

## **ORDINANCE NO. 2015-2**

AN ORDINANCE OF THE CITY OF INDIAN HARBOUR BEACH, BREVARD COUNTY, FLORIDA, REPEALING ORDINANCE NO. 2005-12 AND ORDINANCE NO. 2011-5 (AMENDING ORDINANCE 2005-12) IN FULL; ADOPTING A NEW EXCLUSIVE SOLID WASTE COLLECTION FRANCHISE IN FAVOR OF WASTE MANAGEMENT, INC. OF FLORIDA; ESTABLISHING MANDATORY SOLID WASTE, YARD WASTE, AND RECYCABLE MATERIALS COLLECTION REQUIREMENTS WITHIN THE CITY UNDER CERTAIN TERMS AND CONDITIONS FOR RESIDENTS AND COMMERCIAL ESTABLISHMENTS WITHIN THE CITY; ESTABLISHING REQUIREMENTS FOR CONTAINERIZED AND ROLL-OFF COLLECTION SERVICES; PROVIDING A PENALTY FOR VIOLATION OF SAID MANDATORY SERVICE REQUIREMENTS; DEFINING TERMS; ESTABLISHING SERVICES TO BE PROVIDED; ESTABLISHING RATES AND BILLING PROCEDURES; PROVIDING FOR PAYMENT OF A FRANCHISE FEE; ESTABLISHING THE TERM OF THE FRANCHISE; PROVIDING FOR CERTAIN INDEMNIFICATION TO THE CITY; PROVIDING FOR REPEAL OF PRIOR FRANCHISE AGREEMENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, WASTE MANAGEMENT, INC. OF FLORIDA (the “COLLECTOR”) has been selected by the CITY as its exclusive provider of solid waste and recyclables collection services pursuant this agreement; and

WHEREAS, the COLLECTOR is qualified to provide such services and willing to do so pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, Be it ordained that Ordinance No.2005-12 and Ordinance No. 2011-5 are hereby repealed and new ordinance no. 2015-2 is adopted to read as follows:

**SECTION 1. DEFINITIONS.** For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The work “shall” is always mandatory and not merely directory.

A. **AGREEMENT:** As used herein the term Agreement shall mean this Solid Waste and Recyclables Collection Agreement.

B. **AUTOMATED CART:** The term “automated cart”, “semi-automated cart” or “cart” refers to a 64, or 96-gallon durable plastic container made with recycled content, with a lid, wheels and handles for automated or semi-automated solid waste or recyclable material collection services. The carts shall be uniform in color, contain instructions for use and have the Waste Management logo on the containers. The solid waste carts shall be green in color and the recycling carts shall be green with a yellow lid.

C. **AUTOMATED CART PROGRAM:** The term “automated cart program” or “semi-automated cart program” refers to the program where the COLLECTOR shall provide fully assembled carts for solid waste or recyclable material collection services.

D. BULK COMMERCIAL UNIT: All commercial, non-residential units receiving solid waste collection service at an accessible, centralized location or at a commercial container.

E. COLLECTION AREA: The entire limits of the CITY as of the effective date of this Agreement and as same may be modified from time to time by annexation or contraction.

F. COLLECTION CATEGORIES: A general, inclusive term that includes the specific terms “single-family residence”, “individual multiple-family residence”, “individual commercial unit”, and “bulk commercial unit”.

G. COMMERCIAL CONTAINER: A receptacle for containing solid waste designed for mechanical pickup and provided by the COLLECTOR for use by the customer.

H. COMMERCIAL PROPERTY: The words “commercial property” shall mean any hotel, motel, rooming house, tourist court and other business or establishment other than a residential unit.

I. COMPACTOR BOXES: Any mechanical compacting container used primarily to compact commercial and residential waste.

J. CONSTRUCTION AND DEMOLITION DEBRIS: Means those substances and materials as set forth in FAC 62-701.200 (27) as may be amended from time to time. The term includes, but is not limited to, material generally considered not to be water soluble, including, but not limited to, steel, concrete, glass, brick, asphalt roofing material, pipe, gypsum wall board or lumber from a construction or demolition project or renovation of a structure; clean cardboard, paper, plastic, wood, and metal scraps from a construction project. Contamination of construction and demolition debris with any amount of other types of solid waste will cause it to be classified as other than construction and demolition debris.

K. CUSTOMER: Means the owner, occupant, or other person having control over improved real property within that portion of the COLLECTOR’S service area, and all other persons subscribing to solid waste or recyclable materials collection service provided by the COLLECTOR under the terms of a collection agreement.

L. DIRECTOR: The term “Director” means the City Manager or a designee.

M. GARBAGE: The word “garbage” shall mean every refuse accumulation or deposit of animal, fruit or vegetable matter that attends the manufacture, preparation, use, cooking and dealing in, or storage of edibles, and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gasses or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects, or any container of the material defined herein.

N. GROSS REVENUE: The words “gross revenues” shall mean the gross amount of regular monthly or quarterly fees charged by the Collector for services rendered under the Franchise and actually received by the Collector from its customers within the City, less the actual amount paid by the Collector to Brevard County for disposal of solid waste material from roll-off container services provided within the City.

O. YARD TRASH: The terms “garden trash”, “yard waste”, or “vegetative waste” are synonymous and shall mean any vegetative matter generated from improved real property such as leaves, grass or shrubbery cuttings from the care of lawns or landscape maintenance. Such term does not include large quantities of sod, dirt, and trash from land clearing or other materials requiring special handling. “Bulk yard waste” shall mean any quantity of yard waste which exceeds three (3) cubic yards and which must be removed by a clam shell truck.

P. HAZARDOUS WASTE: The term “hazardous waste” shall mean any solid waste identified by the Department of Environmental Protection as a hazardous waste pursuant to F.A.C. Ch. 62-730. This includes any solid waste which is ignitable, corrosive, reactive, infectious or toxic, and which poses a substantial or potential hazardous to human health and safety, or to the environment when improperly managed.

Q. IMPROVED REAL PROPERTY: The term “improved real property” refers to all real property located in the CITY that generates or is capable of generating solid waste; and, that contains buildings, structures or other improvements designed or constructed for and capable of use for human habitation or human activity or commercial enterprise. Real property becomes “improved real property” following construction completion and the initial issuance of a Certificate of Occupancy.

R. INDIVIDUAL COMMERCIAL UNIT: Any commercial, non-residential unit receiving curbside solid waste collection service in a normal volume not in excess of an amount capable of being placed in 64 gallon carts receptacles twice per week.

S. INDIVIDUAL MULTIPLE-FAMILY RESIDENCE: Any building containing more than one (1) permanent living unit and receiving curbside solid waste collection service from each unit, and all trailers located within trailer parks receiving curbside solid waste collection service from each individual trailer.

T. INDUSTRIAL WASTES: The words “industrial wastes” shall mean the waste products of canneries, slaughterhouses or packing plants, scallop or other seafood processors, condemned food products; agricultural waste products, and other solid waste products generated from industrial processing or manufacturing of a like or similar nature to those enumerated above which because of their volume or nature do not lend themselves to collection and incineration commingled with ordinary garbage and trash or which because of their nature and surrounding circumstances should be for reasons of safety or health disposed of more often than the collection service schedule provided for in this Agreement.

U. JUNK: Any tangible item such as furniture, appliances, bicycles, (excluding, for the purposes of this Agreement) motor vehicles, derelict vessels, and their parts, except up to four tires will be picked up) or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, garden trash, industrial wastes or rubbish.

V. LAND CLEARING DEBRIS: The words “land clearing debris” shall mean all accumulation of trees, parts of trees, brush, weeds and other refuse from land clearing operations.

W. MULTI-FAMILY RESIDENTIAL UNIT: The words “multi-family residential unit shall mean any structure or shelter, or any part thereof used or constructed for use as a residence that receives centralized garbage and trash collection services rendered collectively to more than one such unit and centralized billing for such services.

X. PARKWAY: The term “parkway” is defined as that portion of the street right-of-way paralleling any public thoroughfare between the curb line or paving line and adjacent property line.

Y. PERSON: The term “person” shall mean an individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Z. RESIDENTIAL IMPROVED REAL PROPERTY: The term “residential improved real property” shall mean all improved real property used for either a multi-family residence, or a single-family residence, including trailer parks.

AA. ROLL-OFF CONTAINER: Any container used for the collection and storage of construction and demolition debris or land clearing debris that can be picked up and transported on a specially equipped truck to the disposal site. The definition of roll-off does not include a compactor box.

BB. RUBBISH: The word “rubbish” shall mean refuse, accumulation of paper, excelsior, rags or wooden or paper boxes or containers, sweepings; and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, also any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects.

CC. SINGLE-FAMILY RESIDENCE: Any building or structure designed or constructed for and capable of use as a residence for one family regardless of the type of structure. Such term includes a mobile home or trailer that is erected on a parcel of property owned and offered for sale under the condominium concept of ownership or on a separate parcel of property and not included within the definition of trailer park.

DD. SOLID WASTE: The term “solid waste” means dewatered sludge from a waste treatment works, water supply treatment plant, or air pollution control facility or garbage, rubbish, refuse, or other discarded material, including solid material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Materials not regulated as solid waste pursuant to Florida Administrative Code as amended are: nuclear source or under the Federal Atomic Energy Act of 1954 as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows, or other regulated point source discharges; regulated air emissions; fluids or waste associated with natural gas or crude oil exploration or production.

EE. SOLID WASTE FACILITY: The words “solid waste facility” shall mean and include the buildings, land, location, and equipment constructed and maintained by Brevard County to dispose of solid waste within the County.

FF. SPECIAL COLLECTION SOLID WASTE: The term “special collection solid waste” shall include the following types of solid waste for the following types of designated customer categories:

- (1) Single-family residence and individual multiple-family residence: Any type of solid waste not reasonably capable of being placed in a garbage receptacle. This includes normal household furnishings, appliances, and other bulk items.
- (2) Individual commercial unit: Any type of solid waste not reasonably capable of being placed in a garbage receptacle or any item not reasonably capable of being reduced in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. This includes normal household furnishings, appliances, and other bulk items.
- (3) Bulk commercial unit: Any type of solid waste not reasonably capable of being placed in a commercial container, or any pickup of a commercial container on a frequency in excess of that normally established for the customer or any solid waste placed in garbage receptacles at an accessible, centralized location not in conformity with the requirements specified in this agreement for a single-family residence.
- (4) One collection day per week shall be designated for the collection of Special Collection Solid Waste as defined above.

GG. CURBSIDE RECYCLING: The collection of recyclable materials from single-family residences, individual multiple-family residences, bulk multiple-family residences, at curbside.

HH. PARTICIPATION RATE: The total number of residences that place any recyclable materials at the curb for the COLLECTOR to pick up during a four (4) week period divided by the total number of residences having the opportunity to place recyclable materials at the curb. A four (4) week period is considered to be a one (1) month period for the purpose of calculating participation rates.

II. RECYCLABLE MATERIAL: Any material which can be recovered from the solid waste stream and reused in manufacturing, agriculture, power production or other processes and which, for the purpose of this Agreement, shall include at a minimum the following:

- Newspapers - (Daily newspapers, phone books, or magazines)
- Glass Jars and Bottles - (Clear, brown and green glass, food and beverage bottles)
- Plastic Bottles and Containers #1 – #7. No motor oil, antifreeze, pesticide, pool chemicals or other hazardous material bottles.
- Aluminum and Metal Cans - (Soft drink, beer, food and pet food cans, clean aluminum foil or clean disposable aluminum foil pans.)
- The Director reserves the right to add or delete other materials to the list of Recyclable Materials that shall be collected by COLLECTOR.
- By way of illustration, and not by limitation, the following items are acceptable recyclable materials:

BROWN PAPER BAGS  
CATALOGUES  
CEREAL BOXES  
ENVELOPES  
ENVELOPES WITH WINDOWS  
GLOSSY PAPER  
JUNK MAIL  
MAGAZINES  
OFFICE PAPER  
PHONE BOOKS  
SODA & BEER CARTONS  
TOILET PAPER CARDBOARD ROLLS  
PAPER TOWEL CARDBOARD ROLLS  
TV GUIDES  
NEWSPAPER & INSERTS  
FLATTENED CARDBOARD  
ASEPTIC PACKAGING (Milk Cartons & Juice Cartons)  
STEEL & ALUMINUM CANS  
ALUMINUM FOIL  
ALUMINUM BAKEWARE  
EMPTY AEROSOL CANS  
GREEN, BROWN & CLEAR GLASS BOTTLES  
PLASTIC BOTTLES & CONTAINERS # 1 through # 7

JJ. RECYCLING CARTS: A cart of not more than 96 gallon supplied by the Collector, used for storing and collecting recyclable materials and identifying the recyclable materials at the collection point.

KK. RECYCLING PROGRAM: The program designated by the CITY for meeting the solid waste reduction goals as outlined by the Solid Waste Management Act of 2008 and any subsequent amendments thereto.

LL. CONSUMER PRICE INDEX (CPI): A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, "All Urban Consumers, U.S. All Items 1982-84=100", as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics.

## **SECTION 2. EXCLUSIVE FRANCHISE GRANTED.**

The exclusive right, privilege, and/or Franchise to operate upon, over and across the streets, alleys, bridges and other public thoroughfares of the City of Indian Harbour Beach, hereinafter called the "City" for the purpose of collection, removing, and disposing of solid waste material and recyclable material from the businesses and residences of the City and vacant land within the City, which right, privilege and/or Franchise was granted by Ordinance 2005-12 and amended by Ordinance 2011-5, which granted an exclusive solid waste collection franchise to WASTE MANAGEMENT, INC. OF FLORIDA\_. The franchise granted by Ordinance 2005-12 and Ordinance No. 2011-5 is hereby repealed and replaced\_in full in accordance with the terms and conditions of this Ordinance.

1. This exclusive Franchise shall include all commercial and residential collection services described herein and roll-off container services in excess of 15 cubic yards, and the containerized (in excess of 15 cubic yards) collection of construction and demolition debris and land clearing debris.

The following types of solid waste collection are hereby expressly excepted and excluded from this Franchise:

- (a) Collection of construction and demolition debris or land clearing debris in amounts less than 15 cubic yards;
- (b) Roll-off containers, vehicles and trailers less than 15 cubic yards in size.

Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be effective on February 10, 2015 and extend until December 31, 2020. The City and the Collector shall have the option to extend this Franchise upon mutually agreed language and conditions for successive periods of five (5) years each. Written notice of the intent to so extend the term shall be given by either party no later than 120 days prior to the expiration of the initial term or any extended term; and with respect to such successive extensions, the City shall provide written notice of proposed language and conditions at or prior to the time of the said 120 day notice.

## **Section 3. MANDATORY COLLECTION REQUIREMENT AND PENALTIES.**

- (a) All owners or tenants of residential units within the City and all owners or operators of commercial property within the City shall subscribe to and pay for regular garbage collection service under this Franchise, which service shall be provided at least two times per week. Such owners, tenants and operators shall also subscribe to and pay for the collection of yard trash which service shall be provided at least one time per week. Such owners, tenants and operators shall also pay for the collection

of recyclable materials, which services shall be provided at least one time per week whether or not such persons actually participate in the recycling service. Participation in the recycling service for recyclable material shall be voluntary but each participant shall conform to the collection requirements for recyclable materials set forth herein. The provisions of this ordinance applicable to collection of recyclable materials shall apply to the following types of occupancies as indicated:

- i. Single family residential units which have garbage and trash collection services rendered to individual dwelling units.
  - ii. Multi-family residential units which have collection services rendered at central or common locations.
  - iii. Commercial property – Contractor shall encourage commercial property units to participate in single stream recycling.
- (b) In addition to all other penalties provided by law, any person, firm, corporation, partnership, association or other entity violating subsection (a) of this section shall, upon conviction for such violation, be sentenced to a jail term not to exceed sixty (60) days and/or fine in an amount not in excess of \$500.00.
- (c) In addition to all other remedies set forth in this section the City shall have the right to file a civil action for injunction or other equitable remedies to enforce compliance with the provisions of subsection (a) of this section.

#### **SECTION 4. DUTY OF THE COLLECTOR.**

A. With the exception of the solid waste defined as special collection solid waste, the COLLECTOR shall pick up and deliver to a solid waste disposal facility all garbage, rubbish and garden trash placed by a customer at the collection point set forth in this agreement, from each single-family residence, individual multiple family residence and individual commercial unit within the subject service area not less often than two (2) times per week with collections at least three (3) days apart. It is intended that all such solid waste be picked up and delivered to the disposal site each collection day. The COLLECTOR shall notify the customers within the subject service area of the applicable schedule of collection at least ten (10) days prior to an alteration in said schedule.

B. The COLLECTOR shall pick up and deliver to a solid waste disposal facility all garbage, garden trash, and rubbish generated by a customer and a bulk commercial unit and placed in a commercial container located at the designated collection point or in cans placed at a centralized location. The size and type of a commercial container including compactor boxes and the frequency of collection for each residence or unit shall be established by the COLLECTOR in consultation with the customer and shall be subject to approval by the Director in the event of a dispute. Provided, however, that the frequency of collection shall not be less than one time per week or more frequent as required by rules, ordinances, or regulations of any other entity or the collector.



C. The COLLECTOR shall pick up and deliver to the solid waste disposal facility Special Collection Solid Waste generated from a single-family residence, individual multiple-family residence and of a customer and placed at the applicable collection point one (1) time per week.

D. The COLLECTOR shall pick up and deliver to the solid waste disposal facility all special collection solid waste generated from an individual commercial unit and a bulk commercial unit placed at the applicable collection point within seventy-two (72) hours, after the rate is negotiated and paid to the COLLECTOR, excluding Sundays and legal holidays, of notice by the customer and the COLLECTOR..

Rates for the collection of individual commercial and bulk commercial special collection solid waste shall be negotiated between the customer and the COLLECTOR.

E. The COLLECTOR shall not be required to furnish collection services on the following specified holidays: Memorial Day, Fourth of July, Veterans Day, Thanksgiving Day and Christmas Day. The COLLECTOR shall notify all customers whose normal collection day falls upon such holidays that no collection service will be provided on such day and the date of the next normal collection day at least ten (10) days and not more than thirty (30) days prior to said holiday. Said notice shall be in the form of an advertisement in a newspaper of general circulation published within the COUNTY. The COLLECTOR will collect rubbish and garden trash on the next scheduled collection day. If the County chooses to close the landfill on additional days, the COLLECTOR shall not be required to provide collection services on that day.

F. The COLLECTOR shall be prepared to provide all commercial containers required in the collection of solid waste within the service area and shall maintain such containers in a clean and operable condition including an acceptable appearance according to standards maintained from time to time by the Director. The COLLECTOR shall provide at a minimum, containers of two (2), three (3), four (4), six (6), and eight (8) cubic yards for use as commercial containers or carts.

G. The COLLECTOR shall supply the residential carts for automated service for solid waste.

H. Public Litter Barrels. The COLLECTOR shall, at no charge, collect and dispose of all solid wastes from City public litter barrels which the City may establish and maintain on regular routes of the COLLECTOR. The City shall notify the Collector of the location of all such barrels.

I. Solid Waste from Municipal Beautification Efforts. The COLLECTOR shall, at no charge, collect and dispose of all solid wastes which are properly bagged, bundled or placed in carts as set forth in this agreement and which results from either public or private efforts to clean up or beautify the City. The COLLECTOR shall be notified at least seven (7) days prior to the pick-up date by the City and all such solid waste shall be placed at a pick-up point along the regular routes of the COLLECTOR. Limited to no more than six times per year.

## **SECTION 5. STANDARDS OF COLLECTION AND OPERATION.**

A. The COLLECTOR shall provide sufficient equipment to maintain regular schedules of collection and to promptly and efficiently perform its duties under this Agreement. The Director shall have the authority to inspect the vehicles on such inventory list and reject a given vehicle for health or safety reasons and require a suitable replacement. The COLLECTOR shall attach to such inventory a copy of each contract, lease, or other document that encumbers or limits the COLLECTOR's interests in such property. The COLLECTOR may change equipment from time to time and shall revise the inventory and the attachments thereto; however, in no event shall the number of vehicles be less than the number of vehicles shown on the inventory provided with this agreement. The COLLECTOR shall maintain a vehicular fleet during the performance of work under this contract at least equal to that described in the inventory.

B. Equipment is to be maintained in a reasonably clean and safe working condition and be painted uniformly according to standards maintained from time to time by the Director. Equipment shall contain the name of the COLLECTOR, and the truck number or code established by the COLLECTOR printed in letters not less than three (3) inches high on each side of the vehicles. A record shall be kept of the vehicle to which each number is assigned. No advertising shall be permitted on the vehicles.

Each vehicle used for the collection of solid waste shall have a fully enclosed, metal top and shall be water tight to a depth of not less than (12) inches and shall contain metal sides, and use pneumatic tires. However, the Director shall have the authority to waive the requirement of a fully enclosed, metal top in the event of an emergency. As an alternative to a fully enclosed metal top for use in garden trash collection, said vehicle may be equipped with a cover which may be a net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, and such cover shall be kept in good mechanical order and used to cover the load in traveling to, from and during the loading operation or when parked if the contents are likely to be scattered if not covered.

Vehicles shall not be overloaded so as to scatter solid waste, but when solid waste is scattered from a COLLECTOR'S vehicle for any reason, it shall be the responsibility of the COLLECTOR to immediately pick up such scattered solid waste. Each truck shall be equipped at all times with a shovel and a broom for the collection of spilled refuse.

Vehicles are to be washed thoroughly on the inside and sanitized with a suitable disinfectant and deodorant from time to time in order to be maintained in a clean and sanitary condition and all vehicles are to be washed on the outside at least weekly.

The COLLECTOR'S vehicles are not to interfere unduly with vehicular or pedestrian traffic and vehicles are not to be left standing on streets unattended.

C. It is recognized that disputes may arise between the CITY and the COLLECTOR with regard to the collection of certain items due to disputes over the specific language of this Agreement. In such event, the CITY shall inspect the subject area at the request of the COLLECTOR. The CITY may from time to time notify the COLLECTOR of the location and nature of solid waste which has not been collected due to dispute between the CITY and the COLLECTOR; and it shall be the duty of the COLLECTOR to remove all such solid waste within (5) business days from the date of the notice. Should the COLLECTOR fail to remove said solid waste when obligated to do so pursuant to this Agreement, the CITY will remove the

solid waste and the costs incurred by the CITY shall be assessed against the COLLECTOR. In the event the COLLECTOR disagrees with the decision of the Director he shall have the right to appeal such decision to the City Council and the decision of the Council shall be final.

D. Commercial containers furnished by the COLLECTOR to the customer shall be approved by the Director and shall have lettering not less than one and one-half (1 ½) inches high indicating the identification of the COLLECTOR and following words: "Keep Lids Closed". The COLLECTOR shall close the lids on commercial containers upon removal of solid waste.

E. The COLLECTOR shall make collections with a minimum of noise and disturbance to the occupant of the building and shall not collect prior to the hour of **7:00am** nor after the hour of **9:00 pm**, except the week following holidays and during CITY designated emergency times. Garbage receptacles and other containers shall be handled carefully by the COLLECTOR and shall be thoroughly emptied and then returned and placed at least three (3) feet from the edge of the pavement where possible, standing upright and with covers securely in place. Any solid waste spilled or scattered by the COLLECTOR shall be immediately picked up.

F. The direction and supervision of solid waste collection shall be by competent and qualified personnel and the COLLECTOR shall devote sufficient personal time and attention to the direction of the operation to insure performance of his obligations and duties as specified under the provisions of this Agreement.

The COLLECTOR shall cooperate with authorized representatives of the CITY in every reasonable way in order to facilitate the progress of the work contemplated under this Agreement.

The COLLECTOR shall provide, at its own expense, a suitable office located within Brevard County and shall maintain office hours from 8:00 am to 5:00 pm Monday through Friday and 8:00 am to 12:00 noon on Saturday. In addition, the COLLECTOR shall designate a representative for emergency and complaint calls during the entire week excluding the hours from 5:00 pm Saturday through 8:00 am Monday.

G. Employees collecting solid waste will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be permitted, or crossing property to neighbor's premises unless residents or owners of both such properties have given permission.

Care should be taken to prevent damage to property, including flowers, shrubs and other plantings. The COLLECTOR shall not be responsible for cleaning up unsanitary conditions about the solid waste containers caused by carelessness of the customer.

Care shall be taken by employees to prevent damage to containers by unnecessarily rough treatment. The COLLECTOR shall report to the Director all situations which prevent or hinder the collection of solid waste on any premises.

H. The COLLECTOR may change the scheduled days for collection and/or routes only after informing the Director and authorized by the Council. In the event the COLLECTOR makes a change in routes or schedules that alters the day of pickup for any service, the

COLLECTOR shall, at its expense, notify each affected Customer by mail or other manner not less than one week prior to the change. The CITY reserves the right to deny the COLLECTOR'S vehicles access to certain streets, alleys and public ways where it is in the interest of the general public to do so because of conditions of the streets or bridges or the nature of development of the general area. The COLLECTOR may request and the Director may declare certain streets, alleys and public ways closed for the purpose of collection vehicle operation because of dangers, inadequate clearance, poor road conditions and others. When these closures occur, the COLLECTOR shall supply other types of solid waste collection service acceptable to the Director. Notice shall be given by the Director prior to such denial so as not to unduly interfere with the COLLECTOR's normal operations.

I. The COLLECTOR shall provide backdoor solid waste receptacle pickup from single family residences for customers who are physically disabled and unable, and have no other means, to place their receptacles at the collection point as specified in SECTION 6. The customer shall provide the COLLECTOR with appropriate evidence that they are unable to place their receptacles at the collection point.

J. The residential collection driver will notify dispatch of a bulk yard waste pick up requirement and shall also identify the location of such pick up.

K. The COLLECTOR shall be responsible for the purchase and distribution of automated carts as well as the repair of carts that have been damaged. Carts are the property of the COLLECTOR. The COLLECTOR shall provide three (3) 96-gallon carts (one for solid waste, one for yard waste and one for recycling) to each residential unit. The COLLECTOR shall maintain, at all times, a sufficient number of carts to ensure that extra or replacement carts can be provided with seven (7) working days upon notification by the resident or the CITY. The COLLECTOR shall distribute fully assembled automated carts to new single-family and multi-family residential units added during the term of this Agreement. The COLLECTOR's shall repair or replace carts at the COLLECTOR's expense. Customers desiring a smaller or larger cart other than the default size 96 -gallon cart may select a 64- gallon cart can make a one-time request for a cart change. Solid waste and recycling carts are available in 64, and 96 gallon sizes at no cost. A second request for a cart size change will incur a charge of \$25.00 per cart. Additional cart and cart exchange fees discussed in this agreement are not subject to Consumer Price Index adjustments.

Within 120 days of a new resident taking possession of their home, he or she may request a one-time cart change for new carts at no charge.

Customers wishing to have additional carts may purchase additional carts for a fee of \$70.00 with a \$25.00 delivery charge. Replacement of carts that are damaged, lost, or stolen due to customer abuse or neglect shall be replaced by the customer. The COLLECTOR shall be responsible for all billing and collection of cart fees.

## **SECTION 6. COMPLAINTS.**

A. The COLLECTOR shall perform a service of high quality and keep the number of legitimate complaints to a minimum. In order that the CITY may be informed of the quality of

service, the COLLECTOR agrees to maintain a record of all complaints for inspection by the CITY. The COLLECTOR agrees to furnish a monthly report listing the name and address of the person complaining, the nature of the complaint, and the disposition of each complaint.

## **SECTION 7. DUTY OF CUSTOMERS.**

A. All garbage and rubbish and all grass cuttings, leaves, small clippings and trimmings generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in one or more garbage receptacles, plastic bags or other containers which are acceptable to the COLLECTOR and approved by the Director and placed at the applicable collection point on the designated collection day. All other solid waste shall be stacked in uniform direction at the applicable collection point and shall include only items in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. Any special collection solid waste shall be placed at the collection point on the collection day for special collection solid waste.

B. All solid waste generated from a bulk commercial unit other than special collection solid waste, shall be placed by the customer in a commercial container located at the applicable collection point, or in garbage receptacles located at the applicable collection point, on the designated collection day.

C. The customer shall place all solid waste at the following collection points for the specified categories of property:

(1) Single-family residence: At a point within the parkway abutting such residence no farther than five (5) feet from the curb line or paving line, or, in the case no parkway exists which abuts the customer's property, at a point no greater than five (5) feet from curb line or paving line of the nearest public street, or, in the case of the existence of a drainage ditch, at a point within said dimensions adjacent to the nearest driveway.

(2) Individual commercial unit and individual multiple-family residence: At those points designated by the COLLECTOR in consultation with the customer, which will maximize economy in the collection of the solid waste while considering the public health and the convenience to the customer.

(3) Bulk commercial unit: At a point designated by the COLLECTOR in consultation with the customer, which will maximize economy in the collection of the solid waste while considering the public health and the convenience to the customer. In the event of a dispute between the COLLECTOR and a customer regarding the location of the collection point in the COLLECTOR's decision shall be subject to approval by the Director.

## **SECTION 8. HAZARDOUS WASTE.**

A. No customer shall place or deposit hazardous or infectious waste at any solid waste collection point or in any other place where it might reasonably be expected to be collected by COLLECTOR.

B. The COLLECTOR shall not dispose of hazardous or infectious waste at any Brevard County solid waste disposal facility. The COLLECTOR shall refuse to collect solid waste from a customer if the COLLECTOR believes that such solid waste contains hazardous or infectious waste. If the COLLECTOR believes that a customer is depositing hazardous waste for collection, the COLLECTOR shall immediately notify the Director.

C. The Director shall have the authority to inspect the waste being deposited by a customer at any time to determine whether such waste contains hazardous waste, and, to take whatever action he deems necessary to insure that the customer ceases the placement of hazardous waste into the Brevard County Solid Waste Disposal System. Such an inspection shall be required upon receipt of notice from a COLLECTOR pursuant to subsection B of this section.

D. A residential customer may notify COLLECTOR, by telephone, of a bulk yard waste pick up requirement and the location of such pick up but is not required to provide said notification.

## **SECTION 9. COMPENSATION TO COLLECTOR; ESTABLISHMENT OF RATES**

A. The CONTRACTOR shall make monthly charges for services within the City not to exceed the rates set forth in Exhibit 1, provided, and such residential customers are charged for these services on the monthly water and sewer bill from the City of Melbourne.

B. The rates and charges set within Exhibit 1: shall be adjusted annually and computed pursuant to the mathematical formula provided as Exhibit 2 (Collection Rate Adjustment).

C. The COLLECTOR may petition the CITY to adjust COLLECTOR's rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation ("Change in Law"). Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefore. The CITY shall be entitled to audit the COLLECTOR's financial and operational records directly related to the Contractor's request in order to verify the increase in costs and the reasons therefore. Any change in rates other than the annual rate increase will be the responsibility of the COLLECTOR to collect.

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

The COLLECTOR's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The CITY may request from the COLLECTOR, and the COLLECTOR shall provide, such further information within its possession as may be reasonably necessary in making its determination. The CITY shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the CITY. The CITY shall make a reasonable determination based upon the documentation provided in reaching its decision and shall not unreasonably deny relief hereunder.

D. In the event disposal charges for the CITY's waste are increased, the COLLECTOR shall notify the city of such increase and propose an appropriate rate adjustment to adequately compensate COLLECTOR for such increase. The CITY may request information from the COLLECTOR to substantiate such rate increase. After receipt of same, the CITY shall promptly consider such request and shall accept or reject same within 30 days of receipt of such request and supplemental information. The CITY shall not unreasonably deny the rate adjustment. Any change in rates other than the annual rate increase will be the responsibility of the COLLECTOR to collect.

E. The COLLECTOR shall be required, if requested by the customer, to furnish a roll-off container or a compactable container; provided, however, such request shall not be granted if the type of solid waste generated requires a greater frequency of pickup than reasonably contemplated by the use of said containers. The rate and rental for such roll-off container and the rental for such compactable container shall be as stated in and billed by the COLLECTOR. In the event of a dispute between the COLLECTOR and the customer as to such rate or rental, the Director shall arbitrate and resolve the dispute.

F. In no event shall the CITY be responsible for maintaining commercial customer lists, verifying services or resolving disputed charges. Neither shall the CITY be responsible for paying for any service rendered by COLLECTOR to any customer. COLLECTOR shall charge for the services rendered solely according to the terms of this Agreement, at the rates set forth in this Agreement, except as they may be adjusted subsequently pursuant to this Agreement. COLLECTOR shall not charge more for such services. If any Commercial customer shall fail to make timely payment of invoices submitted by COLLECTOR, then COLLECTOR may, upon fifteen (15) days written notice to such customer, discontinue service to such customer until all delinquent amounts have been paid in full together with a \$50.00 re-establishment of service fee. COLLECTOR shall provide duplicate copies of all such delinquency notices to the CITY, and shall advise the CITY at such times as it discontinues service and when it recommences service upon receipt of payment. COLLECTOR shall not deny service to a new customer because a prior customer at the same location has not paid his account in full. The CITY shall take such steps as are necessary to compel those delinquent accounts to pay all delinquent amounts and the re-establishment fee.

Prior to establishing service with a commercial customer or a customer being billed by the COLLECTOR pursuant to this section, the COLLECTOR may collect a deposit. However, such deposit shall not exceed the normal charge for three month's service to the customer. In addition, any such deposit shall be returned to the customer after twelve (12) months continuous service with no delinquent payments.

Any such customer may pay in advance for the collection services provided pursuant to this Agreement. However, the COLLECTOR shall not require a customer to pay for such collection services more than one (1) month in advance.

The COLLECTOR may impose, in addition to the amount owed (together with interest at 1.5% per month) to the COLLECTOR, a re-connect fee not to exceed the greater of Twenty-five Dollars (\$25.00), or the normal charge for one (1) month's service for a commercial customer, where a commercial customer whose service has been terminated for non-payment wishes to be served by the COLLECTOR again.

There will be no vacancy adjustments for residential customers.

#### **SECTION 10. HURRICANE OR OTHER DISASTER.**

A. In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Director shall grant the COLLECTOR a variance from regular routes and schedules. As soon as practicable after such event, the COLLECTOR shall advise the Director when it is anticipated that normal routes and schedules can be resumed. The Director shall make an effort through the local news media to inform the public when regular services may be resumed.

B. The COLLECTOR shall not be responsible for nor have an obligation to collect, transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster unless the CITY enters into a written agreement with COLLECTOR specifying the terms and compensation for such services. Should the parties enter into a written agreement and in the event the storm is declared a disaster such that FEMA is authorized to participate in managing the cleanup, the COLLECTOR shall be responsible for the preparation of all documents and forms and support information required by FEMA. Such documents, forms and information shall be submitted to the CITY by the CONTRACTOR within the time limits established by FEMA for such filings.

C. The parties agree, storms and other disasters, whether named or not, often cause volumes of solid waste to increase measurably once the disaster terminates. Accordingly, once the COLLECTOR resumes normal collection routes after a disaster whether or not it is one declared by FEMA, the COLLECTOR may be entitled to additional compensation for the collection, transportation and/or disposal of solid waste in excess of historical volumes for the period in question as the result of such disaster event. COLLECTOR shall substantiate the additional costs caused by the event by providing documentation and corroboration of increased costs for personnel and labor, equipment, transportation costs (including fuel and additional trip times) and disposal costs as applicable. The CITY shall have the right to audit such costs.

#### **SECTION 11. COMMENCEMENT OF AGREEMENT; DISAGREEMENTS; DEFAULT OF COLLECTOR; NO WAIVER.**



A. COMMENCEMENT OF AGREEMENT: This Agreement shall be effective

B. DISAGREEMENTS: To prevent all disputes or litigation, it is understood that all questions rising as to the proper performance and the amount of work to be paid for under this Agreement shall be subject to the decision of the Director subject to the right of the COLLECTOR to appeal to the Board, whose decision shall be final and binding.

C. SERVICE DURING DISAGREEMENT: During any dispute which arises between the CITY and the COLLECTOR, in any way relating to this contract, performance, or compensation hereunder, the COLLECTOR shall continue to render full compliance with all terms and conditions of this contract but shall not waive or relinquish any rights by doing so.

D. DEFAULT OF COLLECTOR: The COLLECTOR may be held in default of the Agreement in the event the COLLECTOR, after receiving written notice specifying the event of default and the passage of 10 days without cure:

1. Fails to perform the collections required by the Agreement and has abandoned the work, or is unable to resume performance within forty-eight hours; or
2. Has failed on three or more occasions of three working days duration each in any year, to perform the collections required by the Agreement; or
3. Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Agreement, after having received written notice of its obligation to so comply, or
4. Becomes insolvent or bankrupt, declares bankruptcy or has a receiver or trustee appointed to manage its affairs.

To initiate proceedings under this section, the Director shall first request the City Council to declare the COLLECTOR in default.

Within three working days after its receipt of such a request, the CITY shall give notice to the COLLECTOR and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the COLLECTOR may show cause why it should not be declared in default. In the event the COLLECTOR fails to show, to the reasonable satisfaction of the CITY cause why the COLLECTOR should not be declared to be in default, the Council shall make such declaration.

In declaring the COLLECTOR to have defaulted on the Agreement, the CITY may also order the COLLECTOR to discontinue further performance of work under the contract and transfer the obligation to perform such work from the COLLECTOR to the Surety on the COLLECTOR'S performance bond and take any other action it deems advisable.

In the event the CITY secures the performance of work under the Agreement at a lesser cost than would have been payable to the COLLECTOR had the COLLECTOR performed the same, the CITY shall retain such difference; but in the event such cost to the CITY is greater, the COLLECTOR and its surety shall be liable for and pay the amount of such excess to the CITY.

All payments due the COLLECTOR at the time of default, less amounts due the CITY from the COLLECTOR; shall be applied by the CITY against damages suffered and expense incurred by the CITY by reason of such default; any excess shall be paid to the COLLECTOR except as provided in the Agreement.

Notwithstanding the provisions of this section, a delay or interruption in the performance of all or any part of the Agreement resulting from changes ordered in the work, from labor disputes, or, from other causes beyond the COLLECTOR'S control or other Force Majeure event set forth in this agreement shall not be deemed to be a default and the rights and remedies of the CITY provided for herein shall not be applicable.

E. NO WAIVER: No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement nor affect the right of a party hereto to enforce same. The payment or acceptance of compensation for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

## **SECTION 12. ADMINISTRATIVE CHARGES.**

The following acts or omissions, if not cured within 2 working days after written notice, which includes all forms of written communication including, but not limited to facsimile transmission or electronic transmission (e-mail), shall permit the CITY to impose administrative charges under this Section. Administrative charges, if any, must be imposed no later than the month following the event's occurrence. Administrative charges will be invoiced monthly to the COLLECTOR with written explanation included in the remittance.

1. Collection of residential solid waste prior to 7:00 am or after 9:00 pm  
\$100.00 each event.
2. Failure to Keep Collection Vehicles Closed or Covered as required in the Florida Department of Transportation regulations – \$50.00 each. Occurrence.
3. Legitimate Complaints greater in number than 5% of the residential customers in any one month - \$50.00 each.
4. Failure to clean vehicles and maintain in good working condition -  
\$25.00 per vehicle.
5. Failure to pick up "Special Collection Solid Waste" within five (5) business days - \$100.00 each case on the third day after written notice, including e-mail notification, and \$50.00 each day thereafter until cured.
6. Failure to maintain schedule established and given as a requirement of this Agreement - \$100.00 per violation of route schedule.
7. Failure to pick up debris scattered by COLLECTOR. - \$100.00 each case on the third day after written notice, including e-mail notification, and \$25.00 each day thereafter until cured.

8. Failure to pick up properly prepared Bulk Yard Waste (clam shell pick up) - \$100.00 each case on the third day after written notice, including e-mail notification, and \$50.00 each day thereafter until cured.
9. Failure to dispose of recyclable materials in a proper fashion -- \$100.00 each load.
10. Failure to collect recyclables, solid waste or yard trash on schedule -\$50.00 per stop on the third day after written notice, including e-mail notification, and \$20.00 each day thereafter until cured
11. Failure to have back-up collection equipment, in proper working condition, when needed, so regular schedules and routes can be maintained - \$50.00 per occurrence.
12. Failure to meet seven business day collection of bulk materials, change out of carts, or repair to carts based upon documented call for service - \$100 per occurrence.

The Collector's internal policies provide the handling of complaints in substantially the following manner:

- All complaints, whether received in person, by mail, e-mail, or telephone, shall be recorded and one copy retained in the Collector's file.
- Complaints received after 7 am but before 12 noon shall be serviced by 12 noon of the following workday.
- Complaints received after 12 noon and before 7 am shall be serviced by 5 pm on the following workday.

The City acknowledges the Collector's internal policies about legitimate complaints and that if the Collector does not resolve one or more of the enumerated the service conditions as outlined within the timeframe specified in this agreement shall be deemed to be an administrative charge subject to recovery at the dollar amount stated.

In the event that COLLECTOR disagrees with the imposition of administrative charges by the CITY, it shall have 10 days after notice of same to protest. COLLECTOR shall serve a written notice, including e-mail notification, of protest to the Director explaining the basis for its protest. Within 15 days, the Director shall determine the protest making specific findings to support its decision. If the COLLECTOR disagrees with the decision, it can utilize the provisions this agreement for a final determination.

### **SECTION 13. INSURANCE AND INDEMNIFICATION.**

A. The COLLECTOR shall furnish to the CITY evidence of insurance coverage for all insurance required under the provisions of this section of this Agreement immediately upon the execution of this Agreement by the parties. Failure of the COLLECTOR to maintain said

insurance at any time during the term of this Agreement by the COLLECTOR, shall be construed to be a material breach of the Agreement by the COLLECTOR.

B. The COLLECTOR shall provide and maintain during the term of this Agreement such worker's compensation insurance as required by law for all of its employees employed in connection with the performance of the work provided for under this Agreement.

C. The COLLECTOR hereby agrees to protect, defend, indemnify and hold harmless CITY and its directors, officers, employees and agents from and against any and all claims against any of CITY and its directors, officers, employees and agents by a third party for loss or damage of any nature or kind arising directly or indirectly from negligence, willful misconduct or breach of laws or any provision of this Agreement of any of COLLECTOR or its agents, servants or independent contractors, except and to the extent that such loss or damage was caused by the negligence, willful misconduct or breach of laws or any provision of this Agreement by any of the CITY and its directors, officers, employees and agents.

D. The COLLECTOR agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the CITY, policies of insurance generally known as "public liability policies" insuring the COLLECTOR against any and all claims, demands or causes of action whatsoever for injuries received or damage to property relating to the performance of the duties of the COLLECTOR under the terms and provisions of this Agreement. Such policies of insurance shall insure the COLLECTOR in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to cover any and all claims connected with any accident or occurrence that may arise or be claimed to have arisen against the COLLECTOR. The COLLECTOR shall also obtain property damage insurance insuring the COLLECTOR in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to cover the claims of any person or persons from a single or specific act that result in alleged damage to property. The COLLECTOR agrees to provide and maintain at all times under this Agreement motor vehicle public liability insurance in an amount of not less than Three Hundred Thousand Dollars (\$300,000) to cover the claims of one person, and Five Hundred Thousand Dollars (\$500,000) per incident.

Said insurance policies shall provide that the CITY shall be entitled to thirty (30) days written notice of any changes or cancellations in said policies.

A certificate of insurance indicating that the COLLECTOR has coverage in accordance with the requirements of this Agreement, shall be furnished by the COLLECTOR to the Director within ten (10) days from the date of the execution of this Agreement.

#### **SECTION 14.            PERFORMANCE BOND.**

The COLLECTOR shall provide a COLLECTOR'S performance and payment bond in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) with a surety company acceptable to the CITY as surety, which bond shall be conditioned that such COLLECTOR shall faithfully perform all of the provisions of this Agreement, and pay all laborers, mechanics and sub-contractors and material men, and all persons who shall supply such COLLECTOR or sub-contractors with provisions and supplies for the performance of this Agreement; and shall perform work or services, or furnish material to any sub-contractor, shall have the same right under the provisions of such bond as if such works, services or material was furnished to the

original COLLECTOR, and shall contain appropriate recitations; (1) that it is issued pursuant to this Section of this Agreement; (2) that it shall be construed to meet all the requirements specified herein; and (3) that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void.

## **SECTION 15. MISCELLANEOUS.**

A. The COLLECTOR shall comply with all laws, ordinances, rules and regulations now existing or established or hereinafter established at any time during the term of this Agreement by the CITY, State Legislature and agencies, and Federal Government.

B. It shall be the responsibility of the COLLECTOR to maintain its books and records in accordance with generally accepted accounting principles. The CITY shall have the right to audit said books and accounts at any time during normal business hours upon giving reasonable notice, not less than 5 working days, to the COLLECTOR as to the time and place of such audit.

C. The COLLECTOR shall perform his duties under the terms and provisions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. No part of this Agreement shall in any way be construed or interpreted to constitute the COLLECTOR or any of his agents or employees as the agent, employee or representative of the CITY.

D. To prevent misunderstanding or litigation, the Director shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the manner of performance, the rate of progress of said work, the interpretation of the Agreement provisions, and the acceptable fulfillment of the Agreement on the part of the COLLECTOR subject to the provisions of this agreement.

E. The COLLECTOR shall furnish the Director with every reasonable opportunity for ascertaining whether or not the duty of the COLLECTOR is being performed in accordance with the terms and conditions of this Agreement. The COLLECTOR shall designate in writing the person to serve as agent between his organization and the CITY. The CITY shall have the right to inspect the operations and equipment of the COLLECTOR at any reasonable time upon the giving of reasonable notice and the COLLECTOR shall admit such authorized representatives of the CITY to make such inspections.

F. No modification or amendment of the terms hereof shall be effective unless written and signed by the parties hereto.

G. The provisions, covenants and conditions to this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

H. Should any terms, provision, condition or other portion of this Agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of the Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

J. The terms and conditions of this contract supersede the terms, obligation and conditions of any existing or prior Agreement or understanding, written or oral, between the parties regarding the work to be performed, compensation to be paid, and all other matters contained.

K. In addition to other fees and charges outlined in this agreement, the Collector agrees to remit to the City a fee of \$0.20 per-single-family residence and individual multiple-family residence per month and remitted once each quarter for the duration of this agreement for the collection of recyclable materials. If this Franchise Agreement is extended beyond the calendar year 2020, the fee outlined in this sub-section shall be increased by ten percent (10%) beginning in the year 2021 and every five years thereafter for the term of this franchise.

#### **SECTION 16            FORCE MAJEURE.**

If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government (“Force Majeure”), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term “Force Majeure” does not include and a Party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

#### **SECTION 17.    RECYCLING PROGRAM COLLECTION.**

A. COLLECTOR is hereby granted an exclusive franchise to perform curbside recycling collection services within the service area.

B. The COLLECTOR shall pick up all recyclable materials placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence, bulk multiple-family residence, individual commercial unit and bulk commercial unit within the subject service area not less than one (1) time per week and with said collection occurring on a normal solid waste collection day. The COLLECTOR shall notify the customers within the subject service area of the applicable schedule of recyclable materials collection at least ten (10) days prior to an alteration of said schedule.

C. The COLLECTOR shall furnish a recycling cart at the COLLECTOR’S expense to those single-family residence and individual multiple-family residences. Said container shall be the property of the COLLECTOR. The default size of the container is 96 gallons.

D. The COLLECTOR shall replace lost recycling containers in an amount up to five percent (5%) of the households served, and all broken recycling containers. Each residence shall not be given more than one (1) replacement within a year at the COLLECTOR'S expense.

E. The COLLECTOR shall remove only recyclable materials placed in the recycling container at the curb from all residences that presently receive regular residential garbage collection. There shall be no limit to the quantity of recyclable materials that will be picked up from each residence.

F. The COLLECTOR will not be required to collect materials that are in violation of this Agreement. The non-recyclable materials in the recycling container will be left in the container at the residence as examples of incorrect materials that should not be placed out for collection. Information will be placed in or on the container by the COLLECTOR explaining why the materials were left.

G. The COLLECTOR shall not in any way break or damage or roughly handle the recycling container and shall empty the container and then return it to the curb or designated collection point.

H. The COLLECTOR shall furnish containers to all bulk multiple-family residences and commercial units serviced by the COLLECTOR at rates agreed to between the parties prior to the initiation of the recyclable materials collection service as provided herein.

I. For providing recycling program collection services as specified hereunder, to all improved residential real property within the CITY, the COLLECTOR shall be compensated in accordance with Exhibit 1 of this Agreement.

J. COLLECTOR shall retain 100% percent of all proceeds received from the sale of recyclable materials.

K. Recycling Rewards Program: At the commencement and throughout the duration of this agreement, Contractor shall establish and continue for the residential customers of the City a recycling rewards program which measures the amount of recyclable material each residential customer recycles and then provides reward incentives based upon the amount of recyclable material recycled. The program shall be in place without any additional fee charged to the residents or City.

#### **SECTION 18. DUTIES OF THE CUSTOMER; RECYCLING PROGRAM.**

A. The customer is responsible for proper care and cleaning of any recycling container provided for use in the program.

B. The recycling program shall be single stream commingled recycling.

C. The customer shall drain off all liquids from recyclable materials prior to deposit in the recycling container. Recyclable glass food and beverage containers shall be rinsed prior to placement in the recycling container. Newspapers shall be free of food or other contaminants when placed in a recycling container.

D. All recyclable materials generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in the recyclable container. On the designated collection day, said recyclable container shall be placed at the curb that is a normal collection point, but shall be kept separate and apart from regular solid waste.

E. All recyclable materials generated from a bulk commercial unit, shall be placed by the customer at the collection point described in this agreement.

F. Recyclable materials placed in a recyclable container by a single-family, individual multiple-family, or individual commercial unit, shall not exceed a weight of fifty (50) pounds or the weight specified by manufacturer on the cart.

G. E- waste shall be collected by the COLLECTOR. There shall be no additional charge for the pick-up of the e-waste.

#### **SECTION 19. DUTIES OF THE COLLECTOR, YARD TRASH COLLECTION, BULK YARD WASTE**

A. The COLLECTOR shall pickup all properly prepared Yard Trash and Bulk Yard Waste placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence and bulk multi-family residence, not less than one (1) time per week. The COLLECTOR shall notify the customers of the applicable schedule of Yard Trash collection at least ten (10) days prior to an alteration of said schedule.

B. The COLLECTOR shall pick up all properly prepared Yard Trash and Bulk Yard Waste placed on those road medians or common areas of subdivisions, apartments, townhouses or other multi-family units prescribed by the Director, in consultation with the COLLECTOR, not less than one (1) time per week. The schedule for pick up shall be the same as for other residences in the collection area.

C. The COLLECTOR shall only remove Yard Trash and Bulk Yard Waste placed at the curb from all residences that receive regular residential solid waste collection service. There shall be no limit to the quantity of Yard Trash or Bulk Yard Waste that will be picked up from each residence so long as the Yard Trash is prepared as follows: All branches, fronds and other material must be cut into lengths not exceeding four (4) feet in length, twelve (12) inches in diameter, and fifty (50) pounds in weight and separated from other solid waste. All grass cuttings, leaves and small clippings and trimmings shall be containerized in containers which are acceptable to the COLLECTOR and approved by the Director. Yard Trash exceeding the size and weight described in this paragraph will be picked up by a claw truck as Bulk Yard Waste.

D. For providing Yard Trash Collection Service and Bulk Yard Waste as specified herein, to all improved residential real property within CITY, the COLLECTOR shall be compensated in accordance with Exhibit 1.

#### **SECTION 20. DISPUTE RESOLUTION.**



The parties shall endeavor to settle all issues regarding this Agreement by amicable negotiations. Issues that are not amicably settled shall be submitted to non-binding mediation in front of a mutually agreed upon mediator.

1. Mediation may be commenced by the CITY or COLLECTOR by the service of a written request for mediation ("Request for Mediation") upon the other party. Such Request for Mediation shall summarize the controversy or claim to be mediated.

The mediation shall be heard in Brevard County before a single mediator.

3. All attorneys' fees and costs of the mediation shall be borne by the respective party incurring such costs and fees.
4. If mediation is unsuccessful, the parties are free to file a lawsuit in Brevard County to enforce the provisions herein.
5. The prevailing party in any litigation to enforce this Agreement, including at all appellate levels shall be entitled to an award of attorney fees.

#### **SECTION 21.            RECORD KEEPING AND QUARTERLY REPORTING**

A. COLLECTOR shall maintain in its office records of the quantities of (i) Solid waste collected and disposed under the terms of this Agreement, (ii) Recyclables, by type, collected, purchased, processed, sold, donated or given for no compensation, and Residue disposed, and (iii) Yard waste collected, received, purchased, processed, sold, donated or given for no compensation, and Residue disposed. The records shall be compiled into reports and submitted quarterly as stated below.

B. COLLECTOR shall maintain an auditable journal recording each instance that Solid waste, Yard Waste or Recyclables are not collected in compliance with the terms of this Agreement or applicable ordinance or regulation. The journal shall include the reason for non-collection, including but not limited to, instances of Hazardous Waste found in the Solid waste, Yard Waste or Recyclables.

C. COLLECTOR's refusal or failure to file (after written notice requesting COLLECTOR to do so) any of the reports required, or to provide required information to CITY, or the inclusion of any false or misleading statement or representation by COLLECTOR in such report, shall be deemed a material breach of this Agreement, and shall subject COLLECTOR to all remedies, legal or equitable, which are available to CITY under this Agreement or otherwise.

D. All reports and records required under this or any other Article shall be furnished at the sole expense of COLLECTOR.

E. COLLECTOR shall compile and keep the following information for each month during the quarter and shall deliver a written report thereon, signed by an officer of COLLECTOR, to the CITY on a quarterly basis. Quarterly reports shall be submitted no later than the 30<sup>th</sup> of the month immediately following the end of the quarter, with the first quarterly report due on or before

April 30, 2015. Quarterly reports shall be submitted in hard copy and shall also be provided electronically in a format and using software acceptable to CITY.

(a) Solid Waste Data. The average number of daily set-outs, Tons collected and delivered to the Designated Disposal Site, number of service accounts and number of containers distributed by size and Subscriber for each separate Subscriber class and for each free facility service.

(b) Recycling Data. The daily average of gross tons collected by material type and by route for residential premises, commercial/industrial premises, and for facilities receiving free service; the average number of daily set-outs by route; the total set-outs and Tonnages, by material type and by route for the quarter; the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts; quarterly totals of Recyclables delivered to the Designated Processing Facility; and number of Recyclables containers distributed by size and Subscriber type.

(c) Yard Waste Data. The average daily gross Tons collected by route; the average daily number of set-outs by route; and the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts.

(d) Complaint Log. A copy of the Complaint Log maintained pursuant to this Agreement, including a summary of the type and number of complaints.

(e) Problems and Actions Taken. Narrative summary of problems encountered with collection, disposal, and processing activities and actions taken; report shall indicate the type and number of notification tags left at Subscriber accounts, instances of property damage or injury, poaching or scavenging, significant changes in operation, market factors, publicity conducted, or needs for publicity; description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

(f) Disposal Summaries. Summaries of the net amount of all Solid waste disposed during the reporting period, any fees paid, and where the waste was disposed of, by residential and commercial service sectors. CITY may review all supporting documentation (which COLLECTOR shall retain) for COLLECTOR's summaries on COLLECTOR's business premises after giving 48 hours written notice of such a request.

## **SECTION 22.            FRANCHISE FEE**

In consideration of the terms of this Franchise, the Collector shall pay to the City within thirty days of each semi-annual and annual anniversary date of this Ordinance a Franchise fee equal to ten percent (10%) of the Collector's gross revenue received by the Collector for operations within the City, exclusive of receipts from public schools and services rendered to the City, but inclusive of receipts from the use of roll-off containers.

No part of any of the Collector's revenue derived from collection of recyclable material shall be included in the gross revenues from which the Franchise fee is calculated. All of recyclable materials shall be sold through commercial markets, which markets shall be

developed jointly by the City and the Collector. The City, as owner of the recyclable materials, shall cooperate with the Collector in the sale of these materials.

**SECTION 23.**                      **NOTICE**        All notices required or contemplated by this Contract shall be personally served or mailed postage prepaid and return receipt requested, addressed to the parties as follows:

**Collector:**

**CITY:**

City of Indian Harbour Beach  
2055 S. Patrick Drive  
Indian Harbour Beach, Florida 32937

**SECTION 24.**                      **EFFECTIVE DATE**

This ordinance shall take effect upon its acceptance thereof by the Collector and March 1, 2015.

**SECTION 25.**                      **REPEALER**

Ordinance No. 2005-12 and Ordinance No. 2011-5 are hereby repealed upon the effective date of this ordinance.

CITY OF INDIAN HARBOUR BEACH

By: \_\_\_\_\_  
                    GENE NEWBERRY, MAYOR

Attest: \_\_\_\_\_  
                    DEBORAH MALISKA  
                    CITY CLERK

Acceptance:

\_\_\_\_\_  
Waste Management

