTION**

In the event of joint negligence on the part of the Village and the Contractor, or joint negligence on the part of a Village Indemnified Party and the Contractor, all losses and costs shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the Effective Date, subject to the recovery limits set forth in Section 768.28, Florida Statutes, in effect on the Effective Date.

### **51.4 DAMAGES**

The measure of damages to be paid by the Contractor to the Village or by the Village to the Contractor, due to any failure by the Contractor or the Village to meet any of its obligations under this Agreement, shall be the actual damages incurred by the Village or the Contractor. Neither party shall have any liability under this Agreement for consequential, delay, special, indirect, or punitive damages. The foregoing shall apply without regard to either party's rights to the Performance Bond, insurance proceeds, or other factors.

If the Contractor fails to comply with any Applicable Law, the Contractor shall promptly pay to the Village the following:

- (a) All lawful fines, penalties, and forfeitures charged to the Village by any judicial order or by any governmental agency responsible for the enforcement of the Applicable Law; and
- (b) The actual costs incurred by the Village as a result of the Contractor's failure to comply with the Applicable Law, including any costs incurred in investigating and remedying the conditions which led to or resulted from the Contractor's failure to comply with the Applicable Law.

### **51.5 NO PERSONAL LIABILITY**

Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the Village or the Contractor.

## **52. CONTRACTOR'S INSURANCE**

The Contractor shall maintain, on a primary basis and at its sole expense, at all times on and after the Commencement Date until this Agreement expires or is terminated, policies of insurance that insure the Contractor against any and all claims, demands, or causes of action for injuries received or damages to people or property relating to the Contractor's negligent acts, and errors and omissions under this Agreement. At a minimum, the Contractor shall maintain at all times the following insurance coverage, with the limits and endorsements described herein. The requirements contained herein, as well as the Village's review of and comments concerning the insurance maintained by the Contractor, are not intended

to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement.

## **52.1 COMMERCIAL GENERAL LIABILITY**

The Contractor shall maintain Commercial General Liability with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$6,000,000/\$7,000,000
Products – Completed Operations	\$7,000,000
Personal and Adv. Injury	\$6,000,000
Fire Damage	\$ 50,000
Contractual Liability	Included

The General Liability insurance form shall be no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent, without restrictive endorsements. Coverage shall not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability any further than the restrictions included in the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) or equivalent. The coverage shall include: (1) Bodily Injury and Property Damage; (2) Premises and Operations; (3) Independent Contractors; (4) Products and Completed Operations; (5) Broad Form or equivalent Contractual Coverage applicable to the Agreement and consistent with the indemnification and hold harmless provisions in the Agreement; (6) Broad Form or equivalent Property Damage Coverage; and (7) Personal Injury Coverage with employment and contractual exclusions removed and deleted.

## **52.2 BUSINESS AUTOMOBILE LIABILITY**

The Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$6,000,000 Combined Single Limit / Each Accident. Coverage shall include liability for Owned, Non-Owned & Hired automobiles.

## **52.3 POLLUTION LIABILITY**

The Contractor shall maintain Pollution Legal Liability and Remediation Insurance at a minimum limit of liability not less than \$2,000,000 Each Occurrence / \$2,000,000 Aggregate including all sudden and non-sudden events. The policy shall be maintained for a minimum of three (3) years following the expiration or termination of the Agreement.

## **52.4 UMBRELLA OR EXCESS LIABILITY**

The Contractor may utilize an Umbrella or Excess Liability to meet the aggregate limit requirements of any underlying liability policy. The Contractor any required policy herein as an underlying policy on the Umbrella or Excess Liability. The Contractor shall endorse the Village as an “Additional Insured” on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a “True Following-Form” basis. This liability may be satisfied by the Umbrella Liability form, and the limit may be satisfied by multiple layers of coverage.

## **52.5 WORKERS' COMPENSATION INSURANCE & EMPLOYERS' LIABILITY**

The Contractor shall maintain Workers' Compensation Insurance & Employers' Liability in accordance with Chapter 440, Florida Statutes. The Contractor shall maintain Employers' Liability Limits not less than \$1,000,000 Each Accident, \$1,000,000 Disease Each Employee, and \$1,000,000 Disease Policy Limit.

## **52.6 ADDITIONAL INSURED ENDORSEMENTS**

The Contractor shall endorse its insurance with the Village as an Additional Insured as follows: (1) for the Commercial General Liability, the Contractor shall endorse the Village with the CG 2010 07 04 or CG 2010 04 13 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement, or similar endorsement; (2) for the Business Automobile Liability, the Contractor shall endorse the Village with a CA 2048 – Designated Insured, or similar endorsement; (3) for the Pollution Liability, the Contractor shall endorse the Village with the standard Additional Insured endorsement filed by the insurer for use in the State of Florida; and (4) for the Excess Liability, the Contractor shall endorse the Village as an "Additional Insured" on the Umbrella or Excess Liability, unless the policy provides coverage to the underlying policies on a "True Following-Form" basis. The Additional Insured shall read "Village of Wellington, a municipal corporation of the State of Florida, and the Council," for all endorsements. These endorsements shall specifically state that the coverage afforded by the endorsement shall be provided on a primary and non-contributory endorsement. This primary and non-contributory language can be included in the additional insured endorsement, can be provided in a separate stand-alone endorsement, or this language can be included in the actual liability coverage form for the line of insurance coverage that is being evidenced to the Village. A copy of any endorsement issued to extend coverage to the Village must be provided when evidencing insurance to the Village.

## **52.7 WAIVER OF SUBROGATION**

The Contractor shall endorse the Commercial General Liability with a Waiver of Subrogation endorsement GC 2404 A 05 09 Waiver of Transfer of Rights of Recovery Against Other to Us, or similar endorsement providing equal or broader Waiver of Subrogation, as well as a Waiver of Subrogation for every other required policy herein in favor of the Village for each required policy providing coverage during the entire term of this Agreement. When required by the insurer, or should a policy condition not permit the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition specifically prohibiting such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis. A copy of any endorsement issued to extend coverage to the Village must be provided when evidencing insurance to the Village.

## **52.8 CERTIFICATE(S) OF INSURANCE**

Within ten (10) days after the Effective Date, the Contractor shall provide the Village with a Certificate of Insurance evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect. Said Certificate of Insurance shall provide a minimum of thirty (30) days prior written notice to the Village of any cancellation or non-renewal of coverage. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording

coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, the Contractor shall provide notice to the Village within five (5) Operating Days, and the notice shall include a copy of the non-renewal or cancellation notice or a written statement specifically identifying the coverage that is no longer in compliance. The Certificate of Insurance shall identify the Village's RFP (No. 202108) and this Agreement in the Certificate.

The Certificate of Insurance shall be provided to the Village Attorney's Office, at the address provided in Section 74, below. Copies shall be provided to the Manager and the Village's Risk Management Division at the same address. The Contractor shall submit updated copies of the Certificates of Insurance to the Village Attorney's Office and the Village's Risk Management Division within ten (10) days after the Contractor receives a renewed or revised Certificate of Insurance. The Contractor shall ensure that all such certificates comply with the requirements herein.

## **52.9 DEDUCTIBLES, SELF-INSURED RETENTIONS, AND SUPPLEMENTAL COVERAGE**

The Contractor shall be solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention. When a self-insured retention or deductible exceeds Two Hundred Fifty Thousand Dollars (\$250,000) for any of the foregoing required policies, the Village reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statements to determine the reasonability of the retention levels, based on the financial capacity of the Contractor. At the Village's option, the Contractor may be required to reduce the self-insured retentions, or the Contractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The Village shall be exempt from, and in no way liable for, any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Contractor and any subcontractor providing the insurance.

For policies written on a "Claims-Made" basis, the Contractor shall maintain a Retroactive Date prior to or equal to the Effective Date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggers the right to purchase a Supplemental Extended Reporting Period (SERP) coverage during the term of this Agreement, the Contractor agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage.

## **52.10 RIGHT TO REVISE OR REJECT**

The Village reserves the right, but not the obligation, to reject any insurance policy that fails to meet the criteria stated herein. Additionally, the Village reserves the right, but not the obligation, to review or reject any insurer providing coverage due to its poor financial condition or failure to operate in compliance with Applicable Laws. Neither the Village's approval of any insurance provided by the Contractor or a subcontractor, nor the Village's failure to disapprove such insurance, shall relieve the Contractor or a subcontractor of any part or all of its responsibility for any liability, damages, or accidents, as set forth herein.

## **52.11 MINIMUM REQUIREMENTS FOR INSURANCE COMPANIES**

All of the insurance provided by the Contractor pursuant to this Agreement shall be issued by an insurance company or companies licensed or approved to do business in the State of Florida with a Financial Stability Rating of "A" or better based on the most recent edition of A.M. Best's Insurance Guide. Additionally, the Financial Category Size must be "VIII" or greater.

## **52.12 OTHER INSURANCE REQUIREMENTS**

At its option, the Village may allow the Contractor to be self-insured for one or more lines of coverage. In such circumstances, the Contractor shall be required to demonstrate to the satisfaction of the Village that the Contractor has adequate financial resources to defend and cover all claims in the amounts and categories required by the Village. The Contractor shall be responsible for all of its subcontractors (if any) and their insurance.

## **53. PERFORMANCE BOND**

The Contractor shall furnish to the Village an irrevocable, annually renewable, Performance Bond for the faithful performance of this Agreement and all of the Contractor's obligations hereunder. The Performance Bond shall be in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000). The form and content of the Performance Bond shall be substantially the same as the draft bond in Exhibit 7, and shall be subject to the approval of the Village Attorney. The Performance Bond shall be issued by a surety company that is licensed to do business in the State of Florida and that is acceptable to the Village. At a minimum, the surety company shall be rated "A" or better as to management and "FSC X" or better as to strength by Best's Insurance Guide or Surety, and shall be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds. The Surety shall have been in business and have a record of successful and continuous operation for at least five years. The Performance Bond shall: (a) contain any provisions required by Applicable Law; (b) guarantee the performance of the Agreement; and (c) not be canceled or altered without at least thirty (30) calendar days' prior notice to the Village. The Contractor shall furnish the Performance Bond to the Village Attorney at least five (5) calendar days before the Effective Date.

Maintenance of the Performance Bond and the performance by the Contractor of all of the obligations under this Section 53 shall not relieve the Contractor of liability under the default and termination provisions set forth in this Agreement or from any other liability resulting from any breach of this Agreement. The Performance Bond may be "called" (drawn upon) and used if there is any uncured default or breach of this Agreement by the Contractor. Calling or drawing upon the Performance Bond shall not restrict or preclude the use of any other remedies available to the Village against the Contractor for breach, default, or damages.

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

## **54. PARENT CORPORATION GUARANTEE**

The Contractor shall provide a corporate guarantee from the Contractor's parent company ("Guarantor"), whereby the Guarantor shall guarantee the performance of the Contractor's obligations under this Agreement. The form and content of the corporate guarantee shall be substantially the same as the draft guarantee in Exhibit 6 and shall be subject to the Village Attorney's approval. The form must be executed by a representative of the Contractor's parent company (i.e., the corporate entity that is at the top of any

chart showing the Contractor's corporate organization), who has the legal authority to bind the entity, and is not an intermediary between the Contractor and its parent. The corporate guarantee shall be delivered to the Village at least five (5) days before the Effective Date

## **55. ASSIGNMENT OF AGREEMENT**

- 55.1** No assignment of this Agreement or any right or responsibility occurring under this Agreement, shall be made in whole or in part by the Contractor without the express written consent of the Village. The Village shall have the right to approve any proposed or actual assignment by the Contractor, subject to the conditions in Section 32.4, above. Any assignment of this Agreement made by the Contractor without the express written consent of the Village shall be null and void and shall be grounds for the Village to declare a default of this Agreement.
- 55.2** In the event that the Village's consent to any proposed assignment is denied, the Contractor shall continue to provide all of the services required herein for the remainder of the term.
- 55.3** If any assignment is approved by the Village, the assignee shall fully assume all of the obligations, duties, and liabilities of the Contractor.
- 55.4** The requirements of this Section 55 shall include, but not be limited to cases where the Contractor hires a subcontractor to undertake any of the Contractor's obligations to provide Collection Services under this Agreement, unless (a) the specific subcontractor was identified by the Contractor before the Effective Date or (b) the Administrator provides advance written approval of the subcontractor.

## **56. TRANSFER OF AGREEMENT**

A transfer of this Agreement shall be effective only after approval by the Village. A transfer includes but is not limited to a one-time event that results in a transfer of twenty-five percent (25%) or more of the ownership or controlling interests of the Contractor, or a series of changes that result in a cumulative change of fifty percent (50%) or more of the ownership or controlling interests of the Contractor, and any other event that results in a material change in the ownership or control of the Contractor, whether accomplished by a sale of assets or other means. Any transaction that results in the Contractor or its assets being purchased by or merged with another Person shall constitute a transfer of this Agreement, which is subject to the Village's approval. An application to transfer this Agreement shall be submitted jointly by the proposed transferor and transferee, and shall contain the same type of information about the transferee that was provided by the Contractor before the Village granted this franchise. At a minimum, the proposed transferee shall (a) verify in writing that it will comply with all of the requirements in this Agreement and (b) demonstrate that it has the financial resources, expertise, personnel, equipment and other capabilities necessary to do so. The application shall be accompanied by a non-refundable application fee in the amount of Twenty Thousand Dollars (\$20,000.00). The Council may grant or deny the application for transfer, or grant the application with conditions, or deny the application, subject to the provisions in Section 32.4. Among other things, the Council's approval may be subject to conditions requiring an increase in the amount of the Performance Bond, an increase in the levels and types of insurance coverage, and other safeguards designed to ensure that the Village's work will be completed in compliance with the requirements in this Agreement. In the event that the Council's consent to the transfer is denied, the Contractor shall continue to provide all of the services required herein for the remainder of the term of this Agreement.

Notwithstanding the other provisions in Section 55 and Section 56 of this Agreement, the Village shall

cooperate with the Contractor in the event that a strike, lockout, or similar labor dispute results in the Contractor's use of a subcontractor to provide the Collection Services required under this Agreement. In such circumstances, the provisions of Section 55 and Section 56 shall be waived by the Village for a period not to exceed ninety (90) days.

## **57. SUBSEQUENT VILLAGE ORDINANCES**

Nothing contained in any Village ordinance hereafter adopted shall be construed to affect, change, modify or otherwise alter the duties, responsibilities, and operations of the Contractor under this Agreement, unless it is agreed to in writing by both the Contractor and the Village and this Agreement is amended accordingly.

## **58. AMENDMENTS TO THE AGREEMENT**

### **58.1 GENERAL REQUIREMENTS**

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

### **58.2 VILLAGE'S POWER TO AMEND AGREEMENT**

At its option, the Village may request changes in this Agreement relative to the scope and method of providing Collection Service, when the Village deems it necessary and desirable for the public welfare. The Administrator shall give the Contractor notice of any proposed change and an opportunity to be heard concerning any relevant matters. In all cases involving changes to this Agreement, the Village and Contractor shall enter into good faith negotiations to modify this Agreement and the Rates, as necessary, in a manner that is mutually acceptable. The scope and method of providing Collection Service, as referenced herein, shall be liberally construed to include, but not be limited to all procedures, operations, and obligations of the Contractor. Among other things, the Village and the Contractor may wish to amend this Agreement if the Authority begins to accept Source Separated Recyclable Materials that are collected in a "single stream" – i.e., all of the Recyclable Materials are collected and handled together in one bin or cart. No changes to the Agreement shall take effect until the Parties execute an amendment to the Agreement in the manner required herein.

In the future, the Village may wish to obtain new services that are not addressed under this Agreement. For example, the Village may wish to expand its Recycling program in ways that have not yet been identified. If the Village and the Contractor are unable to agree upon the terms and conditions governing such services, including but not limited to the Rates for such services, the Village shall have the right to procure such services from other Persons, notwithstanding the Contractor's exclusive franchise under this Agreement.

### **58.3 AMENDMENTS DUE TO CHANGES IN LAW**

The Village and the Contractor understand and agree that changes in the Applicable Laws may require amendments to some of the conditions or obligations of this Agreement. In the event any future change in any Applicable Law materially alters the obligations of the Contractor or the Village, then the provisions and Rates in this Agreement may need to be modified. The Village and the Contractor agree to enter into good faith negotiations regarding amendments to this



Agreement, which may be required in order to implement changes for the public welfare or due to a Change in Law. Section 38.6, above, shall govern any adjustment to the Rates that result from a Change in Law.

## **59. WAIVER OF RIGHTS**

No delay or failure to exercise a right under this Agreement shall impair such right or be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the Village or the Contractor at any time to require performance by the other party of any term in this Agreement shall in no way affect the right of the Village or the Contractor thereafter to enforce same. Nor shall waiver by the Village or the Contractor of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

## **60. WAIVER OF FLOW CONTROL CLAIMS**

The Contractor has voluntarily entered into this Agreement for the purpose of enjoying the economic and other benefits conferred upon the Contractor by this Agreement. To ensure that the Village also enjoys the benefits of this Agreement, the Contractor hereby knowingly, voluntarily, and permanently waives its right to challenge, contest, or invalidate the provisions in this Agreement that require the Contractor to use a Designated Facility for the disposal or processing of Solid Waste or Recyclable Materials collected by the Contractor in the Service Area. This waiver includes but is not limited to any claim that this Agreement implements an inappropriate form of Solid Waste “flow control”, regardless of whether the claim is based on local, state, or federal law, or the Florida or U.S. Constitution, or any other grounds, and regardless of whether the claim seeks damages, injunctive relief, or other remedies at law or in equity.

## **61. GOVERNING LAW, VENUE AND ATTORNEYS FEES**

The laws of the State of Florida shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. Any and all legal or equitable actions necessary to enforce this Agreement shall be held and maintained solely in the state and federal courts in and for Palm Beach County, Florida. Venue shall lie exclusively in Palm Beach County. In any legal or other proceeding to interpret, apply, or enforce the terms of this Agreement, each Party shall pay its own legal fees and all associated costs, except as otherwise provided in Sections 49.3 and 49.6, above.

## **62. COMPLIANCE WITH LAWS AND REGULATIONS**

The Contractor shall at all times comply with all Applicable Laws now in effect or hereafter enacted, which are applicable in any way to the Contractor, its officers, employees, agents, or subcontractors, except as provided in Section 57.

## **63. PERMITS AND LICENSES**

The Contractor, at its sole cost and expense, shall obtain and maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for the Contractor to perform the work and services described herein.

## **64. EQUAL OPPORTUNITY EMPLOYMENT**

The Contractor agrees that it shall not discriminate against any employee or applicant for employment for work under this Agreement because of handicap, race, color, religion, sex, age, or national origin and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment by the Contractor without regard to race, color, creed, religion, sex, gender identity or expression, sexual orientation, age, national origin, ancestry, disability, medical condition, or any other characteristic protected under federal or state law. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor shall furnish the Village with a copy of its non-discrimination and equal employment opportunity policy, upon request.

## **65. AGREEMENT DOCUMENTS**

This Agreement and the following documents comprise the entire Agreement between the Village and the Contractor. The following documents are attached to this Agreement and they are incorporated in this Agreement by this reference:

Exhibit 1 through Exhibit 11

After the Effective Date, the Agreement shall be supplemented with the following:

Performance Bonds and Insurance Certificates

Any amendments to this Agreement that are approved by the Council and the Contractor

There are no Agreement documents other than those listed above. In the event of a conflict between this Agreement and the provisions of any exhibit, the provisions of this Agreement shall control when interpreting or applying this Agreement.

## **66. ALL PRIOR AGREEMENTS SUPERSEDED**

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

This Agreement shall govern the Parties' relationship, regardless of anything contained in the Village's RFP (No. 202108) or the Contractor's response to the RFP. Nonetheless, in the event that an order of precedence is needed, it shall be this Agreement, the Village's RFP, and then the Contractor's response to the RFP.

## **67. HEADINGS**

Headings in this document are for convenience of reference only and shall not be considered when interpreting this Agreement.

## **68. CONSTRUCTION OF AGREEMENT**

The following rules shall govern the interpretation and construction of this Agreement:

- (a) The words “include” and “including” shall not be construed to be terms of limitation. References to included matters or items will be regarded as illustrative and will not be interpreted as a limitation on, or an exclusive listing of, the matters or items referred to.
- (b) Whenever the context requires, the singular form of a word includes the plural and the plural includes the singular. The gender of any pronoun includes the other genders.
- (c) Both parties are represented by legal counsel and they waive any rule of law that would require any vague or ambiguous provision herein to be construed against the Party that physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.
- (d) The words “shall” and “must” are used when referring to mandatory duties and obligations. The word “may” is permissive.
- (e) The word “Section” refers to the sections in this Agreement, unless the context clearly indicates otherwise (e.g., citations to sections of the Florida Statutes).
- (f) The word “herein” refers to the provisions in this Agreement.
- (g) All citations to the Florida Statutes refer to the statutes in existence on the Effective Date - i.e., Florida Statutes (2020).

## **69. SURVIVABILITY**

Any term, condition, covenant, or obligation which requires performance by a party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

## **70. SEVERABILITY**

The definitions and provisions contained in this Agreement shall not be construed to require the Village or the Contractor to take any action that is contrary to any local, state or federal law. 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, such provision, 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. This Agreement shall be construed as if such invalid, illegal, void or unenforceable provision had never been contained herein.

## **71. FAIR DEALING**

The Contractor declares and warrants that the Contractor enters into this Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no Council member, Village officer, or Village employee, directly or indirectly owns more than five percent (5%) of the total assets or capital stock of the Contractor, nor will any such Person directly or indirectly benefit by more than five percent (5%) from the profits or emoluments of this Agreement, nor has the Contractor provided any gift to any such Person or their family. The

Contractor warrants that it has not employed or retained any company or Person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and the Contractor has not paid or agreed to pay any Person, other than a bona fide employee working solely for the Contractor, any fee, percentage, gift or any other compensation contingent upon or resulting from the award or making of this Agreement.

## **72. SOVEREIGN IMMUNITY AND LIMITATIONS ON THIRD PARTY LAWSUITS**

Nothing in this Agreement shall be interpreted or construed to mean that the Village waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statutes. Nothing in this Agreement shall constitute the Village's consent to be sued by any third party in any matter arising out of or related to this Agreement.

## **73. REMEDIES NOT EXCLUSIVE**

The remedies specified in this Agreement shall supplement, and not be in lieu of, any other remedies provided at law or in equity. The payment of any administrative charges by the Contractor shall not constitute a defense for the Contractor, nor an election of remedies by the Village, nor serve as the basis for a claim of estoppel against the Village, nor prevent the Village from terminating this Agreement. The Village's decision to refrain from assessing administrative charges, or suspending or terminating this Agreement, or seeking any other relief from any failure in the Contractor's performance, shall not constitute a waiver of the Village's right to pursue any other remedy or a waiver of its right to pursue a remedy for any future failure by the Contractor. No remedy conferred by this Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **74. NOTICES TO PARTIES**

All notices, requests, authorizations, approvals, protests, and petitions provided for herein shall be in writing. Except as provided in Section 31.1 and 44.4, above, such documents shall be addressed as shown below and either (a) hand delivered, (b) mailed by registered or certified mail (postage prepaid), return receipt requested, or (c) sent by facsimile. The documents shall be deemed to have been duly delivered when personally delivered, or when transmitted by telecopier (facsimile) and receipt is confirmed by telephone, or when delivered by U.S. Mail or courier service, as shown by the return receipt. For the present, the Contractor and the Village designate the following as the appropriate people and places for delivering notices and other documents:

As to Village:	Village Manager Village of Wellington 12300 Forest Hill Boulevard Wellington, FL 33414 Telephone: (561) 791-4000 Facsimile: (561) 791-4045
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Copy to:	Village Attorney Village of Wellington
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12300 Forest Hill Boulevard  
Wellington, FL 33414  
Telephone: (561) 791-4000  
Facsimile: (561) 791-4045

As to Contractor: Charles Merkley  
Regional Director of Operations  
FCC Environmental Services Florida, LLC  
5840 Corporate Way, Suite 250  
West Palm Beach, FL 33407

Copy to: Inigo Sanz, President  
FCC Environmental Services Florida, LLC  
5840 Corporate Way, Suite 250  
West Palm Beach, FL 33407

Both parties reserve the right to designate a different representative or representatives in the future, or to change the address(es) for notice, by providing written notice to the other party of such change.

## **75. NO THIRD PARTY BENEFICIARIES**

THIS AGREEMENT ONLY PROVIDES RIGHTS AND REMEDIES FOR THE VILLAGE AND THE CONTRACTOR, EXCEPT TO THE EXTENT THAT SECTION 51.2 PROVIDES LIMITED RIGHTS FOR VILLAGE INDEMNIFIED PARTIES. NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN, THIS AGREEMENT DOES NOT PROVIDE ANY RIGHTS OR REMEDIES FOR ANY OTHER PERSON. THERE ARE NO THIRD PARTY BENEFICIARIES UNDER THIS AGREEMENT, EXCEPT FOR VILLAGE INDEMNIFIED PARTIES.

## **76. COOPERATION WITH THE INSPECTOR GENERAL**

Pursuant to Ordinance No. 2011-009, Palm Beach County has established the Office of the Inspector General, which is authorized to review Village contracts and records. The Contractor shall fully cooperate with the Inspector General and shall provide access to the Contractor's records in the manner provided herein for the Village to inspect such records. Failure to cooperate with the Inspector General, or interfering with or impeding any investigation of the Inspector General, shall be a violation of County Ordinance 2009-049 and shall be punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

## **77. REDUCING CONTAMINATION OF RECYCLABLE MATERIALS**

If the Contractor's employees see that a Residential Customer's Recycling Bin contains Contaminated Recyclable Material, the Contractor's employees shall (a) place a warning notice or educational materials on the Recycling Container to encourage the Customer to "recycle right" and (b) leave the Contaminated Recyclable Material on the Customer's Premises. The same procedure shall be followed if the Contractor

collects Recycling Carts with a rear-loading vehicle and the Contractor's employee sees that the cart contains Contaminated Recyclable Material before the employee unloads the cart into the vehicle. Further, the same procedure shall be followed if the Contractor uses Mechanical Containers to collect Program Materials and the Contractor's driver sees that a Mechanical Container contains Contaminated Recyclable Material before the Mechanical Container is unloaded into the Contractor's vehicle. In all of these cases, the Contractor shall leave a Non-Collection Notice on the Recycling Container and the Contractor shall leave the Contaminated Recyclable Material at the Customer's Premises.

However, nothing contained in this Agreement requires the Contractor to look into a Recycling Cart or otherwise inspect the contents of a Mechanical Container before the Contractor collects the contents of that Recycling Cart or Mechanical Container. The Contractor shall coordinate with the Administrator concerning the content of any Non-Collection Notices and educational materials used pursuant to this Section 77.

The Administrator shall have the exclusive authority to resolve any dispute as to whether the contents of a Recycling Container or Load constitute Contaminated Recyclable Material. The Administrator's determination may be based on any visual inspection or measurement that the Administrator deems sufficient, including a visual inspection of photographs of the container's contents.

## **78. MANAGEMENT OF CONTAMINATED RECYCLABLE MATERIAL**

Pursuant to Section 403.706, Florida Statutes, the Village is adopting a definition of Contaminated Recyclable Material that is appropriate for the local community. The Village's definition of Contaminated Recyclable Material is contained in Section 1.27, above. The Village plans to reduce the amount of Contaminated Recyclable Material being collected in the Village primarily by (a) using Recycling Bins and a "dual stream" method of collecting Recyclable Materials and (b) implementing public education and outreach programs. The Contractor will assist the Village in this effort by providing educational notices pursuant to Sections 35 and 77, above, and by providing technical and educational services pursuant to Section 36.9, above. Section 77, above, describes the basic procedures that the Contractor shall use for identifying, documenting, managing, and rejecting Contaminated Recyclable Material. Collectively, Sections 35, 36.9, and 77 describe the educational and enforcement measures that the Contractor is responsible for implementing when providing Collection Services under this Agreement. Leaving the Contaminated Recyclable Material in the Recycling Container at curbside is the Contractor's primary remedy when the Contractor discovers Contaminated Recyclable Materials in a Recycling Container. In addition, the Contractor should report to the Administrator pursuant to Sections 15.5, above, if a Customer repeatedly Sets Out Contaminated Recyclable Material for Collection. The Village is responsible for implementing educational and enforcement programs, as the Village deems appropriate in light of its funding and other constraints, and thus promoting proper Recycling techniques. Subject to its budgetary and other constraints, the Village intends to explore potential outreach and messaging campaigns, enforcement mechanisms, and other measures that will encourage Customers to "recycle right." The Village shall have the exclusive authority to determine whether the Village will adopt or implement any specific program or course of action.

## **79. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor represents and warrants to the Village that:

- (a) The Contractor is a corporation existing in good standing under the laws of the state of its formation, is in good standing under the laws of the State of Florida, and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- (b) The Contractor has the requisite power, authority, and legal right to enter into and perform its obligations under this Agreement and possesses all orders, permits, consents, licenses, approvals, franchises, certificates, registrations, and other authorizations from third parties and governmental authorities that are necessary to conduct its current business and to satisfy its duties and obligations under this Agreement.
- (c) This Agreement has been duly executed and delivered by the Contractor and, as of the Effective Date, constitutes a legal, valid, and binding obligation of the Contractor, enforceable by the Village against the Contractor in accordance with its terms, except to the extent its enforceability is limited by (1) the application of general principles of equity and by bankruptcy, insolvency, moratorium, debtor relief, and similar laws of general application affecting the enforcement of creditor rights and debtor obligations, and (2) public policy limitations on the enforceability of indemnification provisions.
- (d) The execution, delivery, and performance of this Agreement by the Contractor: (1) have been duly authorized; (2) do not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained after the Effective Date; (3) have been duly authorized by all requisite action of the Contractor, and no other proceedings on the part of the Contractor, its officers, partners or managers are necessary to authorize this Agreement or to perform the duties and obligations of the Contractor contemplated by it; (4) will not violate any law applicable to the Contractor or its property or any provisions of the Contractor's articles of incorporation, by-laws, articles of organization or operating agreement; (5) do not constitute a default under or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of the Contractor under any agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound or affected in any manner that prohibits or otherwise adversely affects the Contractor's ability to perform its obligations under this Agreement; and (6) do not and will not violate any copyrights, patents, or other intellectual or proprietary rights of any Person.
- (e) To the best of the Contractor's information and belief, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority pending against the Contractor, in which an unfavorable decision, ruling, or finding would materially and adversely affect the performance by the Contractor of its obligations under this Agreement, or that in any way would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Contractor or any of its affiliates in connection with this Agreement.
- (f) The Contractor did not engage, directly or indirectly, in any collusion, bribery, deception, or fraud in connection with its efforts to procure the work awarded under this Agreement.
- (g) None of the agents, members, managers, partners, officers, directors, employees, or executives of the Contractor, or any affiliate that is active in the management of the

Contractor, has been convicted of a public entity crime, as defined in Section 287.133(g), Florida Statutes.

- (h) The personnel employed by the Contractor have the proper skill, licenses, training, background, knowledge, experience, authorizations, integrity, and character necessary to perform the Contractor's obligations in accordance with this Agreement.
- (i) No Village employee received or will receive, directly or indirectly, any benefit, interest, or profit out of the procurement process that resulted in the award of this Agreement or in connection with this Agreement or the services to be provided pursuant to this Agreement, and no Village employee has or will have any direct or indirect financial interest in the award of this Agreement or any of the services to be provided pursuant to this Agreement.
- (j) The Contractor acknowledges that Section 287.135, Florida Statutes, prohibits agencies from contracting with companies for goods or services of \$1,000,000 or more that are on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy List, or the other lists identified therein. The Contractor certifies, represents, and warrants to the Village that the Contractor is not on any of those lists. The Contractor acknowledges and agrees that, pursuant to Section 287.135, Florida Statutes, the Village may terminate this Agreement and civil penalties may be assessed against the Contractor if the Contractor is found to have submitted a false certification concerning these matters.
- (k) The Contractor has registered with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of the Contractor's newly hired employees. The Contractor's subcontractors do not employ, contract with, or subcontract with unauthorized aliens.

[The remainder of this page is intentionally blank]



IN WITNESS WHEREOF, the parties have made and executed this Agreement, as attested to by the signature of their duly authorized officers or representatives and their official seals affixed hereon, the day and year first above written.

VILLAGE OF WELLINGTON, by and through  
its Council

Attest:

\_\_\_\_\_  
Chevelle D. Addie, Village Clerk

By: \_\_\_\_\_  
Ann Gerwig, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2021

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
Laurie S. Cohen, Village Attorney

\_\_\_\_ day of \_\_\_\_\_, 2021

WITNESSES:

FCC ENVIRONMENTAL SERVICES  
FLORIDA, LLC

\_\_\_\_\_  
Signature

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

\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Signature

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

\_\_\_\_ day of \_\_\_\_\_, 2021

ATTEST:

\_\_\_\_\_  
SECRETARY

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF                    )

The foregoing Agreement was acknowledged before me, an officer duly authorized by law to administer oaths and take acknowledgments, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, as \_\_\_\_\_ of FCC Environmental Services Florida, LLC, an organization authorized to do business in the State of Florida, and who executed the foregoing Agreement as the proper official of FCC Environmental Services Florida, LLC for the uses 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 city aforesaid on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

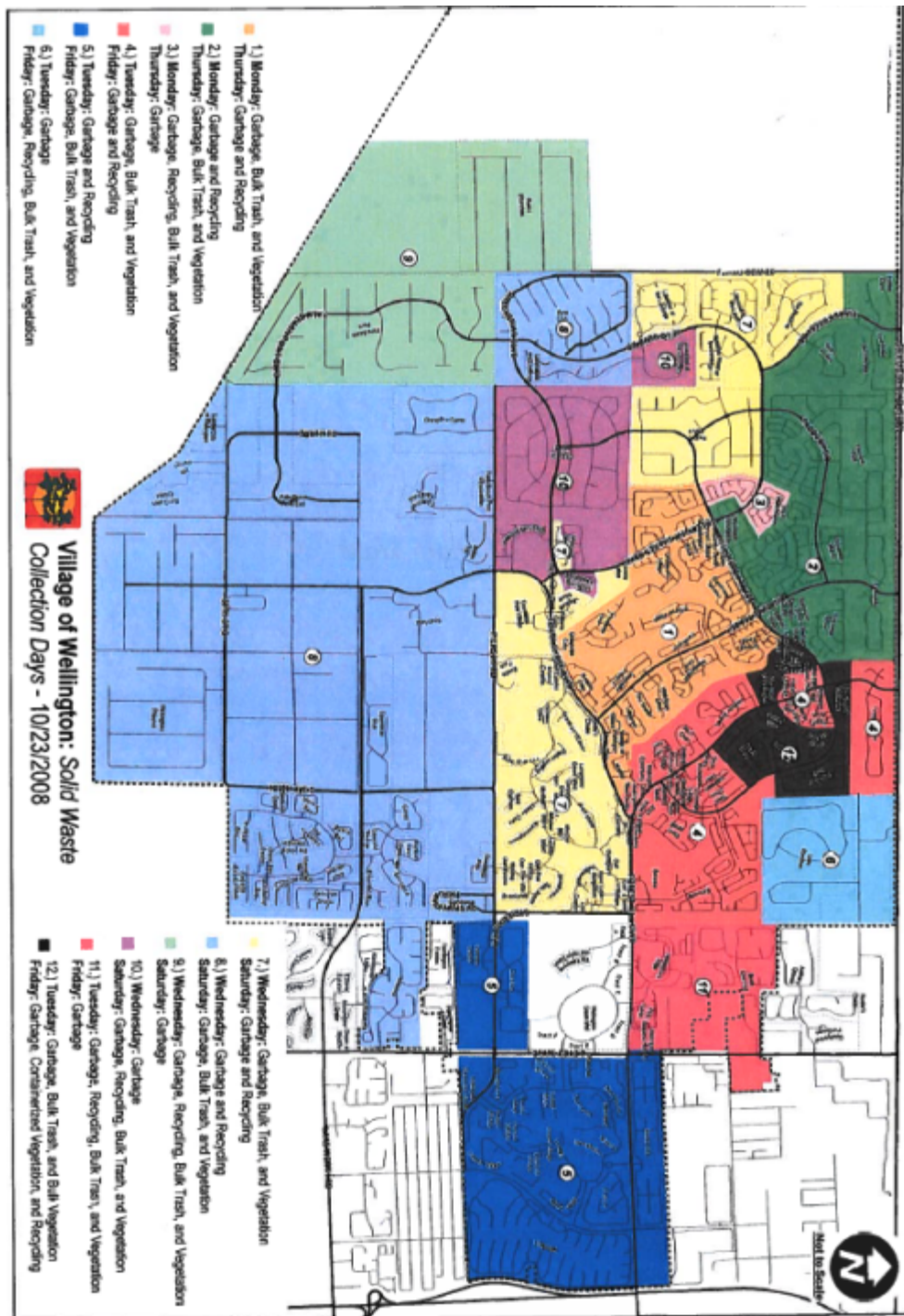
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

# EXHIBIT 1

## GENERAL MAP OF SERVICE AREA

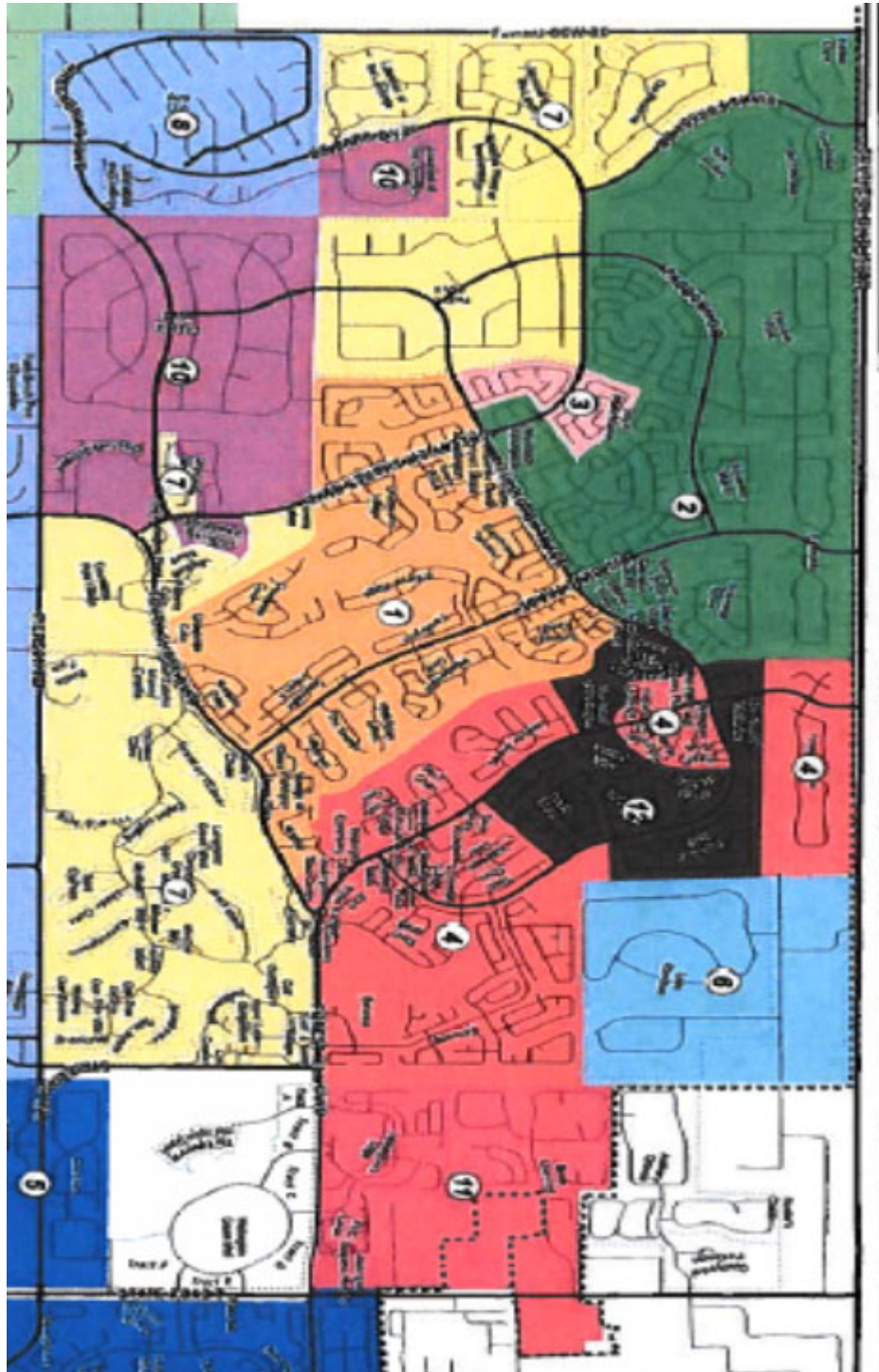
The following map depicts the Village, including the zones that are used by the company that currently collects the Village's Solid Waste.



## EXHIBIT 2

### MAP OF CENTRAL VILLAGE

The Central Village is comprised of Zones 1, 3, 4, 7, 11, and 12 in the following map.



**EXHIBIT 3**  
**RATES FOR RESIDENTIAL COLLECTION SERVICES**

	Curbside Collection with Garbage Carts
Garbage	\$ 7.73 (2x/wk)
Yard Waste	\$ 6.60 (1x/wk)
Source Separated Recyclable Material	\$ 3.27 (1x/wk)
Bulky Waste	This cost is included in the Rate for Garbage. Service shall be provided one time each week.
Total Monthly Cost per Dwelling Unit	\$ 17.60 per month

### EXHIBIT 3

(continued)

	Collection Service for Multi-Family Dwellings with Mechanical Containers
Garbage	\$ 7.73 per month (2x/wk)
Yard Waste	Not Applicable
Recyclable Material	\$ 3.27 per month (1x/wk)
Bulky Waste	\$ 1.49 per month (1x/wk)
Total Monthly Cost per Dwelling Unit	\$ 12.49 per month

## EXHIBIT 3

(continued)

### Explanatory Notes

1. All Rates are fixed through September 30, 2022, and are based on the service requirements specified in the Agreement. The Rates are expressed as the cost that the Village must pay per Dwelling Unit per month.
2. The Rates for Residential Collection Service with Garbage Carts shall apply to each Customer that receives such service, regardless of the number of Garbage Carts, Yard Waste Carts, and Recycling Bins that are used by the Customer.
3. The Rates for Collection Service for Multi-Family Dwellings with Mechanical Containers includes all charges and fees for maintaining and renting Mechanical Containers, except Compactors. The Rate for leasing a Compactor shall be negotiated by the Contractor and the Customer.
4. The Rates for "Collection Service for Multi-Family Dwellings with Mechanical Containers" are based on the frequency of service shown above. If a Customer wishes to receive more frequent service, the Rate for the requested service shall be increased proportionately. For example, if a Customer at a Multi-Family Dwelling with Mechanical Containers wishes to receive Collection Service for Garbage on three (3) occasions per week (rather than two (2)), the Customer shall pay an amount equal to the Rate for such service multiplied by one and one-half (1.5). The Rate shall be multiplied by two (2) if the Customer wishes to receive such service four (4) times per week.
5. There shall be no charge for Side Door Service if the Customer satisfies the criteria in Section 7.7 of the Agreement.
6. With regard to monthly Rates, each month shall be deemed to consist of 4.33 weeks.

**EXHIBIT 4**

**RATES FOR COMMERCIAL COLLECTION SERVICES**

Rate for Collection of Commercial Waste with Mechanical Containers (i.e., other than Compactors and Roll-Off Containers)	<p>\$ 8.08 per cubic yard for Collection</p> <p>\$ 2.81 Disposal</p> <p>Total per cubic yard \$ 10.89</p>
Rate for Collection of Commercial Waste in Compactors (8 cubic yards or less)	<p>\$ 24.24 per cubic yard for Collection (3x the Collection cost for Mechanical Containers, above)</p> <p>\$ 8.43 Disposal</p> <p>Total per cubic yard \$ 32.67</p>
Rate for Collection of Recyclable Materials in Mechanical Containers	<p>\$ 8.08 per cubic yard</p>
Rate for Collection of Commercial Waste with 96 Gallon Garbage Cart collected one time per week (Customers generating less than 2 cubic yards per week)	<p>\$ 16.86 per month for Collection</p> <p>\$ 6.08 per month for Disposal</p> <p>Total monthly \$ 22.96</p>
Rate for Collection of Recyclable Materials with 96 Gallon Recycling Cart collected one time per week	<p>\$ 16.86 per month for Collection</p>



## EXHIBIT 4

(continued)

Rate for Collection of Commercial Waste in Compactors (greater than 8 cubic yards – Roll-Off Compactors)	\$ 290.00 per pull for Collection
Rate for Collection of Commercial Waste in Roll-Off Containers	\$ 260.00 per pull for Collection

### Explanatory Notes

1. All Rates are fixed through September 30, 2022, and are based on the service requirements specified in the Agreement.
2. The Rates for Commercial Collection Service include all charges and fees for the rental and maintenance of Mechanical Containers, except Compactors. The Rate for leasing a Compactor shall be negotiated by the Contractor and the Customer.
3. With regard to monthly Rates, each month shall be deemed to consist of 4.33 weeks.
4. The Rates for Garbage Carts and Recycling Carts are based on Collection Service provided one time each week. If a Customer wishes to receive more frequent service, the Rate for the requested service shall be increased proportionately. For example, if a Customer using a Garbage Cart wishes to receive Collection Service for Garbage on two (2) occasions per week, the Customer shall pay the Rate for such service multiplied by two (2). The Rate shall be multiplied by three (3) if the Customer wishes to receive such service three (3) times per week.

## EXHIBIT 5

### RATES FOR SPECIAL COLLECTION SERVICES

SERVICE	RATE PER SERVICE
Rolling Out Commercial 95 or 101 Gallon Carts, with 10 or more feet per direction	\$1.00 (no charge for Residential Customers regardless of distance; no charge for Commercial Customers for less than 10 feet per direction)
Rolling Out Mechanical Container (and returning it to original location)	\$8.00 per month per container times frequency of collection
Opening (and closing) Doors or Gates	No Charge
Locks for Containers	\$9.00 (one time) Charge for Replacements based on cost + 10%
Unlocking Containers	\$2.00
Supplying (and retrofitting) locking mechanism on container per customer request only	\$55.00 one-time installation charge
Adding wheels to or changing wheels on Mechanical Containers	No Charge
Adding lids to or changing lids on Mechanical Containers	No Charge
Moving Container Location Per Customer Request	No Charge
Changing Out sizes (more than twice per Operating Year)	\$25.00
Additional Scheduled Pick-ups for Residential Customers using Mechanical Containers	Same as Applicable Commercial Collection Rates (No Disposal Charges)
Additional Unscheduled (picked up by end of business the following day but not including “on-call”) Pick-ups for Commercial and Residential Customers using Mechanical Containers	\$25.00 Special Service Fee Plus Applicable Commercial Collection and Disposal Rates Per Dumpster (No Disposal Charges for Residential)
Special Service or special equipment required because of impaired accessibility	Negotiable
Turn around compactors (Commercial Customer only)	\$10.00 per pull (No Charge for Multi-family)
Stump/Land Clearing Collection	Negotiable
Yard Waste collected at Curbside	\$8.00 per cubic yard
Yard Waste collected in Mechanical Container	\$12.00 per cubic yard
Residential Mixed Collection (Yard Waste with C&D and/or Bulky Waste)	\$12.00 per cubic yard
Commercial Bulky Waste	Negotiable
Lease of Compactor	Negotiable

## EXHIBIT 6

### **PARENT CORPORATION GUARANTEE**

THIS GUARANTEE ("Guarantee") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Guarantor"), to and for the benefit of the Village of Wellington, Florida (the "Village") (each capitalized term used and not defined herein shall have the meaning ascribed to such term in the Agreement).

WITNESSETH:

WHEREAS, \_\_\_\_\_ (the "Contractor"), a \_\_\_\_\_ corporation and a wholly-owned subsidiary of the Guarantor, is entering into an "Exclusive Franchise Agreement ("Agreement") with the Village;

WHEREAS, the Guarantor is willing to guarantee the performance of the Contractor under the Agreement, pursuant to the terms of this Guarantee; and

WHEREAS, the execution of this Guarantee is a condition precedent to the execution by the Contractor and the Village of the Agreement, and the Village would not enter into the Agreement unless the Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the Village to enter into the Agreement, the Guarantor agrees as follows:

1. The Guarantor hereby irrevocably, absolutely and unconditionally guarantees the full, prompt and timely performance and discharge of all of the duties, obligations, covenants and agreements of the Contractor pursuant to and in accordance with the terms and provisions of the Agreement, including but not limited to, the full, prompt and timely payment when due of all sums and amounts payable by the Contractor, including without limitation, the payment of any and all fines, damages, indemnification obligations, costs, and expenses, including without limitation, reasonable fees and expenses of attorneys (collectively, the "Obligations").

2. All Obligations of the Guarantor under this Guarantee shall be irrevocable, absolute, unconditional and continuing, and shall remain in full force and effect until all of the Obligations now existing or hereafter incurred have been performed, discharged and paid in full in accordance with the terms of the Agreement. The Obligations of the Guarantor under this Guarantee shall not be released, discharged, affected, modified or impaired by reason of the happening from time to time of any event or circumstance, including, without limitation, any one or more of the following:

(i) the compromise, settlement, release, discharge or termination of any or all of the Obligations, by operation of law or otherwise, except by payment and performance in full of the Obligations pursuant to the terms of the Agreement;

(ii) the failure of the Village to give notice to the Contractor or the Guarantor of the occurrence of any Event of Default under the Agreement;

## **EXHIBIT 6 (continued)**

(iii) the waiver by the Village of any payment, performance, or observance of any of the Obligations;

(iv) the extension of the time (whether one or more) for payment or performance of the Obligations, or the extension or the renewal of any thereof;

(v) the invalidity or unenforceability of any term or provision of the Agreement based on the lack of authority, insolvency, bankruptcy or reorganization of the Contractor;

(vi) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Contractor, or its assets, or the Guarantor, or its assets, or any allegation of invalidity or contest of the validity of this Guarantee in any such proceedings;

(vii) the default or failure of the Guarantor to fully perform any of its obligations set forth in this Guarantee, or the occurrence of any events of default under the Agreement;

(viii) the failure of any agreement, instrument, certificate, or other document to be executed or delivered in connection with the Agreement; or

(ix) any assignment, amendment, modification, or waiver of, or change in any of the terms, covenants, conditions or provisions of any of the Obligations or the Agreement, or the invalidity or unenforceability of any of the foregoing.

3. This Guarantee shall be construed in accordance with and governed by the laws of the State of Florida, without giving effect to any choice or conflict of law provisions or rules (whether of the State of Florida or any other jurisdiction).

4. Subject to the provisions of Section 7 hereof, this Guarantee shall be binding upon and enforceable against the Guarantor, its successors, or permitted assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties or capital stock of the Guarantor), whether or not the Guarantor's obligations hereunder are expressly assumed by such successor, assignee, or transferee, and is for the benefit of the Village and any of its successors and assigns under the Agreement.

5. Each and every event of default under the Agreement shall give rise to a separate cause of action hereunder, and separate claims may be brought hereunder by the Village as each cause of action arises. The Guarantor waives to the greatest extent permitted by law: notice of acceptance hereof; presentment and protest of any instrument, and notice thereof; notice of default; notice of foreclosure; notice of any modification, release or other alteration of any of the Obligations or of any security therefor and all other notices to which the Guarantor might otherwise be entitled. Should the Contractor default in the payment or performance of any of the Obligations, the obligations of the Guarantor hereunder with respect to such Obligations in default shall become

## **EXHIBIT 6**

### **(continued)**

immediately due and payable to the Village without demand or notice of any nature, all of which are expressly waived by the Guarantor. Payments by the Guarantor hereunder may be required by the Village on any number of occasions.

6. No failure, omission or delay by the Village in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege of the Village. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom any such waiver, amendment, release or modification is sought to be enforced.

7. The Guarantor shall not assign its obligation hereunder nor substitute any Person in place of itself hereunder without first obtaining the express prior written consent of the Village, which consent may be withheld by the Village in its sole and absolute discretion. Any attempted assignment in violation of this Guarantee shall be null and void.

8. The obligations of the Guarantor to the Village set forth in this Guarantee are direct, absolute and unconditional without regard to the liability of any other Person; and shall not be subject to any requirement that the Village first enforce any remedies it may have against the Contractor or any other Person, or any requirement to seek to recover from the Contractor hereunder before proceeding against the Guarantor hereunder, and shall not be subject to any claim of the Guarantor against any other Person including the Village. No setoff, counterclaim, reduction, or diminution of any obligation, or any other defense of any kind of nature (excepting payment or performance in fact and any other defenses the Contractor has under the Agreement) which the Contractor or the Guarantor has or may have against the Village shall limit or in any way affect the Guarantor's obligations under this Guarantee.

9. Each of the Guarantor and the Village irrevocably (i) consents that any action or proceeding against it under, arising out of or in any manner relating to this Guarantee shall be brought in the state or federal courts in and for Palm Beach County, Florida, and consents to the exclusive jurisdiction of such courts; (ii) consents and submits to the personal jurisdiction of any such court in any such action or proceeding; (iii) consents to the service of summons, notice, or other process relating to any such action or proceeding by delivery thereof by hand or by mail in the manner provided for in Section 13 of this Guarantee and consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Florida, in accordance with applicable laws; (iv) waives any objection, claim or defense which it may have at any time to the laying of venue of any such action or proceeding in any such court; (v) waives any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; (vi) waives the right to object, with respect to any such action or proceeding brought in any such court, that such court does not have jurisdiction over such party; and (vii) permanently, voluntarily, and with the advice of counsel, waives any rights it may have to a jury trial concerning any dispute involving or arising out of the Agreement or this Guarantee.

10. Upon payment by the Guarantor of any sum to the Village hereunder, all rights of the Guarantor against the Contractor arising as a result thereof by way of right of subrogation or

## EXHIBIT 6

otherwise shall in all respects be subordinate, junior in right of payment to, and not exercisable until, the prior indefeasible payment and performance in full of all Obligations.

11. This Guarantee may be executed in multiple counterparts, including by way of facsimile or other electronic transmission (i.e., pdf), each of which shall be deemed an original, but all of which taken together shall constitute one instrument. If any provision of this Guarantee is determined to be unenforceable, the Village and the Guarantor hereby agree that such provision may be reformed so that it is enforceable to the maximum extent permitted by applicable laws. In the event that any provision of this Guarantee cannot be reformed, such provision shall be deemed to be severed from this Guarantee, but every other provision of this Guarantee shall remain in full force and effect. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of the Village and may be enforced against Guarantor by the Village and any of its successors and assigns. This Guarantee contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements, representations and understandings of the parties with respect to the subject matter herein.

12. The Guarantor hereby expressly waives notice from the Village of its acceptance of and reliance upon this Guarantee, and of any future creation, renewal or accrual of any of the Obligations.

13. All notices hereunder shall be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission or other electronic transmission service is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

If to the Village: Village Manager  
Village of Wellington  
12300 Forest Hill Boulevard  
Wellington, FL 33414  
Telephone: (561) 791-4000  
Facsimile: (561) 791-4045

Copy to: Village Attorney  
Village of Wellington  
12300 Forest Hill Boulevard  
Wellington, FL 33414  
Telephone: (561) 791-4000

**EXHIBIT 6**  
**(continued)**

Facsimile: (561) 791-4045

If to the Guarantor:

Copy to:

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice given to the other party in accordance with this Guarantee.

14. Any termination of this Guarantee shall be applicable only to transactions having their inception after the effective date of such termination and shall not affect rights and obligations arising out of transactions having their inception prior to such date.

IN WITNESS WHEREOF, the Guarantor has executed this instrument the day and year first above written.

ATTEST: \_\_\_\_\_ (Guarantor)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Seal]

**EXHIBIT 6**  
**(continued)**

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

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Print or Type Name

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Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name



**EXHIBIT 7**  
**PERFORMANCE BOND**

**CONTRACTOR** (name, principal place of business, and phone number):

XYZ Company  
Address

**SURETY** (name, principal place of business, and phone number):

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

**VILLAGE:**

Village Manager  
Village of Wellington  
12300 Forest Hill Boulevard  
Wellington, FL 33414  
Telephone: (561) 791-4000  
Facsimile: (561) 791-4045

**BOND No.**

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

**Amount:** One Million Five Hundred Thousand Dollars (\$1,500,000)

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, (hereinafter "CONTRACTOR"), as Principal, and \_\_\_\_\_, hereinafter "SURETY"), as Surety, are held and firmly bound unto the Village of Wellington, Florida (hereinafter "VILLAGE"), as Oblige, in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00), for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the SURETY states that it has read all of the "Exclusive Franchise Agreement" (hereinafter "Agreement") that is attached hereto and incorporated herein by reference, and SURETY has carefully considered the CONTRACTOR's obligations and duties under the Agreement, including but not limited to the provisions of Sections 47 ("Breach and Termination of Agreement") and 51 ("Damages and Indemnification"); and

WHEREAS, the VILLAGE's issuance of an exclusive franchise to the CONTRACTOR, and the VILLAGE's execution of the Agreement with the CONTRACTOR, are contingent upon the execution of this bond (hereinafter "BOND") and these presents.

## **EXHIBIT 7 (continued)**

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, if the CONTRACTOR shall in all respects promptly and faithfully perform and comply with all of the terms and conditions of the Agreement, and the CONTRACTOR's obligations thereunder, then this obligation shall be void; otherwise, the BOND shall remain in full force and effect, in accordance with the Agreement and the following terms and conditions:

1. The SURETY, for value received, as hereby acknowledged, stipulates and agrees that no change, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the requirements for the same shall in any way affect the SURETY's obligations on the BOND, and SURETY does hereby waive notice of any change, alteration, or addition to the terms of the Agreement or to the work.

2. The SURETY, for value received, as hereby acknowledged, further stipulates and agrees that it will pay the VILLAGE all losses, damages, expenses, costs, and attorneys' fees, including fees incurred in appellate proceedings, the VILLAGE sustains because of a default by the CONTRACTOR under the Agreement, up to the maximum amount of the BOND.

3. The fact that the VILLAGE may extend the time within which the CONTRACTOR may perform its obligations shall not release the SURETY from its obligations under this BOND, whether such extension is made after notice to the SURETY or not, and the SURETY hereby consents that the VILLAGE may extend the time for the CONTRACTOR's performance, without providing notice to the SURETY.

4. In the event that the CONTRACTOR defaults in the performance of any of the terms, covenants, or conditions of the Agreement, the VILLAGE shall promptly give notice of such default to the SURETY in writing by certified mail, return receipt requested, addressed to the SURETY at its principal place of business, as identified above.

5. In the event that the CONTRACTOR defaults in the performance of any of the terms, covenants, or conditions of the Agreement, the SURETY shall have the right to complete the work or performance on behalf of the CONTRACTOR, and for that purpose shall have all of the rights of the FRANCHISEE under the Agreement for the completion of performance.

6. In the event that the CONTRACTOR defaults in the performance of any of the terms, covenants, or conditions of the Agreement, the SURETY shall remedy the default or otherwise satisfy its obligations under this BOND.

7. In the event there is a failure to perform the conditions of this obligation, the VILLAGE may bring any and all actions, suits, or proceedings, or otherwise take such steps as it deems appropriate, to enforce the obligation of the SURETY, and the VILLAGE may do so without joining the CONTRACTOR in any such actions, suits, or proceedings. Thereafter, whether judgment is obtained against the SURETY or not, successive actions can be brought against the CONTRACTOR, and this BOND shall remain a continuing obligation on the part of the SURETY and the CONTRACTOR until the conditions of this BOND have been fully performed, including the resolution of third party lawsuits.

8. It is understood and agreed that the obligation of the CONTRACTOR under this BOND continues from day to day until paid, and a new cause of action arises thereon daily with the result that the statute of limitations of the State of Florida does not run against the entire claim. The obligation of the SURETY under this BOND, therefore, continues in this manner, and no action, suit, or proceeding against

## **EXHIBIT 7**

### **(continued)**

the CONTRACTOR or the SURETY hereunder shall be barred, except under such conditions as would bar it under the said statute of limitations.

9. Any proceeding, legal or equitable, under this BOND shall be instituted only in a court of competent jurisdiction in and for Palm Beach County, Florida, and shall be instituted within the statute of limitations after the CONTRACTOR's default or within the statute of limitations after the SURETY refuses or fails to perform its obligations under this BOND, whichever occurs later. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the State of Florida shall be applicable.

10. Notices to the SURETY, the VILLAGE, and the CONTRACTOR shall be mailed or delivered to the addresses shown above.

11. The SURETY represents and warrants to the VILLAGE that it has a rating of "A" or better as to management and "FSC X" or better as to strength by Best's Insurance Guide or Surety; (b) it is listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds; (c) it has been in business continuously for at least five years; (d) it is licensed to do business in Florida; and (e) it will not cancel or alter this BOND without providing at least 30 days advance notice to the VILLAGE.

**EXHIBIT 7**  
**(continued)**

CONTRACTOR AS PRINCIPAL  
Company: (Corporate Seal)

SURETY  
Company: (Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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Print Name

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Witnesses:

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Print Name

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

FLORIDA RESIDENT AGENT FOR SURETY

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

**EXHIBIT 8**

**RESERVED**

## **EXHIBIT 9**

### **LIST OF VILLAGE PROPERTIES RECEIVING COLLECTION SERVICE**

The Contractor shall provide containers and Collection Service to the Village facilities without cost. The following is a list of Village facilities, as well as current containers and service requirements:

Wellington Storage Site	2 – 20 cy Roll-offs 2 – 30 cy Roll-offs	2x/wk 1x/wk
Village Hall 12300 Forest Hill Blvd.	2 – 8cy 20 – 95 gal 1 – 8cy	3x/wk Recycling SWA – Recycling
Wellington WTP 1100 Wellington Trace	1 – 6cy 1 – 8cy 1 – 20cy	2x/wk SWA – Recycling Roll-off
Public Works 14001 Pierson Rd.	1 – 8cy 4 – 95 gal. 1 – 8cy	2x/wk Recycling SWA – Recycling
Boys and Girls Club/Engineering 1100 Wellington Trace	1 – 8cy	2x/wk
Community Park 3401 South Shore Blvd	1 – 8cy	2x/wk
Wellington Village Park 11700 Pierson Rd.	3 – 8cy 1 – 8cy 2 – 20cy 20 – 95gal	1x/wk 2x/wk Roll-offs Recycling
Wellington WWTP 11860 Pierson Rd.	2 – 4cy 2 – 20cy	2x/wk Roll-offs
Olympia Park 9830 Stribling Way	1 – 8cy	2x/wk
Tiger Shark Cove Park 13800 Greenbriar Blvd.	2 – 8cy	2x/wk
Tennis Center 3100 Lyons Road	1 – 8cy	1x/wk

The Contractor will provide Collection Service for Recyclable Materials to all Palm Beach County Fire Rescue stations located within the Village. At the current time there are 4 stations.

1000 Greenview Shores Blvd.  
Wellington, FL 33414

9610 Stribling Way  
Wellington, FL 33414

1060 Wellington Trace  
Wellington, FL 33414

3411 Southshore Blvd.  
Wellington, FL 33414

## EXHIBIT 10

### SAMPLE CALCULATIONS FOR CPI ADJUSTMENTS

The following calculations use hypothetical values to demonstrate how the annual CPI adjustment should be determined under Section 38.3 of the Agreement. More specifically, the examples demonstrate how hypothetical Rates for Residential Collection Services (Curbside Collection with Garbage Carts) should be calculated. The actual Rates for these services are set forth in Exhibit 3. The following examples assume the “Total Monthly Cost per Dwelling Unit” on October 1, 2022 will be \$21.87.

#### CPI Adjustment on October 1, 2022

Collection component of the current monthly Rate per Dwelling Unit: \$21.87

Percentage change in CPI for previous 12 month period: 3.0%

Calculation of CPI Adjustment:  $\$21.87 \times 0.03 = \$0.6561^*$

Calculation of the new Rate:  $\$21.87 + \$0.65 = \$22.52$

\*The annual adjustment is calculated to a whole cent. It is not rounded up or rounded down.

#### CPI Adjustment on October 1, 2023

Collection component of current monthly Rate per Dwelling Unit: \$22.52

Percentage change in CPI for previous 12 month period: 6.5%\*\*

Calculation of CPI Adjustment:  $\$22.52 \times 0.05^{**} = \$1.12$

Calculation of the new Rate:  $\$22.52 + \$1.12 = \$23.64^*$

\* Pursuant to Section 38.3 of the Agreement, a single CPI adjustment to the Rate shall not exceed five percent (5%) in any year. Accordingly, the CPI adjustment in this hypothetical year shall be limited to five percent (5%).

**EXHIBIT 11**

**THE VILLAGE'S INTERLOCAL AGREEMENT WITH THE  
AUTHORITY**



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**RESOLUTION NO. R2021-01**

**A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL  
APPROVING AND AUTHORIZING THE MAYOR AND  
CLERK TO EXECUTE AN INTERLOCAL AGREEMENT FOR  
THE DELIVERY OF MUNICIPAL SOLID WASTE, TO  
DESIGNATE FACILITIES AND FOR A MUNICIPAL  
REVENUE SHARING RECYCLING PROGRAM; AND  
PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969", authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, the Interlocal Agreement between the Village of Wellington and the Solid Waste Authority of Palm Beach County provides for the continuation of a municipal recycling program toward achievement and maintenance of the State recycling goal and the requirements of Chapter 403, Part IV, Florida Statutes (2009; and

**WHEREAS**, Staff recommends that the Village Council approve the Interlocal Agreement for Municipal Recycling, as presented; and

**WHEREAS**, such Interlocal Agreement has been prepared and a copy attached hereto.

**NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON, FLORIDA'S COUNCIL** that:


**SECTION 1.** The foregoing recitals are hereby affirmed and ratified as being true and correct

**SECTION 2.** Wellington's Council hereby approves the Interlocal Agreement for Municipal Recycling with the Solid Waste Authority of Palm Beach County (attached hereto as Exhibit "A") and hereby authorizes the Mayor and Clerk to execute the Agreement.


**SECTION 3.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** this 12<sup>th</sup> day of January, 2021.

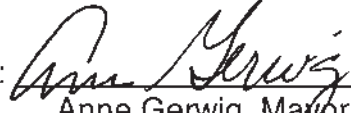
1 **ATTEST:**

2  
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4 By:   
5 Chevelle D. Addie, Wellington Clerk  
6

7 **APPROVED AS TO FORM**  
8 **AND LEGAL SUFFICIENCY**  
9

10  
11 By:   
12 Laurie Cohen, Attorney for Wellington  
13  
14

**WELLINGTON**

By:   
Anne Gerwig, Mayor



YOUR PARTNER FOR  
SOLID WASTE SOLUTIONS

March 26, 2021

Village of Wellington  
12300 W. Forest Hill Boulevard  
Wellington, FL 33414  
Attention: Paul Schofield

Re: Interlocal Agreement for the Delivery of Municipal Solid Waste to Designated Facilities for a  
Municipal Revenue Sharing Recycling Program

Mr. Schofield:

Please find enclosed your fully executed and recorded copy of the subject Interlocal Agreement.

Sincerely,

Angela Bolin  
Engineering Services Specialist





CFN 20210095959

OR BK 32246 PG 1421  
RECORDED 03/02/2021 15:40:15  
Palm Beach County, Florida  
Joseph Abruzzo, Clerk  
Pgs 1421 - 1428 (8pgs)

**INTERLOCAL AGREEMENT FOR THE DELIVERY OF MUNICIPAL SOLID WASTE  
TO DESIGNATED FACILITIES AND FOR A MUNICIPAL REVENUE SHARING  
RECYCLING PROGRAM**

**THIS** Agreement, made and entered into this 12<sup>th</sup> day of FEBRUARY, 2021, by and between the **SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**, a dependent special district created pursuant to Chapter 2001-331, Laws of Florida, as amended, hereinafter called "Authority", and the **VILLAGE OF WELLINGTON**, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter called "VILLAGE".

**WITNESSETH:**

**WHEREAS**, the Authority has been empowered by law to carry out the powers, obligations and requirements in Palm Beach County, Florida, prescribed to a "county" pursuant to the provisions of Chapter 403, Part IV, *Florida Statutes*; as amended, and

**WHEREAS**, the VILLAGE desires to work in cooperation with the Authority to continue a municipal recycling program toward achievement and maintenance of the State recycling goal and the requirements of Chapter 403, Part IV, *Florida Statutes*; as amended, and

**WHEREAS**, in addition, the VILLAGE provides for the collection of solid waste from the residents and businesses and residential recyclable materials within its boundaries and recognizes the need for safe and sanitary processing and disposal of solid waste and residential recyclable materials; and

**WHEREAS**, the VILLAGE wishes to participate in a coordinated County-wide program for the management of hazardous waste and control of solid waste processing and disposal and residential recycling participation in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and land pollution; and

**WHEREAS**, the VILLAGE together with the Authority recognizes the need to plan and develop an adequate solid waste and residential recycling system for the benefit of all the residents of Palm Beach County.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the VILLAGE, its constituents and the Authority, it is agreed as follows:

1. The above recitals are true and correct and incorporated into the body of this Agreement as if fully set forth herein.
2. Definitions:  
**Acceptable Load** — Any load of Designated Recyclables that contains no Prohibited Material and a maximum of 12% Contamination in total, or the Container component contains no Prohibited Material and a maximum of 12% Contamination and

**INTERLOCAL AGREEMENT FOR THE DELIVERY OF MUNICIPAL SOLID WASTE  
TO DESIGNATED FACILITIES AND FOR A MUNICIPAL REVENUE SHARING  
RECYCLING PROGRAM**

THIS Agreement, made and entered into this 12<sup>th</sup> day of FEBRUARY, 2021 by and between the **SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**, a dependent special district created pursuant to Chapter 2001-331, Laws of Florida, as amended, hereinafter called "Authority", and the **VILLAGE OF WELLINGTON**, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter called "VILLAGE".

**WITNESSETH:**

**WHEREAS**, the Authority has been empowered by law to carry out the powers, obligations and requirements in Palm Beach County, Florida, prescribed to a "county" pursuant to the provisions of Chapter 403, Part IV, *Florida Statutes*; as amended, and

**WHEREAS**, the VILLAGE desires to work in cooperation with the Authority to continue a municipal recycling program toward achievement and maintenance of the State recycling goal and the requirements of Chapter 403, Part IV, *Florida Statutes*; as amended, and

**WHEREAS**, in addition, the VILLAGE provides for the collection of solid waste from the residents and businesses and residential recyclable materials within its boundaries and recognizes the need for safe and sanitary processing and disposal of solid waste and residential recyclable materials; and

**WHEREAS**, the VILLAGE wishes to participate in a coordinated County-wide program for the management of hazardous waste and control of solid waste processing and disposal and residential recycling participation in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and land pollution; and

**WHEREAS**, the VILLAGE together with the Authority recognizes the need to plan and develop an adequate solid waste and residential recycling system for the benefit of all the residents of Palm Beach County.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the VILLAGE, its constituents and the Authority, it is agreed as follows:

1. The above recitals are true and correct and incorporated into the body of this Agreement as if fully set forth herein.
2. Definitions:  
**Acceptable Load** — Any load of Designated Recyclables that contains no Prohibited Material and a maximum of 12% Contamination in total, or the Container component contains no Prohibited Material and a maximum of 12% Contamination and



the Fiber component contains no Prohibited Material and a maximum of 5% Contamination.

**Acceptable Material** — Designated Recyclables as defined herein.

**Combined-Haul City** — A municipality that has contracted with a Private Hauler that uses the same equipment to service other municipal or unincorporated areas within Palm Beach County to collect and deliver Residential Recovered Materials to the Authority.

**Containers** — Includes aluminum cans, aseptic containers, gable-topped containers, glass bottles and jars (green, brown and clear), and plastic containers #1 - #7 (except Styrofoam).

**Contaminated Recyclable Material** — Any Recyclable Material that does not conform to the standards for Acceptable Loads.

**Contamination** — Any material not included in the definition of Designated Recyclables.

**Corrugated Cardboard** — Containers having liners of either test liner, jute, or kraft.

**Designated Facility** — The Authority's Recovered Materials Processing Facility (RMPF), the Authority's transfer stations, a Private Commercial Materials Recycling Facility (PCMRF) designated by the Authority or any other sites designated by the Authority for recycling. The Authority reserves the right to add or delete approved facilities with reasonable notice.

**Designated Recyclables** — Fiber and Containers as defined herein or other materials as the Authority may designate.

**Equivalent Residential Unit (ERU)** — Single-Family and Mobile Homes equal 1 ERU, Multi-Family Homes equal 0.75 ERUs.

**Fiber** — Includes newspapers (including inserts), magazines and catalogs, phone books, Corrugated Cardboard, Mixed Paper, Sorted White Ledger, Sorted Office Paper, and kraft bags.

**Mixed Paper** — A mixture of various types and grades of paper including but not limited to: all office paper, colored paper, corrugated cardboard, envelopes (excluding envelopes with cellophane windows), junk mail, kraft bags, magazines, and catalogs. Mixed Paper does not include tissue or towel paper.

**Municipal Solid Waste or MSW** — Garbage, sewage, sludge, septage, rubbish, refuse, and other discarded solid or liquid materials resulting from domestic, industrial, commercial, agricultural, and governmental operations, but does not include solid or dissolved materials in domestic sewage, storm drainage, or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants.

**Net Revenue** — Residential Recovered Materials Revenue minus Processing Cost.

**Private Hauler** — Any for-profit person or entity providing collection of recyclables for hire on a routine basis within the municipality.

**Processing Cost** — The sum(s) due and payable to the contract operator of the RMPF by the Authority.

**Prohibited Material** — Hazardous, medical or biological waste.

**Public/Self Hauler** — The municipality providing the collection of solid waste and recyclables using their own resources rather than using the hauling services of a Private Hauler.

**Recovered Materials Processing Facility (RIVIPF)** — A facility owned by the Authority that processes Recyclable Material.

**Recyclable Material** — Includes Containers and Fiber.

**Residential Recovered Materials Revenue** — Total earned revenue from the sale of designated Residential Recovered Materials.

**Residential Recovered Materials** — Designated Recyclables collected from residential units less Unacceptable Materials and Prohibited Materials delivered to Designated Facilities.

**Self-Haul City** — A municipality that collects its own Residential Recovered Materials and delivers it to the Authority or who uses a private contractor that collects its Residential Recovered Materials on dedicated routes and can positively demonstrate that they have collected and are delivering only that jurisdiction's Residential Recovered Materials to the Authority.

**Sorted Office Paper** — Office paper including letterhead, computer paper, legal paper, loose-leaf paper, copy and typing paper.

**Sorted White Ledger** — White ledger or computer printout paper.

**Unacceptable Load** — Any load of Designated Material delivered to a Designated Facility that is deemed not an Acceptable Load as defined herein.

**Unacceptable Material** — Any material other than Acceptable Material and Prohibited Material.

3. The purpose of this Agreement is to set forth the terms and conditions for the delivery of Municipal Solid Waste (MSW) to Designated Facilities and for the operation of a recycling program between the Authority and the VILLAGE which upon execution by both parties shall automatically rescind the current **INTERLOCAL AGREEMENT FOR THE DELIVERY OF MUNICIPAL SOLID WASTE TO DESIGNATED FACILITIES AND FOR A MUNICIPAL RECYCLING PROGRAM** and shall become effective upon filing with the Clerk of the Courts in accordance with Chapter 163, *Florida Statutes*.
4. The VILLAGE agrees that all MSW and Designated Recyclables collected by or on behalf of the VILLAGE shall be disposed of at a Designated Facility in accordance with this Agreement.
5. The VILLAGE agrees to cooperate with the Authority to provide all necessary and required information to the Authority in a timely manner so that it can be determined if the VILLAGE's MSW and Designated Recyclables are being delivered to a Designated Facility.

6. The Authority agrees to pay the VILLAGE a minimum of 50% of the Net Revenues earned from the sale of Residential Recovered Materials attributable to the VILLAGE on a quarterly basis. The actual percentage will be determined annually through the Authority's budget process. The Net Revenues to be shared will consist of the Residential Recovered Materials Revenues received by the Authority for each quarter less the Processing Cost for that quarter. That amount will be divided by the total tons received to determine an average price per ton and then multiplied by the adopted annual revenue share percentage to set the program price to be paid for the quarter. The Net Revenue distribution formula will be based on the number and type of residential units serviced by the VILLAGE in relation to the total number of these units for all municipalities participating in this program or on the actual amount delivered for municipalities that haul their own material. Each participating municipality will either be classified as a Self-Haul Village or a Combined-Haul Village. Self-Haul Cities will receive a revenue share based on the actual weight of Acceptable Loads delivered to a Designated Facility. Combined-Haul Cities will share the balance of those net revenues based upon the proportion of their total ERUs serviced in comparison to the total ERUs serviced for all Combined-Hauler Cities in Palm Beach County.
7. The Authority agrees to maintain its Designated Facilities to ensure adequate capacity for the VILLAGE's waste and residential recyclables to operate within all applicable local, state and federal environmental guidelines.

8. Collection of Designated Recyclables

A. Residential

Individual residents/homeowners shall be encouraged by the VILLAGE to separate their MSW into recyclables and non-recyclables. Each residential unit or combination of units will receive from the Authority the appropriate type and number of reusable containers, in accordance with the countywide recycling program, into which Recyclable Materials will be deposited.

Corrugated Cardboard shall be cut to an acceptable size and flattened, and for curbside residents, shall be set beside or in the same reusable container as the Fiber. Residents receiving containerized service may receive a separate container to be used for the collection of Corrugated Cardboard.

The Authority retains the right to modify the manner in which materials are set out for collection with reasonable notice to the VILLAGE. Notice for a substantial change in collection method shall be no less than one year.

B. Commercial

Individual businesses shall be encouraged by the VILLAGE to separate their MSW into two categories: recyclable and non-recyclable. Businesses contracting for services will arrange with their service provider to receive one or more containers into which Recyclable Material may be deposited. Acceptable Materials for commercial recycling shall include: Containers, Corrugated Cardboard, Sorted White Ledger, Mixed Paper, Sorted Office Paper, and any other materials agreed to in writing by the VILLAGE and the Authority.



The Authority reserves the right to add or delete allowable Designated Recyclables and when doing so will provide the Village with reasonable notice to make those changes.

9. Commercial Recycling Revenue Share

As a further incentive for the VILLAGE to actively pursue commercial recycling, the Authority and the VILLAGE may enter into a separate agreement to provide for payment to the VILLAGE for all Acceptable Loads of agreed upon commercial Recyclable Materials. Types of commercial Recyclable Materials eligible for payment shall be determined by the Authority.

10. Transportation and Equipment

The VILLAGE shall be responsible for having collected Designated Recyclables transported to a Designated Facility as defined herein. The Authority or its contractor shall receive, process, dispose of and/or recover all Designated Recyclables delivered by or on behalf of the VILLAGE, at no charge to the VILLAGE, except for Unacceptable Loads as described below. Collection equipment must be of a type to provide for rear, side or front unloading and may be compartmentalized or in separate vehicles.

11. Improperly Prepared and Sorted Recyclable Materials

When a collector's crew encounters improperly prepared and sorted materials or non-recyclable items, they must follow this procedure:

- A. The collector shall pick up all Designated Recyclables except for Contaminated Recyclable Material or those which cannot be safely retrieved from the reusable containers. Improperly prepared and sorted materials or contamination will be left in the reusable containers or temporarily removed and returned to the reusable containers. The collector shall leave an Authority and/or VILLAGE approved form on the material or in the container. The form will notify the resident or business that material has not been properly sorted, and will provide contact information for the VILLAGE or Authority recycling coordinator for further information. Upon request of the VILLAGE, the Authority will provide rejection procedure training for the route drivers. The Authority and the VILLAGE will consult and evaluate the extent of the need for such training, which shall be provided by the Authority.

As a means of strengthening the VILLAGE's ability to have its collector fulfill the VILLAGE's recycling needs, the VILLAGE agrees to notify the Authority when preparing the VILLAGE's future Request for Proposals or Bid for collection services.

- B. It shall be the responsibility of the VILLAGE or its Private Hauler to contact residents or businesses that repeatedly place improperly sorted materials in their designated container and inform and encourage them to properly sort materials. If the problem

persists, the VILLAGE shall notify the Authority, who shall then assist the VILLAGE in resolving the problem.

12. Recycling Containers

The Authority shall provide yellow and blue eighteen (18) and ninety-six (96) gallon recycling containers. The yellow and blue colors reflect a consistent educational advertising effort through TV commercials, newsprint, radio, mailer, or other source. It is the VILLAGE's responsibility to make sure it or its Private Hauler has equipment compatible to provide proper collection of these recycling containers without damage. The VILLAGE or its Private Hauler shall be responsible for replacement of any recycling container(s) damaged during service at no cost to the Authority. The Authority reserves the right to add or delete different size containers and when doing so will provide the Village with reasonable notice to make those changes.

13. Compliance with Zoning Ordinances

Any transfer, processing, disposal and/or storage of Municipal Solid Waste and Recyclable Materials shall be undertaken at a Designated Facility that complies with all local zoning ordinances and any other applicable local and state statutes, ordinances, and regulations.

The VILLAGE further agrees to use its best efforts to amend or modify its appropriate zoning, building, or land development code to require new multi-family or commercial developments to provide adequate space for recycling containers.

14. Delivery of Unacceptable Loads

If the Village delivers a load of Designated Recyclables that is deemed to be an Unacceptable Load, the VILLAGE or its Private Hauler will be charged the actual disposal cost for any rejected load due to Contamination or equipment failure. The Authority will notify the VILLAGE or its contractor immediately of an Unacceptable Load. If the problem of Unacceptable Loads persists (more than two times in a month), the Authority may elect to monitor the route for proper sorting and tagging procedures, and/or make recommendations to the VILLAGE.

15. Promotion and Education Responsibilities

The Authority will provide recycling containers and assist in promoting and educating residents within the VILLAGE in an effort to increase recyclable tonnages and reduce Contamination.

16. Delivery of Designated Recyclables

The VILLAGE agrees that it shall require that all Designated Recyclables separated from the normal Municipal Solid Waste stream that are collected by or on behalf of the VILLAGE be delivered to Designated Facilities as defined herein. The VILLAGE will take such action as is necessary and available to ensure against and prevent scavenging and unauthorized removal

of such recyclables within the jurisdiction of the VILLAGE.

17. Term

This Agreement shall begin on the later of its effective date or October 1, 2020, and continue through the following September 30th and shall automatically be renewed for successive annual periods. Either party may terminate this Agreement on any October 1st by delivering written notice received by the other party prior to the preceding May 1st. The Authority will continue to provide the necessary recycling containers and ongoing education and advertising as provided in this Agreement. Notwithstanding termination, any rights or duties imposed by law shall remain in effect.

18. Change in Law

In the event any change in law abrogates or modifies any provisions or applications of this Agreement, the parties hereto agree to enter into good faith negotiations and use their best efforts to reach a mutually acceptable modification of this Agreement.

19. Notices


All formal notices affecting the provisions of this Agreement shall be delivered in person or be sent by registered or certified mail to the individual designated below, until such time as either party furnishes the other party written instructions to contact another individual.

For the Authority:	For the
Solid Waste Authority of Palm Beach County 7501 North Jog Road West Palm Beach, Florida 33412 Attention: Executive Director	Village of Wellington 12300 Forest Hill Blvd. Wellington, FL 33414 Attention: Village Manager

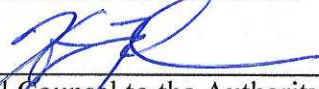
20. If any clause, section, or provision of this Agreement shall be declared to be unconstitutional, invalid or unenforceable for any cause or reason, or is abrogated or negated by a change in law, the same shall be eliminated from this Agreement, and the remaining portion of this Agreement shall be in full force and effect and be valid as if such invalid portions thereof had not been incorporated herein.

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

WITNESSES:

  
\_\_\_\_\_  
Philip Nguyen

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
\_\_\_\_\_  
General Counsel to the Authority

Date: 2/3/21


As to the Authority:

SOLID WASTE AUTHORITY OF  
PALM BEACH COUNTY

  
\_\_\_\_\_  
Daniel Pellowitz, Executive Director

Date: 2/6/2021

SOLID WASTE AUTHORITY OF PALM  
BEACH COUNTY

  
\_\_\_\_\_  
Sandra J. Vassalotti, Clerk to the Authority

Date: 02/12/2021

(Affix SWA Seal)

ATTEST:

  
\_\_\_\_\_

As to the VILLAGE:

  
\_\_\_\_\_

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
\_\_\_\_\_  
Laurie Cohen, Village Attorney

Date: 1/12/2021