

**Solid Waste and Recyclables Collection  
Franchise Agreement**

**Between**

**Indian River County Solid Waste Disposal District  
("SWDD")**

**And**

**Waste Management Inc. of Florida  
("Franchisee")**

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This Franchise Agreement ("Agreement") is hereby made and entered into this 21st day of April 2015, between Indian River County Solid Waste Disposal District (SWDD), a dependent special district of Indian River County, Florida, whose address is c/o Indian River County Utilities Department, 1801 27<sup>th</sup> Street, Vero Beach, Florida, 32960, and Waste Management, Inc. of Florida, a Florida Corporation, whose address is 2700 Wiles Road, Pompano Beach, Florida 33073 ("Franchisee"), for the services set forth herein.

#### **ARTICLE 1. DEFINITIONS**

To the extent that any definition contained herein conflicts with any similar definition contained in any federal, state, or local law, the definition herein shall prevail for the purposes of this Franchise Agreement. However, nothing contained herein shall be interpreted to require Franchisee to undertake any conduct that is prohibited by Applicable Law. Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa.

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

**Biological Waste** shall mean Solid Waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under chapter 497, Florida Statutes.

**Biomedical Waste** shall mean any Solid Waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contain human disease-causing agents; discarded disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the Florida Department of Health represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under Chapter 497, Florida Statutes.

**Board** shall mean the Board of County Commissioners of Indian River County, Florida.

**Bulk Trash** shall mean any non-vegetative item that cannot be containerized, bagged or bundled, or whose large size or weight precludes its handling, processing, or disposal by normal methods. Bulk Trash does not include Hazardous Waste.

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

**Commencement Date** shall mean October 1, 2015, the date services pursuant to the Agreement shall commence.

**Commercial Collection Service** shall mean the collection of Solid Waste within the Solid Waste Franchise Area from Commercial Properties and Multi-Family or Residential Units choosing not to have curbside Residential Collection Service, and delivery of Solid Waste to the Designated Facility. Commercial Collection Service includes collection of C&D in containers fifteen cubic yards and greater ( $\geq 15CY$ ) in size.

**Commercial Customers** shall mean any person receiving Commercial Collection Service.

**Commercial Property** shall mean property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multi-family residential uses.

**Construction and Demolition or C&D** shall mean discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of Construction and Demolition with other types of Solid Waste will cause it to be classified as other than Construction and Demolition. The term also includes:

- (a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- (b) Unpainted, non-treated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted, non-treated wood pallets provided the wood scraps and pallets are separated from other Solid Waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other Solid Waste; and
- (c) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

**Contract Manager** shall mean the person designated by SWDD to act as SWDD's representative during the term of this Agreement.

**County** shall mean Indian River County, Florida.

**Day** shall mean calendar day unless otherwise noted in the Agreement.

**Designated Facility** shall mean the facility designated by SWDD for delivery of Solid Waste, Program Recyclables, Yard Trash, or Bulk Trash collected according to this Agreement and identified in Article 10.1.

**Effective Date** shall mean the date this Agreement has been executed by both SWDD and Franchisee, whichever is later.

**Franchise Agreement or Agreement** shall mean this Franchise Agreement between SWDD and Franchisee, together with all exhibits and other documents that are expressly incorporated by reference.

**Holidays** shall mean Independence Day, Labor Day, Thanksgiving, Christmas, and New Year's Day.

**Hazardous Waste** shall mean any Solid Waste regulated as a hazardous waste by the Florida Department of Environmental Protection or the U.S. Environmental Protection Agency pursuant to Applicable Law.

**Multiple Dwelling Unit or Multi-Family Unit** shall mean any building containing five (5) or more permanent residential living units.

**Program Recyclables** refers to Recyclables included in SWDD's Residential and Multi-Family recycling program as defined in Exhibit 3. Program Recyclables include incidental amounts of rejects and non-designated materials as can normally be expected as part of municipal recycling collection. The types of Recyclables included in SWDD's recycling program may be amended by the Contract Manager.

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

**Recycling Franchise Area** shall mean the specified area within the County, as defined in Exhibit 2, for which Franchisee is granted the right to collect residential Recyclables.

**Residential Collection Service** shall mean curbside collection of Solid Waste, including Bulk Trash and Yard Trash, from individual Residential or Multi-Family Units, and delivery of collected materials to the Designated Facility.

**Residential Customers** shall mean any person receiving Residential Collection Service.

**Residential Recyclables Collection Service** shall mean the collection of Program Recyclables from Residential and Multi-Family Units and delivery to the Designated Facility.

**Residential Unit** shall mean each and every lot or parcel of land that is improved for occupancy as a single-family residence, duplex, triplex, or quadraplex. The term also includes mobile or modular homes or trailers.

**Roll Cart** shall mean a wheeled container designed and intended to be used for automated collection service.

**Single Stream** refers to a recycling process that allows for Recyclables to be collected comingled, with containers and paper collected in the same Roll Cart or Recycling Bin.

**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 waste disposal appurtenances.

**Solid Waste** as defined by Section 403.703(13), F.S., as may be amended, to mean Sludge that is not regulated under the federal Clean Water Act or Clean Air Act, as well as 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. For the purposes of this Agreement, Solid Waste shall not include Recyclable Materials.

**Solid Waste Franchise Area** shall mean the specified area of the unincorporated County, as defined in Exhibit 2, for which Franchisee is granted the right to provide Residential Collection Service and Commercial Collection Service.

**SWDD** means the Indian River County Solid Waste Disposal District (SWDD), a dependent special district of Indian River County, Florida.

**Uncontrollable Force** shall mean any event that results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, terrorism, sabotage, and governmental actions. Labor disputes, including, without limitation, strikes and slowdowns, are not an Uncontrollable Force.

**Urban Service Area** or **USA** shall mean a specific area within the Solid Waste Franchise Area, as defined in Exhibit 2, where "urban" commercial, industrial, and residential uses are allowed and where urban services are provided to serve development. Conversely, the areas lying outside the USA, or non-Urban Service Area (non-USA), are designated conservation or agricultural and are generally intended to be rural in nature with agricultural, conservation, and low density residential uses are allowed.

**Yard Trash** shall mean vegetative matter resulting from yard and landscaping maintenance, including grass clippings, palm fronds, tree branches and other similar matter.

## **ARTICLE 2. TERM**

### **2.1. Effective and Commencement Dates**

The Effective Date is the date the Agreement is executed and has been signed by SWDD or Franchisee, whichever date is later. The Commencement Date is the date that collection services required by this Agreement shall commence. The Commencement Date shall be October 1, 2015.

### **2.2. Initial Term**

The term of this Agreement shall be for a period of seven (7) years beginning on the Commencement Date, October 1, 2015, and terminating September 30, 2022.

### **2.3. Renewal Option**

At the sole option of SWDD, this Agreement may be renewed for one (1) additional term of three (3) years under the same terms and conditions as the initial term, including amendments. Franchisee shall be notified by SWDD no later than September 30, 2021 of its intent to renew or not to renew the Agreement. If renewed, the additional three (3) year term will begin on October 1, 2022, and terminate on September 30, 2025.

### **ARTICLE 3. COLLECTION SERVICES**

#### **3.1. Exclusive Services**

Franchisee is herein granted the exclusive right to provide the following collection services:

- a. Residential Collection Service and Commercial Collection Service in the Solid Waste Franchise Area.
- b. Residential Recyclables Collection Service in the Recycling Franchise Area.
- c. C&D collection in containers fifteen cubic yards and greater ( $\geq 15$  CY) in size in the Solid Waste Franchise Area.

#### **3.2. Non-Exclusive Services**

- 3.2.1. Franchisee is herein granted the non-exclusive right to collect C&D with containers less than fifteen cubic yards ( $< 15$  CY) in size in the unincorporated areas of the County.
- 3.2.2. Franchisee shall provide collection of Recyclables from Commercial Properties upon request and as required in Article 8.3 of this Agreement; however, provision of this service is not exclusive to Franchisee.
- 3.2.3. SWDD reserves the right to exclude the collection of other materials from this Agreement in the future for the purposes of increasing waste diversion.

### **ARTICLE 4. TITLE TO SOLID WASTE AND RECYCLABLE MATERIALS**

After Solid Waste or residential Recyclables have been placed by the customer/generator to be collected by Franchisee, SWDD shall hold title and ownership to all such materials. Franchisee shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials, except that Franchisee shall have the right and obligation to transport all such materials to the Designated Facility. However, Franchisee shall have the sole responsibility and liability for the lawful disposal of any Biological Waste, Biomedical Waste, or Hazardous Waste that Franchisee collects.

### **ARTICLE 5. TRANSITION OF COLLECTION SERVICES**

#### **5.1. Transition Prior to Commencement of Collection Services**

Franchisee shall participate in transition meetings as scheduled and conducted by the Contract Manager, to plan and manage the transition process so that no service interruption occurs. Franchisee is responsible for providing a smooth transition in services to minimize inconvenience to customers. To accomplish this objective, Franchisee shall submit to the Contract Manager, no later than thirty (30) Days following the Effective Date, a transition plan that provides a detailed description of how Franchisee will plan and prepare for providing Residential Collection Services, Residential Recyclables Collection Services, and Commercial Collection Services leading up to the Commencement Date. The transition plan must meet the approval of the Contract Manager. At a minimum, Franchisee must address the following specific performance requirements in the transition plan and accomplish them according to deadlines specified in the plan:

- Coordination of meetings with the outgoing franchisee and SWDD, if necessary.
- Schedule of transition meetings with SWDD staff leading up to the Commencement Date.
- Schedule for and obtaining any additional necessary labor, vehicles, equipment, and containers.
- Schedule for removal and replacement of containers utilized by outgoing franchisee for Commercial Collection Service.
- Schedule for providing a vehicle and equipment list and route summary to the Contract Manager and ensuring that all vehicles are street legal (registered, insured, licensed, and tagged) prior to the Commencement Date.
- Schedule for delivering SWDD-provided information brochure to all customers (existing & new) prior to the Commencement Date.



- Schedule for conducting dry-runs of collection routes.
- Schedule for testing/calibrating truck-mounted Radio Frequency Identification (RFID) readers.
- Coordination with SWDD to ensure transmission of asset management database and other associated information for Roll Cart management.
- Schedule for onsite training for SWDD staff on the use of web-based asset management and service verification software by appropriately-trained professional personnel.
- Franchisee will host a minimum of two (2) community “Town Hall” style meetings, in coordination with SWDD staff, at Commission Chambers or other approved location, that feature hands-on demonstrations showing residents how to use the new services and educating them on proper recycling methods and techniques. Franchisee’s local Public Affairs Manager will be supported by its fulltime Community Relations Staff and local management team to host the meetings and develop outreach methods and collateral material. All education and outreach materials and information shall be reviewed and approved by SWDD prior to dissemination.
- Franchisee will develop a multi-faceted media and communications plan featuring SWDD-approved mailers, community events, Internet updates, media outreach, and phone calls to provide information about new services to customers. All education and outreach materials and information shall be reviewed and approved by SWDD prior to dissemination.
- Franchisee will prepare and distribute SWDD-approved educational and outreach materials to all County residents including service days, proper recycling methods, and the local phone number for Franchisee’s customer service center.
- Franchisee will provide direct access to professional staff to address questions and concerns. Residents will:
  - Receive comprehensive information on Roll Carts, including size options.
  - Have full access to a County-based team of transition experts who can answer questions and assist residents on choosing the Roll Cart size that best meets their needs.
  - Have access to a customer service professional before, during, and after business hours who can answer questions about Roll Carts or transition, process requests for a different Roll Cart size, schedule deliveries, and provide answers on proper recycling.

## 5.2. Solid Waste Service Contracts

- 5.2.1. Any and all contracts that provide Solid Waste collection service and/or related Solid Waste services between the previous franchisees and Residential or Commercial Customers within the unincorporated areas of the County shall be null and void as of 11:59 p.m. on September 30, 2015.
- 5.2.2. The term of any contract for Solid Waste collection shall not extend past the term of this Agreement.

## 5.3. Transition Prior to Expiration of Collection Services

- 5.3.1. Should SWDD choose not to renew this Agreement or should no renewal options remain, SWDD anticipates awarding a new agreement at least six (6) months prior to the expiration of this Agreement or any subsequent renewals. In the event a new agreement has not been awarded within such time frame, Franchisee agrees to provide service to SWDD for an additional ninety (90) Day period beyond the expiration of the Agreement at the then established service rates, provided SWDD requests said services in writing pursuant to Article 20.17, at such time.
- 5.3.2. At the expiration of this Agreement, Franchisee shall work with SWDD and the newly selected franchisee to ensure a smooth transition period with no interruption of service, including, but not limited to, attending coordination meetings with SWDD and newly selected franchisee,

coordination and cooperation in delivery and removal of commercial containers, and providing service information, as requested.

- 5.3.3. SWDD reserves the right to withhold payment to Franchisee for the final month of service until Franchisee has complied with all requirements of this Article.

## **ARTICLE 6. RESIDENTIAL SERVICE**

### **6.1. Residential Collection Service**

- 6.1.1. Residential Customers may initiate, terminate, or change subscription service by contacting Franchisee. The Residential Collection Service shall start, terminate, or change on the next scheduled collection date from the date requested by the Residential Customer.
- 6.1.2. Solid Waste shall be collected once per week in Franchisee-provided Roll Carts. See Article 7.2 for further details regarding Roll Carts.
- 6.1.3. Residents will be instructed to place all materials inside of Roll Carts. During the first ninety (90) Days following Commencement Date, Franchisee shall collect all Solid Waste placed curbside by Residential Customers including bags left outside of the Roll Cart. Thereafter, Franchisee shall collect Solid Waste left outside of the Roll Cart one (1) time and leave a notice instructing the resident that any materials left outside of the Roll Cart in the future will not be collected and providing instructions for requesting an additional cart if needed. Following notification, should Franchisee not collect bags left outside of the Roll Cart, a non-collection notice shall be placed on the bag or Roll Cart explaining why collection was not made. However, Franchisee acknowledges that higher generation of waste during holiday weeks may result in occasional bags left outside of the Roll Cart. During Holiday weeks Franchisee shall collect all bags left outside of the Roll Cart.
- 6.1.4. Franchisee shall collect all Yard Trash placed curbside by Residential Customers for collection according to the provisions herein. Residential Customers are to containerize, bundle, or neatly stack Yard Trash and place it curbside. If the Yard Trash is placed by the Residential Customer in a bag, Franchisee is required to empty bags of Yard Waste collected on the route into the residential collection vehicles, return the bag to the customer, but may leave a notice instructing the resident that Yard Waste should not be placed in a bag. Yard Trash may not exceed four (4) feet in length, three (3) inches in diameter, and must not exceed fifty (50) pounds in weight each. Yard Trash is limited to four (4) cubic yards per week per customer. Natural Christmas trees (free from any lights, ornaments, etc.) will be collected as Yard Trash, provided that the sections of the tree are not more than eight (8) feet in length or more than fifty (50) pounds.
- 6.1.5. Franchisee shall provide collection for Bulk Trash within four (4) Days after receiving a customer request to collect such materials. There shall be no additional charge to the customer or SWDD for collecting Bulk Trash placed curbside.

### **6.2. Residential Recyclables Collection Service**

- 6.2.1. Service for Residential Recyclables Collection shall be only initiated, terminated, or changed by SWDD. Franchisee will not initiate, terminate, or change service to the customer without written notification from SWDD. Residential Recyclables Collection Service shall initiate, terminate, or change on the next scheduled collection day from the date notified by SWDD.
- 6.2.2. Franchisee shall collect Program Recyclables from Residential Units and Multi-Family Units according to the provision herein. Program Recyclables shall be collected once per week. Collection of Program Recyclables for Residential Customers shall occur on the same day as collection of Solid Waste or Yard Trash.
- 6.2.2.1. Franchisee shall provide Roll Carts for Program Recyclables for Residential Customers. See Article 7.2 for further details regarding Roll Carts.
- 6.2.2.2. For Residential or Multi-Family Units choosing commercial-style collection, collection containers shall be placed at locations that are mutually acceptable to Franchisee and

customer. Franchisee shall provide Roll Carts, dumpsters, or roll-offs, as needed and appropriate.

6.2.3. The types of materials included for collection as Program Recyclables may be modified upon mutual agreement between SWDD and Franchisee. Such modification shall be at no additional cost to SWDD unless Franchisee can document that the addition of such items substantially impacts the cost of providing service. A list of materials accepted as Program Recyclables is provided in Exhibit 3.

6.3. Backdoor Collection

Franchisee shall, at no additional cost to the Residential Customer or SWDD, provide backdoor collection of Solid Waste and Recyclables to Residential Customers who are unable to deliver their Solid Waste or Recyclables to the curb. Franchisee shall commence backdoor collection within one (1) week of notification, in the form of documentation by a medical practitioner, by a Residential Customer.

6.4. Procedures for Non-Collection

6.4.1. In the event that the Solid Waste placed out for collection does not comply with set out procedures pursuant to this Agreement, with the exception of bags outside of a Roll Cart pursuant to Article 6.1.3., Franchisee is not required to collect it. If Franchisee elects to not collect such materials, a non-collection notice shall be placed on the container or non-conforming materials explaining why collection was not made and Franchisee shall notify SWDD pursuant to Article 12.2.2.

6.4.2. In the event that Program Recyclables are contaminated through commingling with materials that are not a Program Recyclable, Franchisee shall, if practical, collect the Program Recyclables and leave material that is not Program Recyclables in the Recycling Roll Cart along with a non-collection notice explaining why all materials were not collected. However, in the event that the Program Recyclables and materials that are not Program Recyclables are commingled to the extent that they cannot easily be separated by Franchisee, or the nature of the non-Program Recyclables render the entire Recycling Roll Cart contaminated, Franchisee shall leave all the materials along with a non-collection notice explaining why collection was not made.

6.4.3. Franchisee shall develop and produce non-collection notices for solid waste and recycling. The design and content of non-collection notices are subject to approval by SWDD.

6.4.4. As further specified in Article 12.2, within one (1) Day of occurrence, Franchisee shall electronically notify the Contract Manger regarding all non-collection events.

6.5. Hours and Holidays

6.5.1. Residential Collection Service and Residential Recyclables Collection Service shall take place between 6:00 a.m. and 6:00 p.m. Monday through Friday.

6.5.2. The SWDD Facility is closed on Independence Day, Labor Day, Thanksgiving, Christmas, and New Year's Day. In the event Residential Collection Service or Residential Recyclables Collection Service normal collection day falls on a Holiday, Franchisee will provide make-up collection as directed by SWDD.

6.5.3. All collection services following a Holiday shall be one (1) Day after the normally scheduled collection day for the remainder of the week. Saturday collection is required for Holiday make-up collection.

6.6. Provision for Universal Residential Collection Service

Should SWDD decide to implement universal Residential Collection Service in the Urban Service Area (USA) of the Solid Waste Franchise Area along with any participating municipality, Franchisee shall honor the proposed universal rates provided in Exhibit 1 with a Consumer Price Index (CPI) adjustment. The CPI to be used is defined in Exhibit 4. If the change to universal Residential Collection Service is made between October 1, 2015 and September 30, 2018, seventy-five percent (75%) of the percentage change in CPI between the month of April in the prior year and the month of April in the current year shall be added to

the proposed universal rate. If the change to universal Residential Collection service is made on or after October 1, 2018, one hundred percent (100%) of the percentage change in CPI between the month of April in the prior year and the month of April in the current year shall be added to the proposed universal rate. Universal rates shall be subject to rate adjustments pursuant to Article 16.1.2. following the first year of implementation. Upon implementation of universal Residential Collection Service, the County shall assume billing residents receiving universal service through a non-ad valorem assessment. If other than payment by check, ACH or EFT, payment method for universal Residential Collection Service to the Franchisee to be determined upon mutual agreement between the County and the Franchisee. Franchisee shall be responsible for purchasing and distributing Roll Carts to residents who are not already receiving subscription service and require a Solid Waste Roll Cart.

## **ARTICLE 7. CONTAINERS**

### **7.1. Customer-Provided Containers**

Franchisee shall replace personal containers used for Yard Trash of a Residential Customer within three (3) business days after being notified by SWDD or customer that Franchisee or its employees damaged the customer's container. Franchisee shall provide a replacement container (as applicable) that is similar in style, material, quality, and capacity to the customer's original container. Franchisee is not responsible for a replacement container if it can satisfactorily prove to the Contract Manager that Franchisee or its employees did not damage the Customer's container.

### **7.2. Roll Carts**

7.2.1. Prior to the Commencement Date and in accordance with transition plan specified in Article 5, Franchisee shall provide Solid Waste Roll Carts for all Residential Customers within the Solid Waste Franchise Area and Recycling Roll Carts for all residences and Multi-Family Units within the Recycling Franchise Area. Roll Carts must meet the technical specifications provided in Exhibit 5. SWDD reserves the right, at its sole discretion, to designate the number, size, and/or frequency of collection of Roll Carts provided to Multi-Family Units.

7.2.2. SWDD will inform residents of options for repurposing or recycling their Recycling Bins. Recycling options will include delivery of Recycling Bins to a SWDD Customer Convenience Center or placing Recycling Bins curbside during the first week of carted collection service. If placed curbside, Franchisee shall collect and deliver Recycling Bins to the SWDD Facility.

7.2.3. Ownership of Roll Carts provided for Residential Collection Service or Residential Recyclables Collection Service shall rest with Franchisee until expiration or termination of this Agreement, at which point ownership shall rest with SWDD.

7.2.4. The standard program-size Roll Carts include a ninety-six (96) gallon cart for Solid Waste and a sixty-four (64) gallon cart for Program Recyclables issued to each residential customer. However, 96-, 64-, and 35-gallon Solid Waste and Recycling Roll Cart sizes will be made available for customers that request alternative sizes.

7.2.5. Following the first ninety (90) days of service, upon request, Franchisee shall exchange a residential customer's Roll Cart with an alternatively-sized Roll Cart. Franchisee shall provide one (1) Roll Cart exchange for Solid Waste and Recyclables per customer at no charge to the customer or SWDD. Should a residential customer request additional exchanges, Franchisee may charge the residential customer no more than thirty dollars (\$30) per Roll Cart that is exchanged. Franchisee shall track and report exchanges as specified in Article 12.2.2

7.2.6. If a customer generates large quantities of Solid Waste, the customer may request one (1) additional Roll Cart to accommodate the extra materials. Franchisee may charge a one-time fee of no more than sixty dollars (\$60) per additional Roll Cart delivered. There shall be no charge for collection service of additional Roll Carts for Solid Waste.

- 7.2.7. If a customer generates large quantities of Program Recyclables, the customer may request an additional Roll Cart to accommodate the extra materials. There shall be no charge for the delivery or collection service for additional Roll Carts for Recyclables.
- 7.2.8. Franchisee shall repair or replace a Roll Cart within three (3) business days of receiving notice from SWDD or customer of the need for repair, or if identified unserviceable by Franchisee.
- 7.2.9. All new or replacement Roll Carts shall be delivered to the customers within three (3) Days from the date of request with a SWDD-provided new customer information packet attached.

## **ARTICLE 8. COMMERCIAL COLLECTION SERVICE**

### **8.1. Service Requests**

Commercial Customers shall initiate, terminate, or change service directly by a written contract with Franchisee. Service shall start, terminate, or change on the next scheduled collection day from the date requested.

### **8.2. Commercial Collection Service**

8.2.1. Franchisee shall provide Commercial Collection Service in the Solid Waste Franchise Area.

8.2.2. Collection of Solid Waste shall be provided at least once per week. Commercial Collection Service shall be provided frequently enough to prevent the creation of a public nuisance or a threat to the public health, safety, or welfare. If necessary, the Contract Manager or their designee shall assist Franchisee and Customer in confirming that the size of the collection container and frequency of collection service are sufficient to ensure that Solid Waste is not routinely placed or stored outside of the collection container.

8.2.3. Collection containers shall be placed at locations that are mutually acceptable to Franchisee and Commercial Customer, and in compliance with County ordinance. If a dispute should arise between a Commercial Customer and Franchisee regarding the location of a collection container, the Contract Manager shall consult with the County's Community Development Department and designate the location.

8.2.4. Franchisee shall purchase, equip, and maintain Ultra High Frequency (UHF) Radio Frequency Identification (RFID) tags on all commercial containers serviced. Technical specifications for the required RFID tags are provided in Exhibit 6.

### **8.3. Commercial Recycling**

8.3.1. Franchisee shall encourage all persons utilizing a Commercial Property to recycle and shall provide for collection of Recyclables. The types of Recyclables collected from Commercial Customers shall, at a minimum, include the Program Recyclables listed in Exhibit 3.

8.3.2. Frequency of collection for Recyclables may be provided as agreed upon by the Commercial Customer and Franchisee.

8.3.3. The rate charged by Franchisee for collection of commercial Recyclables shall be less than the collection rate charged for servicing a Solid Waste container of equal size and frequency.

### **8.4. Hours and Holidays**

8.4.1. Commercial Collection Service shall take place between 6:00 a.m. and 6:00 p.m. Monday through Sunday. Franchisee may begin collecting Solid Waste from Commercial Customers with frontend load vehicles at 4:00 a.m. subject to the approval of the Contract Manager. Should the Franchisee receive any complaints from residents that live in close proximity to the commercial routes and are adversely affected by early morning collection activity, the Franchisee shall reroute the affected area to begin collection time in said area to 6:00 a.m. All rerouting is subject to the approval of the Contract Manager.

8.4.2. Franchisee shall not be required to provide Commercial Collection Service on Holidays.

## **ARTICLE 9. COMMUNITY CLEANUPS**

Franchisee shall perform four (4) community cleanups within the Franchise Area each calendar year. Community cleanups are typically a single day event on a weekend. The times and locations of the community cleanups shall be selected by the Contract Manager after coordinating with Franchisee. Franchisee shall provide appropriate containers during each community cleanup at no additional cost to SWDD or to the sponsor. During the community cleanup, Franchisee shall collect only Solid Waste, Yard Trash, Program Recyclables, and Bulk Trash. Franchisee shall transport these materials to the SWDD Facility for disposal at no additional cost to Franchisee.

In addition, Franchisee shall assist SWDD with at least two (2) Household Hazardous Waste and e-waste collection event within the Franchise Area each calendar. HHW and e-waste collection events are typically a single day event on a weekend scheduled from 9:00 a.m. to 3:00 p.m. Franchisee shall provide up to twenty (20) personnel and, as required, pallets, shrink wrap, fork-lift, gaylord boxes, containers, and transport truck. Franchisee personnel shall receive HHW and e-waste from residents, properly containerize it, load it, and deliver it to the landfill. The County will accept properly prepared HHW and e-waste at no cost to Franchisee.

## **ARTICLE 10. DESIGNATED FACILITY**

### **10.1. Solid Waste and Program Recyclables**

10.1.1. Franchisee shall deliver all Solid Waste (including Bulk Trash), Recyclables, and Yard Trash collected pursuant to this Agreement to the Designated Facility, unless otherwise approved by the Contract Manager in writing.

Solid Waste and Recyclables

SWDD Facility  
1325 74<sup>th</sup> Avenue SW  
Vero Beach, Florida 32968

Yard Trash

Indian River BioEnergy Center  
925 74th Avenue SW  
Vero Beach, Florida 32968

10.1.2. SWDD reserves the right to change the Designated Facility during the term of the Agreement. Should SWDD do so, collection rates may be adjusted according to the average change in distance driven by Franchisee. Supporting information justifying the need for an adjustment will be required.

10.1.3. Solid Waste collected from Residential Customers in the Solid Waste Franchise Area according to the terms of this Agreement may be disposed of at the Designated Facility at no cost to Franchisee.

10.1.4. Solid Waste collected from Commercial Customers in the Solid Waste Franchise Area pursuant to this Agreement, may be disposed of at no additional cost to Franchisee, with the exception of C&D. Franchisee shall pay disposal fees for C&D delivered in roll-off containers, or any roll-off containers where C&D is mixed with other types of Solid Waste, and is responsible for invoicing and collecting payment for such disposal costs from the Commercial Customer.

10.1.5. Franchisee shall pay the applicable fees at the Designated Facility for the disposal of C&D collected in containers less than fifteen cubic yards (<15 CY) in size, or any loads where C&D is mixed with other types of Solid Waste, and all other Solid Waste collected outside the terms of this Agreement and is responsible for invoicing and collecting payment for such disposal costs.

### **10.2. Out-of-County Solid Waste**

Franchisee shall not transport any Solid Waste or other material originating from outside of the County to the Designated Facility without the prior written authorization of SWDD. Any out-of-County Solid Waste or Recyclables approved by SWDD for disposal or processing in the Designated Facility shall be subject to appropriate fees and charges, as determined by the Board by resolution.

**ARTICLE 11. ADDITIONAL FRANCHISEE RESPONSIBILITIES**

**11.1. Restrictions on Collection of Mixed Loads**

- 11.1.1. Franchisee shall collect Solid Waste, Yard Trash, Bulk Trash and Program Recyclables generated in the County separate from any materials generated outside of the County.
- 11.1.2. Franchisee shall collect Solid Waste generated by Residential Customers separate from that generated by Commercial Customers.
- 11.1.3. Franchisee shall not mix or comingle Recyclables with Solid Waste. Franchisee shall collect Program Recyclables generated by Residential and Multi-Family Units separate from Recyclables from Commercial Customers. Any Recyclables from Commercial Customers that are comingled with Recyclables from Residential or Multi-Family Units shall become the property of SWDD and delivered to the Designated Facility.
- 11.1.4. Franchisee shall collect Solid Waste, Yard Trash, and Program Recyclables separate from each other, and shall not combine loads of different material types. Franchisee shall be responsible for all disposal costs associated with loads of mixed materials.

**11.2. Future Recycling Initiatives**

To assist the County in meeting the Florida State seventy-five percent (75%) recycling goal by 2020, Franchisee shall negotiate in good faith on the expansion of future recycling initiatives developed by SWDD such as residential, multi-family and commercial food waste collection programs. Any such changes shall be mutually agreed upon by both parties and approved by the SWDD Board as an amendment to the Agreement. Nothing in this Agreement shall preclude SWDD from allowing a business to source separate and transport food waste or other material for the purpose of diverting it from disposal.

**11.3. Routes and Schedules**

- 11.3.1. Franchisee shall provide routes and map information in GIS-compatible format to the Contract Manager at least thirty (30) Days prior to the Commencement Date and annually thereafter. All updates during the term of this Agreement shall be provided in a GIS-compatible format.
- 11.3.2. Franchisee shall not change the scheduled collection days until Franchisee receives the Contract Manager's prior written authorization. The Contract Manager's approval of such changes shall not be unreasonably withheld. In the event that the Contract Manager authorizes a change in schedule that alters the collection day for any Residential Customer, Franchisee shall, at its expense, notify each affected Residential Customer by mail or other manner approved by the Contract Manager not less than one (1) week prior to the change.

**11.4. Manner of Collection**

- 11.4.1. All containers and Roll Carts shall be completely emptied and placed back in an upright position at the point where collected. Containers with an unattached lid shall be completely emptied and placed back in an upright or inverted position with the lid set on top, or placed beside the



container, at the point where collected. Roll Carts shall be placed with the lid in the closed position.

- 11.4.2. Franchisee shall provide all Residential Collection Services with as little noise and disturbance as possible.
- 11.4.3. No trespassing by Franchisee's employees will be permitted.
- 11.4.4. No Franchisee employee shall remove or tamper with any property not placed for collection.
- 11.4.5. All collection vehicles shall remain on the right-hand side of the road when providing Residential Collection Service and at no time shall collection crews cross to the left-hand side of the road to retrieve containers, Roll Carts, or materials that have been set out for collection.
- 11.4.6. Franchisee's vehicles shall not unduly interfere with vehicular or pedestrian traffic. Vehicles shall not be left on the street unattended.

#### 11.5. Protection of Private and Public Property

- 11.5.1. Franchisee acknowledges that collection points on rights-of-way are frequently co-located with other utility easements. Therefore, particular attention shall be given to the location of water meters, transformers, guy wires, utility poles, and irrigation structures. Authorization to use the easement does not abrogate Franchisee's responsibility to exercise caution in relationship to the property of other authorized users.
- 11.5.2. Franchisee shall take care to prevent damage to all public and private property while conducting services pursuant to this Agreement, including, but not limited to, buildings, monuments, markers or fences, vehicles, pipes and underground structures, storm water inlet covers, gutters, curbs, public streets, trees and tree canopies, flowers, shrubs, and other plantings. SWDD acknowledges this does not preclude normal wear and tear of streets resulting from normal use by Franchisee.
- 11.5.3. Franchisee shall immediately notify the Contract Manager of any personal injury or damage to public or private property caused by Franchisee during the provision of collection services. Wherever such property is damaged due to the activities of Franchisee, it shall be immediately restored to its original condition by Franchisee at Franchisee's expense. In addition, if on County/SWDD property, Franchisee shall submit an accident/investigation report within forty-eight (48) hours to Contract Manager and the Indian River County Risk Manager.
- 11.5.4. In case of failure on the part of Franchisee to restore such property or make good such damage or injury, SWDD may, upon forty-eight (48) hours written notice to Franchisee, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary and to bill the cost to Franchisee. If any damage caused by Franchisee impacts the safety, health and welfare of the County's citizens, the repairs will be arranged by SWDD and billed to Franchisee based on the actual cost incurred to repair the said damages, plus ten percent (10%) to account for SWDD's administrative costs.

#### 11.6. Spillage and Littering

- 11.6.1. Franchisee shall not litter or cause any spillage to occur upon the premises or the right-of-way wherein the collection and transport of materials shall occur. During transportation, all collected materials shall be contained, tied, or enclosed to prevent leaking, spilling and blowing.
- 11.6.2. In the event of any confirmed spillage/leakage/blowing from a Franchisee's vehicle, Franchisee shall promptly, at least within twenty-four (24) hours, clean up all spillage/leakage/blowing at no cost to SWDD or the County. Franchisee is responsible to clean such spills, leaks, or blown materials to the satisfaction of the Contract Manager up to, and including, resealing or resurfacing depending on the severity of the damage. If Franchisee can satisfactorily prove to the Contract



Manager that the responsibility for the spillage/leakage/blowing belongs to a third party, then Franchisee will not be responsible for the cleanup.

11.7. Collection Plan

Franchisee shall maintain a collection plan, initially developed during the transition prior to Commencement Date, describing in detail how Franchisee will provide collection services in compliance with the requirements in the Agreement. The collection plan and all revisions to the plan are subject to the Contract Manager's prior written approval. Any change to the collection plan shall be submitted to the Contract Manager for approval.

11.8. Permits and Licenses

Franchisee shall obtain, at its own expense, all permits and licenses required by Applicable Law and maintain same in full force and effect. Any revocation of Franchisee's licenses or permits shall be reported to SWDD within three (3) Days.

11.9. Relationship with SWDD

Franchisee shall cooperate with SWDD in every reasonable way to facilitate the successful completion of the activities contemplated in this Agreement. Franchisee shall assign a qualified person or persons as a point of contact to be in charge of Franchisee's operations within the County. SWDD shall have direct access to Franchisee's point of contact as designated by Franchisee. SWDD's point of contact shall be the Contract Manager. Alternates may be designated by either party upon written notification.

11.10. Personnel

11.10.1. Within three (3) Days following the Effective Date, Franchisee shall provide the Contract Manager with a written list containing the names, addresses, emails, and telephone numbers of Franchisee's operations manager and other key personnel, and the telephone numbers that are to be used to contact Franchisee in the event of an emergency.

11.10.2. Franchisee shall use competent, qualified, sober, drug-free personnel to provide collection services pursuant to this Agreement. Franchisee shall only utilize personnel in providing services pursuant to this Agreement that have passed criminal background checks. Franchisee shall devote sufficient personnel, time, and attention to its operations under this Agreement to ensure that its performance will be satisfactory to SWDD.

11.10.3. Franchisee shall furnish each employee with an appropriate means of identifying him or her as an employee of Franchisee. At a minimum each Franchisee employee shall have a uniform with a nametag and company logo. Franchisee's employees shall wear the identification at all times while on duty.

11.10.4. All of Franchisee's personnel shall maintain a courteous and respectful attitude at all times. Franchisee shall instruct its employees to avoid loud or profane language at all times during the performance of their duties under this Agreement. Franchisee's employees shall not conduct themselves in a negligent, disorderly, or dishonest manner.

11.10.5. Franchisee shall comply with all Applicable Law relating to wages, hours, overtime, disability, and all other matters relating to the employment and protection of employees, now or hereafter in effect.

11.10.6. SWDD reserves the right to disapprove and request removal of any Franchisee personnel assigned to SWDD's work. Such disapproval or request shall be for reasonable cause only and shall be addressed in writing to Franchisee. Notwithstanding the foregoing, Franchisee shall not be required to take any action with regard to Franchisee's personnel that would violate any Applicable Law.

11.11. Employee Training and Licenses

11.11.1. All of Franchisee's employees shall be qualified and appropriately trained for the tasks assigned to them. Franchisee shall provide refresher courses and additional training to its employees, as

needed, to ensure compliance with the requirements of this Agreement and all Applicable Law. SWDD has the right to review Franchisee's training records.

11.11.2. At all times when operating vehicles or equipment pursuant to this Agreement, Franchisee's employees shall carry a valid Florida driver's license for the type of vehicle or equipment being operated.

11.12. Office Requirements

11.12.1. Franchisee shall maintain an office in the County to remain open from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday, except Holidays.

11.12.2. Franchisee shall maintain a toll-free telephone number where service inquiries and complaints can be received by Franchisee. Franchisee shall use either a telephone answering service or answering machine to receive service inquiries and complaints during those times when the office is closed. During office hours, these services must be monitored regularly, so that Franchisee can respond to any message within sixty (60) minutes. The response, at a minimum, shall include a reply to the inquiry and a plan of action to address or fix the complaint. During non-office hours, messages shall be answered no later than noon the following business Day.

11.12.3. Franchisee's office shall be equipped with adequate and appropriate personnel and equipment to receive, document, and respond to inquiries, issues, and complaints in a timely manner (no longer than twenty-four (24) hours). Franchisee's office staff shall be familiar with SWDD and Franchisee's obligations under this Agreement.

11.12.4. Franchisee shall establish a process, subject to the Contract Manager's approval, for receiving and handling emergency calls, both during and after normal operating hours.

11.13. Customer Service Standards

11.13.1. Franchisee shall be responsible for providing the highest quality service to all residential and commercial customers under the provisions of this Agreement.

11.13.2. If SWDD or customer notifies Franchisee before 12:00 p.m. of a missed collection Monday through Friday, Franchisee shall return to the customer's premises before 6:00 p.m. the same Day of the notification and collect all of the Solid Waste or Recyclables that have been set out for collection. If Franchisee is notified after 12:00 p.m. Monday through Friday of a missed collection, collection shall be made by 12:00 p.m. the next Day following notification. Notifications received Saturday or Sunday shall be corrected before 12:00 p.m. on Monday. Any missed collections that are not remedied as outlined above shall be considered a complaint.

11.13.3. If SWDD receives a complaint regarding Franchisee's service under this Agreement, the complaint shall be immediately forwarded to Franchisee by telephone or electronic communication. Franchisee shall resolve all complaints as expeditiously as possible and shall take whatever steps are necessary to remedy the cause of a complaint within twenty-four (24) hours after receiving a complaint from SWDD.

11.13.4. Upon resolution of the complaint, Franchisee shall notify SWDD within twenty-four (24) hours, by telephone or electronic communication, of the action taken to resolve the complaint.

11.13.5. Franchisee shall also notify the Contract Manager regarding any disputes that have not been resolved within twenty-four (24) hours after receiving the complaint. Franchisee may request, and the Contract Manager may grant, additional time to remedy a complaint when necessary. If a dispute is not resolved to a Residential or Commercial Customer's satisfaction, SWDD shall have the authority to determine how the dispute will be resolved.

11.13.6. Franchisee shall keep a written record of all complaints it receives regarding Franchisee's service under this Agreement. Franchisee shall use a standard form to record the pertinent facts regarding each complaint and how it was resolved. The form shall identify source of the complaint (customer name, customer type - residential or commercial, and contact information), the time and date when a complaint was received, when Franchisee responded to the complaint, and the date and

time when the complaint was resolved. Franchisee's records and forms shall be kept up to date and a record of all complaints shall be submitted monthly as outlined in Article 12.2.2. In addition, Franchisee's records and forms shall be maintained throughout the term of this Agreement. Copies of the complaints and forms shall be kept at Franchisee's office in the County and shall be available for inspection by the Contract Manager during normal business hours.

#### 11.14. Vehicle and Collection Equipment

##### 11.14.1. General Requirements

- 11.14.1.1. Franchisee shall maintain a dedicated fleet of collection vehicles designated for Indian River County to fulfill this Agreement. No single frontline vehicle shall exceed the maximum age of ten (10) years. SWDD reserves the right, at its discretion, to require a vehicle be taken out of service for habitual maintenance issues.
- 11.14.1.2. Franchisee will have a compressed natural gas (CNG) fuel station constructed and operational in Indian River County by October 1, 2017.
- 11.14.1.3. SWDD reserves the right to add antennae and computer device to collection vehicles to record Automatic Meter Reading (AMR) technology output signal from IRC utilities water meter devices if it chooses to use this technology. The device would require power source and allow some sort of magnetic antennae. All AMR equipment shall not interfere with franchisee equipment or job function. SWDD releases franchisee from all liability related to carrying the device.
- 11.14.1.4. Franchisee shall purchase and/or lease, maintain, and repair all of the vehicles and equipment necessary to comply with the requirements of this Agreement. Franchisee's vehicles and equipment shall be compatible (in size and weight) with, and appropriate for, the areas where such vehicles and equipment are utilized. If Franchisee must use a substandard road (as determined by the County) to obtain access to a customer, Franchisee shall use lightweight and/or smaller vehicles and equipment when providing service on such roads.
- 11.14.1.5. All of Franchisee'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.
- 11.14.1.6. All collection vehicles shall be painted a uniform color.
- 11.14.1.7. SWDD reserves the right to conduct periodic inspections of operations, vehicles, and equipment to ensure compliance with federal and state commercial motor vehicle statutes, as well as the above requirements.
- 11.14.1.8. All vehicles used to provide Collection Service under this Agreement shall be equipped at all times with: (a) all safety supplies, equipment, and first aid supplies required by Applicable Laws; (b) a fire extinguisher; (c) a heavy-duty broom, a rake, and a large dustpan; (d) a spill response kit; (e) an audible back-up warning device; and (f) back-up cameras. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from Franchisee's collection vehicles.
- 11.14.1.9. Franchisee shall have sufficient reserve vehicles and equipment available to complete daily routes. The use of reserve vehicles and equipment shall include, but not be limited to, occasions when frontline vehicles and equipment are out of service, or when unanticipated delays will prevent frontline vehicles and equipment from completing the collection route(s) within the established hours of collection.
- 11.14.1.10. The reserve vehicles and equipment shall be in service within two (2) hours of any breakdown or delay of the frontline collection vehicle. The reserve vehicles and equipment shall be similar in size and capacity to the vehicles and equipment being replaced.

#### 11.14.2. Maintenance and Cleaning

11.14.2.1. Franchisee shall monitor, maintain and repair its collection vehicles and equipment, at a minimum, in compliance with the manufacturer's recommendations and Applicable Law. Oil/hydraulic systems and waterproof seals/enclosures shall be kept in good condition at all times to prevent spills and leaks.

11.14.2.2. Franchisee shall keep all collection vehicles and equipment cleaned. All collection vehicles used for the collection of Solid Waste shall be washed thoroughly and sanitized with a suitable disinfectant and deodorant at least once each week, unless the Contract Manager approves an alternate cleaning schedule. Other collection vehicles shall be cleaned and washed, as necessary, to minimize the potential for odors and nuisance conditions.

#### 11.14.3. Vehicle Identification

11.14.3.1. Franchisee's vehicles shall clearly display Franchisee's logo, name, and telephone number printed in letters not less than four inches (4") on each side of the vehicle.

11.14.3.2. Franchisee vehicles shall be numbered with numbers not less than four inches (4") high on each side of the vehicle. Franchisee shall keep a record of the vehicle to which each number is assigned.

11.14.3.3. Franchisee shall display the SWDD theme and logo on the sides and rear of every vehicle newly put into service in the County to collect Solid Waste or Recyclables pursuant to this Agreement. The signs shall be appropriately sized, as mutually agreed. SWDD will provide the approved artwork for the Franchisee's vehicles.

#### 11.15. Service Verification System

11.15.1. Franchisee will provide ENSPIRE<sup>SM</sup>, a proprietary software package and web-based tracking program, to SWDD at no cost.

11.15.2. Franchisee shall provide and maintain a service verification system with web-based access. Service verification software shall be capable of providing reports online that can be downloaded in PDF and Excel formats. Franchisee is responsible for all associated software costs and maintenance.

11.15.3. Service verification software shall be capable of providing map-based location visibility of frontline and reserve collection vehicles operated in real time, and shall be able to generate reports as needed based on Roll Cart and container service activity, including, but not limited to, collection and non-collection events and set-out rates. Variables and fields used to supply and manage this information shall include, but not be limited to:

- a. Roll Cart or container type (garbage or recycling)
- b. Generator type (residential, multi-family, or commercial)
- c. Customer ID and address
- d. Collection event date, time, and latitude/longitude coordinates
- e. RFID tag number
- f. Serial number
- g. Cart size
- h. Route and truck information

11.15.4. Service verification software shall include an asset management database through which Franchisee shall be responsible for reporting and tracking the movement of all Roll Carts, including deliveries, removals, exchanges, repairs, warranty recovery, and any other information necessary to manage cart assets, subject to SWDD approval. All database adjustments must be made within forty-eight (48) hours of physical inventory exchange and completion of work order. All software used shall have the ability to generate reports that can be converted to Excel or PDF based on Roll

Cart activity including maintenance and inventory reports. Data fields shall include, but not be limited to:

- a. Work order number, date, and status
- b. Roll Cart type (garbage or recycling)
- c. Customer ID and address
- d. Container serial numbers, new and old if replacement is required
- e. RFID tag numbers, new and old if replacement is required
- f. Serial number
- g. Cart size
- h. Recovery and delivery latitude/longitude coordinates
- i. Route information

## **ARTICLE 12. RECORD KEEPING AND REPORTING**

### **12.1. Record Keeping**

Franchisee shall maintain books, records, documents, time and cost accounts, and other evidence directly related to its provision or performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles during the time of the Agreement and up to one (1) year thereafter. SWDD shall have the right to perform audits of Franchisee's records at SWDD's expense, whenever SWDD deems it necessary.

### **12.2. Reporting**

**12.2.1. Daily Report:** Within one (1) Day of occurrence, Franchisee shall electronically notify the Contract Manager of any of the events listed below, in a format approved by the Contract Manager, which may include use of the service verification system reports, if applicable. If no such events occur, no notification is necessary.

- a. Non-collection as specified in Article 6.4.
- b. Incidences of personal injury or property damage, including vehicular damage, to public or private property by Franchisee as specified in Article 11.5.
- c. Spillage and Littering occurrences as specified in Article 11.6

**12.2.2. Monthly Report:** Prior to the fifteenth (15) Day of each month during the term of this Agreement, Franchisee shall electronically submit a report to the Contract Manager in a format approved by the Contract Manager, which may include use of the service verification system reports. The report shall contain the following information for the previous service month:

- a. A summary of Complaints as specified in Article 11.13 with residential and commercial complaints listed separately.
- b. Roll Cart repair, replacement, exchange, and asset management reports including information as specified in Article 7.2.
- c. List of customers receiving the following services (including customer name, address, container size, frequency of collection, and billing rate):
  - Residential Collection Service
  - Commercial Collection Service (identify Multi-Family and Commercial Properties)
  - Residential Recyclables Collection Service for residents receiving Commercial Collection Service (identify Residential and Multi-Family Units)
  - Commercial Recyclables collection service (identify types of materials collected, such as segregated cardboard, paper, commingled containers, or Single Stream)
- d. Documentation and calculation of Franchise Fee linked to the previous list and identifying total monthly invoice and gross revenue received:

- Residential Collection Service
  - Commercial Collection Service
  - C&D collection service of containers less than fifteen cubic yards (<15CY) in size
- e. Documentation of all activities conducted by the Franchisee to encourage participation in recycling or subscription Residential Collection Service, including activities conducted pursuant to participation growth strategies specified in Article 14.

**12.2.3. Annual Reports:**

12.2.3.1. Recycling Participation: Franchisee shall, on or before March 31 of each year, determine the number of customers participating in the Residential Recyclables Collection Service. Customer participation may be conducted using service verification software. SWDD may request a participation report, as needed.

12.2.3.2. Vehicle List: On or before March 31 of each year, Franchisee shall provide the Contract Manager with a list of the vehicles and other collection equipment that will be used by Franchisee to provide services under this Agreement. This list shall include the license tag number and age for each vehicle. Franchisee shall revise and resubmit the list to the Contract Manager during the term of this Agreement if there are any changes to the list of vehicles or other collection equipment. The requirements of this paragraph do not apply to: (a) vehicles and other collection equipment used in the County for thirty (30) Days or less; or (b) bona fide demonstration trucks and other collection equipment.

12.2.3.3. Franchisee shall provide to SWDD annually a certified financial statement and report that includes an income statement showing the gross revenue received by Franchisee from the collection of Solid Waste and Recyclables and other services provided by Franchisee under this Agreement. The report must include the opinion of a Certified Public Accountant, who had conducted an audit of Franchisee's books and records in accordance with generally accepted accounting standards which include tests and other necessary procedures, that the financial statements are fairly presented in all material aspects and in conformity with generally accepted accounting procedures. The report also must include the Certified Public Accountant opinion that Franchisee has properly calculated and fully paid the Franchise Fees that are due and owing to SWDD pursuant to the provisions of this Agreement. The annual audit shall be delivered to SWDD by April 30 of each year. SWDD may waive the requirement of an audited financial statement upon good cause.

12.2.4. Franchisee shall provide any additional information or reports as requested by the Contract Manager to monitor this Agreement or SWDD's Solid Waste and Recyclables programs.

**ARTICLE 13. PUBLIC AWARENESS PROGRAM**

The Public Awareness Program is a public information program developed by SWDD and Franchisee to encourage the residents and businesses in the County to reduce the amount of Solid Waste generated, recycle whenever possible, and safely manage and dispose of Solid Waste that is not recycled. The program also will provide the public with information concerning Franchisee's services, fees, level of service and any proposed changes in those fees or services. At the request of the Contract Manager, Franchisee shall distribute brochures or other informational material concerning SWDD's Public Awareness Program up to two (2) times per year. These materials will be prepared by SWDD. The materials shall be delivered by Franchisee to Franchisee's customers via U.S. mail, or as approved by the Contract Manager, at no additional cost to SWDD or customer.

**ARTICLE 14. PARTICIPATION GROWTH STRATEGY**

Franchisee is committed to assist SWDD in accomplishing the Florida Legislature's goal of achieving seventy-five percent (75%) recycling by the year 2020. Efforts will be focused on increasing waste diversion with residential,

multi-family, and commercial generators. In addition, SWDD desires an increase in community usage of Residential Collection Service, thus reducing reliance on the County's convenience centers. All forms of communication regarding the County's programs including, but not limited to, electronic, written, audio, video, graphics, logos, etc., shall be reviewed and approved by the Contract Manager, or his designee, prior to disseminating or presenting publically.

**14.1. School Presentations**

Franchisee will partner with SWDD and Indian River County Schools to present programs on recycling and sustainability on-site at the schools.

**14.2. Commercial Recycling**

Franchisee will have a designated Commercial Account Manager to direct Franchisee efforts to work directly with businesses to review current container size and service frequency, and provide an analysis detailing cost savings that may be realized by adding a recycling program.

**14.3. County Park Recycling**

Franchisee shall provide and service up to seventy-five (75) bottle and can recycling containers for use at County parks at no cost to SWDD or the County. Franchisee will work in conjunction with SWDD to determine container type, container placement, implementation timeline, and educational materials to encourage use. Markings on the containers shall be approved by SWDD.

**14.4. Residential Subscribers**

14.4.1. Franchisee shall encourage new subscribers by offering an introductory rate to new Residential Customers. Residents who contact Franchisee between October 1 and October 31, 2015 to establish new subscription service will receive a ten percent (10%) discount off the first quarter invoice. Subscribers will transition to the regular rate after the introductory rate period.

14.4.2. Franchisee shall encourage universal service within individual Homeowners Association (HOA) communities by offering discounted pricing to HOAs that elect to receive one invoice for the entire community. Franchisee will send one invoice reflecting a ten percent (10%) discount to the HOA for all residential units within the community. This discount will be in force until the termination of this Agreement.

14.4.3. Franchisee shall dedicate staff resources to offer presentations to HOA and community organizations regarding the special rate programs and benefits of curbside Residential Collection Service.

**ARTICLE 15. FRANCHISE FEE**

The Franchise Fee shall pertain to Residential Collection Service, Commercial Collection Service, and non-exclusive C&D collection service. No Franchise Fee is required for Residential Recyclables Collection Service. Franchisee shall remit a Franchise Fee in the amount of six percent (6%) of gross revenues collected in the immediately preceding month pursuant to the Franchise granted herein to SWDD, by check, on or before the fifteenth (15th) Day of each month.

Should the City of Fellsmere elect to participate in this Agreement, the Franchise Fees for Residential Collection Service, Commercial Collection Service, and non-exclusive C&D collection service provided within the municipal boundaries shall be remitted directly to the City of Fellsmere. If applicable, Franchisee shall remit a Franchise Fee in the amount of six percent (6%) of gross revenues collected in the immediately preceding month for services provided within the municipal boundaries to the City of Fellsmere, by check, on or before the fifteenth (15th) Day of each month.



## **ARTICLE 16. COMPENSATION**

### **16.1. Collection Service Rates**

16.1.1. Rates for Residential Collection Services, Residential Recyclables Collection Service, and Commercial Collection Service are provided in Exhibit 1. All rates are subject to rate adjustments set forth in Article 16.1.2. No additional fees or charges shall be billed by Franchisee unless approved by the SWDD Board.

16.1.1.1. The Residential Collection Services rate set forth in this Agreement is the total rate that may be charged by Franchisee and includes all collection costs and Franchise Fees. Franchisee shall not separately state the amount of the Franchise Fee on any bill to any Residential Customer. Franchisee may charge a discounted service rate, as provided in Article 14.4.2., to homeowner associations (HOAs) that accepts a single bill for providing subscription service to all residences in the HOA in order to incentivize Residential Collection Service.

16.1.1.2. The rates for Commercial Collection Service set forth in this Agreement include the Franchisee Fee. Pursuant to Articles 10.1.4 and 10.1.5, disposal fees for C&D or C&D mixed with Solid Waste delivered in roll-off containers are to be paid by the Franchisee based on actual tonnage and the applicable fees at the Designated Facility and passed onto the customer by the Franchisee.

### **16.1.2. Rate Adjustment**

16.1.2.1. All unit prices shall remain the same through the first year of the Franchise Agreement.

16.1.2.2. Franchisee may request an annual rate adjustment. Such request must be submitted in writing to SWDD no later than June 1 of the year in which Franchisee would like the rate adjustment to go into effect. Such rate adjustments are subject to approval by SWDD. If approved, the rate adjustment would become effective October 1 of that year.

16.1.2.3. If a rate adjustment is requested, the calculation shall be made as specified in Exhibit 4 and shall not exceed three and a half percent (3.5%) or as approved by SWDD.

16.1.2.4. All notices to customers regarding rate adjustments must be approved by SWDD prior to being issued.

### **16.1.3. Change in Law Rate Adjustment**

Franchisee may petition SWDD for an additional rate adjustment resulting from a Change in Law. Franchisee's request shall contain substantial proof and justification to support the need for the rate adjustment. SWDD may request from Franchisee such further information as may be reasonably necessary in making its determination. Within sixty (60) Days of receipt of the request and all other additional information required by SWDD, the Contract Manager shall make a determination regarding the fairness of the request and shall make a recommendation to the Board. The Board shall consider the request at a regularly scheduled meeting. If the Board approves the request, adjusted rates shall become effective upon the Board's approval. All notices to customers regarding rate adjustments must be approved by SWDD prior to being issued.

### **16.1.4. Limitation on Rate Changes**

Franchisee shall not be allowed a rate increase for any reason other than those expressly specified in this Agreement. Notwithstanding the foregoing, in the event that a federal, state, or local entity imposes a fee, charge, or tax after October 1, 2015 that applies to Franchisee's operations, such fee, charge, or tax shall be treated as a Change in Law and shall be passed through as a separate billed item after notice to, and confirmation by, SWDD.



## 16.2. Billing and Payment

### 16.2.1. Residential Collection Service

Billing of subscription Residential Collection Service shall be the sole responsibility of Franchisee. Invoicing shall be quarterly in advance of services rendered. Franchisee may discontinue service to a subscription Residential Solid Waste Customer and remove the Solid Waste Roll Cart assigned to that customer upon non-payment for two (2) consecutive months. Franchisee shall notify the Contract Manager of intention to discontinue service due to non-payment. Should a Roll Cart be removed and the Residential Customer reinstate service, the Franchisee may charge up to twenty-five dollars (\$25) for a redelivery fee.

### 16.2.2. Residential Recyclables Collection Service

SWDD shall provide Franchisee with the final count each month of customers receiving Residential Recyclables Collection Service. Franchisee shall then submit an invoice to SWDD each month for Residential Recyclables Collection Service provided during the immediately preceding month according to final customer count provided by SWDD. SWDD shall make payment to Franchisee for all undisputed amounts on or before the thirtieth (30<sup>th</sup>) Day of each calendar month or twenty (20) Days after SWDD receives the invoice, whichever occurs later, upon verification by SWDD of the invoice submitted.

### 16.2.3. Commercial Collection Service

Billing of Commercial Collection Service shall be the sole responsibility of Franchisee. Invoicing shall be monthly in advance of services rendered, with the exception of roll-off pull and disposal charges which shall be billed in arrears. Franchisee may discontinue service to a Commercial Customer upon non-payment for two (2) consecutive months. Franchisee shall notify Contract Manager of intention to discontinue service due to non-payment.

### 16.2.4. Non-Exclusive C&D Collection Service

Billing of C&D collection service in containers less than fifteen cubic yards (<15 CY) in size shall be the sole responsibility of Franchisee.

## ARTICLE 17. EMERGENCY SERVICES

### 17.1. Contingency Plan

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, resulting in the temporary closure of the Designated Facility, the Contract Manager may grant Franchisee a variance from regular routes and schedules. However, Franchisee shall resume regular collection service upon re-opening of the Designated Facility. Should the Designated Facility be in operation but the Franchisee is unable to perform regular collection service, the Franchisee may be granted a variance upon request by Franchisee in writing to the Contract Manger. Franchisee shall coordinate with SWDD to inform customers of any change in schedule as soon as possible after variance has been granted. In such cases, Franchisee shall make the County its highest priority and additional effort will be rendered to make up for missed collections. As soon as practicable after such event, Franchisee shall advise the Contract Manager when it is anticipated that normal routes and schedules can be resumed. All of the vehicles normally used by Franchisee in the County shall be dedicated to the collection of Solid Waste in the County during the emergency and any subsequent recovery periods.

### 17.2. Franchisee Unable to Provide Contracted Services

In the event that Franchisee is unable to provide adequate services during an emergency or other event involving an Uncontrollable Force, SWDD or the County may hire other contractors to provide those services. In such case, SWDD or the County, as applicable, reserves the right to charge Franchisee for all costs and expenses that SWDD or the County incur while providing the services that Franchisee is obligated to provide pursuant to the requirements of this Agreement, subject to set-off for the amounts that would have been paid to Franchisee for services.

**17.3. Rapid Recovery from Disaster**

The clean-up from some natural disasters may require that Franchisee hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster. Franchisee acknowledges that the County has entered into one or more stand-by contracts for debris removal in the event of a natural disaster. Therefore, there is no guarantee that Franchisee will be authorized to provide such clean-up services. Franchisee shall not receive any extra compensation (i.e., above the normal compensation provided in this Agreement) to recover the costs of rental equipment, additional personnel, overtime hours, or other expenses unless Franchisee has received written authorization and approval from the County Administrator or designee, prior to such work being performed, and promptly thereafter entered into a written Emergency Contract Memorandum of Understanding Supplemental to Franchise Agreement signed by the Indian River County Administrator and Franchisee. Any and all such costs shall be audited by the County or SWDD prior to payment.

**17.4. Disaster Response Plan**

Franchisee shall develop and provide to the County a written disaster preparedness and response plan (Disaster Plan) thirty (30) Days prior to the Commencement Date, to include four (4) hard copies and one electronic copy. Thereafter, Franchisee shall provide an updated Disaster Plan by June 1 of each year. This Disaster Plan shall include provisions for additional personnel and equipment, and shall establish a reasonable, verifiable basis for any charges associated therewith. SWDD shall coordinate with Franchisee if a disaster should require temporary closure, or modification to the hours of operation of the Designated Facility. Franchisee shall be familiar with local, state, or federal agency documentation requirements, including but not limited to the generality of the foregoing, rules, regulations, and guidelines applicable to the Federal Emergency Management Agency's (FEMA's) Public Assistance Program for Debris Removal, as such requirements change from time to time. Franchisee shall maintain complete and accurate records of any and all such Disaster Work and provide all required and necessary documentation for submission of cost reimbursement requests. Franchisee shall be required to submit its FEMA documentation of costs to SWDD as a condition of payment for additional personnel and equipment pursuant to this section.

**ARTICLE 18. PERFORMANCE**

**18.1. Performance Bond**

Franchisee shall furnish a performance bond as security for the performance of this Agreement with SWDD within thirty (30) Days of the Effective Date. Said performance bond will be equal to fifty percent (50%) of the previous year's invoiced service fees, or fifty percent (50%) of the anticipated service fees for the first year of the Agreement. The premium for the performance bond described above shall be paid by Franchisee. The performance bond shall be written by a surety company licensed to do business in the State of Florida with an A.M. Best Financial rating of A-VI or higher for the most current calendar year available. The Surety or Sureties shall be a company or companies satisfactory to SWDD.

**18.1.1. Said bond shall be forfeited should Franchisee:**

- a) Fail to comply with the requirements of this Agreement; or
- b) Take the benefit of any present or future insolvency status or make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of reorganization or the readjustment of indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of Franchisee's property; or
- c) By an order or decree of a court to be adjudicated bankrupt; or
- d) Have an order or decree of a court entered approving a petition filed by any of Franchisee's creditors seeking a reorganization or readjustment of Franchisee's indebtedness under the Federal Bankruptcy laws or any law or statute of the United States or any state thereof,

provided, however, that if any such judgment or order is vacated within sixty (60) Days after the entry thereof, any notice of cancellation shall be and become null, void, and of no effect.

**18.2. Administrative Charges**

- 18.2.1. The Contract Manager shall notify Franchisee in writing by the tenth (10) Day of the month of the SWDD's intent to deduct any administrative charges, as set forth in Article 18.2.4, including the basis for each administrative charge, from payments due or to become due to Franchisee for service provided under this Agreement.
- 18.2.2. In the event Franchisee wishes to contest such monthly assessment, Franchisee must do so within ten (10) Days of issuance of each assessment notification by requesting, in writing, a meeting with the Contract Manager to resolve the issue. Following such a meeting, the Contract Manager shall notify Franchisee in writing of any action taken with respect to Franchisee's claims. Franchisee may further appeal, in writing, the decision of the Contract Manager to the County Administrator, who shall conduct a review of all of the facts and circumstances, and make a determination in writing. The County Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- 18.2.3. Franchise Fee payments received after the fifteenth (15) Day of the month shall bear interest at eighteen percent (18%) per year. Unless due to an Uncontrollable Force, Franchise Fee payments received more than thirty (30) Days after the due date shall be subject to an administrative fee of \$500 for the first nonpayment; \$1,500 for the second nonpayment; and \$5,000 for the third nonpayment. Three late payments in any single calendar year that are not due to an Uncontrollable Force shall result in termination of this Agreement.
- 18.2.4. The Contract Manager may assess the following administrative charges pursuant to this Article on a monthly basis in connection with the Agreement:

<b>Performance Standard Violation</b>	<b>Liquidated Damages</b>
Failure to deliver materials to a Designated Facility. (Article 10.1)	1 <sup>st</sup> occurrence = \$1,000 2 <sup>nd</sup> occurrence = \$5,000 3 <sup>rd</sup> + occurrences = \$10,000
Mixing materials within a single load. (Article 11.1)	\$5,000 per occurrence
Failure to submit to SWDD all plans, reports, or other documents in the time required under the provision of this Agreement unless otherwise approved by the Contract Manager.	\$50 per incident per Day after due date
Failure to comply with the hours and days of operation. (Article 6.5 and 8.4)	\$100 per occurrence per Day
Failure to complete each route on the regularly scheduled day except when such completion is made impossible by weather or other conditions, as determined by SWDD.	\$250 per route per Day
Failure to resolve missed pickups or complaints within the specified time frame. (Articles 11.12 and 11.13)	\$100 per unresolved missed pickup or complaint per Day
Failure to clean spillage, leakage, or blowing of material (oil, hydraulic fluid, Solid Waste, Recyclables, etc.) within twenty-four (24) hours. (Article 11.6)	\$50 per occurrence per Day per incident
Failure to repair, replace, or deliver a container or Roll Cart within three (3) Days of notification. (Article 7.1. and 7.2)	\$50 per occurrence per Day

Failure to leave a non-collection notice for customer explaining why material was not collected. (Article 6.4)	\$50 per occurrence
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**ARTICLE 19. TERMINATION**

**19.1. Failure to Maintain Performance Bond and Insurance.**

SWDD reserves the right to terminate this Agreement if Franchisee fails to obtain and maintain the Performance Bond as set forth in Article 18 and the insurance set forth in Article 20.

**19.2. Scrutinized Companies**

Franchisee is advised that section 287.135, Florida Statutes, prohibits agencies from contracting with companies for goods or services of One Million Dollars (\$1,000,000.00) or more that are on either the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List. Both lists are created pursuant to section 215.473, Florida Statutes. SWDD reserves the right to terminate this Agreement if SWDD discovers that Franchisee has submitted a false certification regarding the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List, and/or if, during the term of the Agreement, Franchisee has been placed on the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List.

**19.3. Bankruptcy**

19.3.1. SWDD reserves the right to terminate this Agreement if Franchisee takes the benefit of insolvency statute, or shall make a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy, petitions or answers seeking an arrangement for its reorganization or readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or any state thereof, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

19.3.2. SWDD reserves the right to terminate this Agreement if by order or decree of a court, Franchisee shall be adjudged bankrupt, or an order shall be made approving a petition filed by any of its creditors or by any of the Stockholders of Franchisee seeking its reorganization or the readjustment of its indebtedness under federal bankruptcy laws or under any law or statute of the United States or of any state thereof; provided that, if any such judgment or order is stayed or vacated within sixty (60) Days after the entry thereof, any notice of cancellation shall be and become null, void, and of no effect.

19.3.3. SWDD reserves the right to terminate this Agreement if by or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Franchisee, and such possession of control shall continue in effect for a period of sixty (60) Days.

**19.4. Default**

SWDD may terminate this Agreement by written notice of default to Franchisee if Franchisee fails to perform or observe any of the terms and conditions of this Agreement for a period of thirty (30) days after receipt of notice of such default.

**ARTICLE 20. INSURANCE**

Franchisee shall not commence work until all the insurance required under this section has been obtained, and until such insurance has been approved by SWDD. Firm's insurance shall be primary. The County shall be named as an additional insured for both General Liability and Automobile Liability. The awarded firm shall maintain the following limits of insurance during the term duration of this agreement.

Workers' Compensation as required by the State of Florida

- Each accident \$100,000
- Each Disease – each employee \$100,000
- Each Disease – policy limit \$500,000

**General Liability**

- Each Occurrence \$1,000,000
- Fire Damage-any one fire \$50,000
- Medical Expenses-any one person \$5,000
- Personal and Advertising Injury \$500,000
- General Aggregate \$3,000,000
- Combined Single Limit \$3,000,000

**Automobile Liability – Combined Single Limit \$1,000,000**

**Professional Liability Insurance**

- \$1,000,000 per occurrence
- \$2,000,000 aggregate combined single limit

The policy shall cover the firm, all employees, and/or volunteers, and all independent contractors, subcontractors and professional contractual persons hired or retained by contractor.

All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be authorized to do business in Florida. The insurance policies procured shall be "Occurrence" policies or as generally available on the open insurance market.

The Insurance Carriers shall supply Certificates of Insurance evidencing such coverage to the Indian River County Risk Management Department prior to the execution of this Agreement.

The insurance companies selected shall send written verification to the Indian River County Risk Management Department that they will provide 30 Days written notice to the Indian River County Department of Risk Management of its intent to cancel or terminate.

**ARTICLE 21. OTHER TERMS AND CONDITIONS**

**21.1. Piggyback Clause**

Municipalities located within the Recycling Franchise Area may, at their discretion, also contract for Solid Waste Residential Collection Services and Commercial Collection Services from Franchisee under the same terms and conditions as this Agreement, with the exception that the rates may be negotiated based on the remaining period of the piggyback contract. Municipalities will issue their own purchase orders or contracts, issue payments, and coordinate the service locations with Franchisee, as applicable.

**21.2. Indemnification**

Franchisee shall defend, indemnify and hold harmless SWDD and the County including its commissioners, officers, employees and agents, from any and all losses, damages, expenses (including reasonable attorney's fees) and other liabilities of any type whatsoever, arising out of or relating to any negligence, intentional tort, breach of contract, or breach of Applicable Law by Franchisee, or its employees, agents, subcontractors, or other persons or entities performing work under this Agreement.

21.3. Assignment

21.3.1. Assignment

No assignment of this Agreement or any right occurring hereunder shall be made in whole or in part by Franchisee without the express written consent of SWDD; in the event of any assignment, assignee shall assume the liability of Franchisee.

21.3.2. Subcontracting

Franchisee acknowledges that the Board encourages the subcontracting to small businesses portions of the services provided in this Agreement by Franchisee, providing that Franchisee remains fully liable for the performance of all obligations under this Agreement during the term of such subcontract. Franchisee shall require each subcontractor to procure and maintain until completion of the subcontractor's services, all of the insurance specified in Article 20 Insurance of this Agreement, unless the subcontractor's services are covered by the protection afforded by Franchisee's insurance.

21.4. Severability

If any Article, sub article, sentence, clause or provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected.

21.5. Compliance with Laws and Regulations

Franchisee agrees that they will comply with all Federal, State, and Applicable Law, including OSHA, EPA, and any other requirements that may apply, to the production, sale, and delivery of the goods or the furnishing of any labor or services called for by this Agreement, and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference. Noncompliance may be considered grounds for termination of this Agreement.

21.6. Sovereign Immunity

SWDD reserves and does not waive any and all defenses provided to it by the laws of the State of Florida or other Applicable Law, and specifically reserves and does not waive the defense of sovereign immunity.

21.7. Right to Require Performance

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

21.8. Modification

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

21.9. Reservation of Rights

SWDD hereby expressly reserves the right to amend this Agreement, which may be necessary or proper to secure and protect the health, safety, moral, general welfare and accommodation of the public including, but not limited to, amendments related to rates, and to protect the public from danger and inconvenience in the management and operations of solid waste services business, and to provide such service as is contemplated by this Agreement.

21.10. Independent Franchisee

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



Agreement. Persons employed by Franchisee in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to SWDD's officers and employees either by operation of law or by SWDD.

21.11. Governing Law, Venue

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in Indian River County, Florida or if in Federal Court then it is in the Southern District of Florida.

21.12. Public Access

Franchisee shall comply with Florida's Public Records Law in accordance with the provisions of Chapter 119, Florida Statutes. Specifically, Franchisee shall keep and maintain public records that ordinarily and necessarily would be required by SWDD in order to perform the service. Franchisee shall provide the public with access to public records on the same terms and conditions that SWDD would provide the records at a cost that does not exceed the costs provided in Chapter 119 or as otherwise provided by law. Franchisee shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. Franchisee shall meet all requirements for retaining public records and transfer, at no cost, to SWDD or the County, all public records in possession of Franchisee upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SWDD in a format that is compatible with the information technology systems of the County.

21.13. Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

21.14. Survival of Obligation

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations shall survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

21.15. Attorney's Fees

In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

21.16. Headings

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

21.17. Notice

All notices required or contemplated by this Agreement shall be addressed and sent by certified U.S. mail, unless otherwise specified by the Contract Manager, to SWDD and Franchisee as follows:

To SWDD:           Managing Director  
                          Indian River County Solid Waste Disposal District  
                          1325 74<sup>th</sup> Avenue SW  
                          Vero Beach, Florida 32968

**To Franchisee:** Michael Lewis, Senior District Manager  
Waste Management Inc. of Florida  
7382 Talona Drive  
West Melbourne, Florida 32904

**Copy to:**

Waste Management Inc. of Florida  
Legal Department  
2700 Wiles Road  
Pompano Beach, Florida 33073



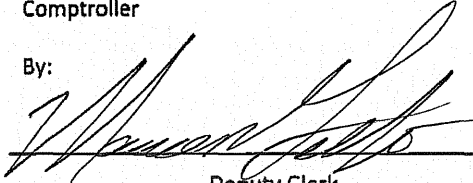
Indian River County Solid Waste Disposal District  
Solid Waste and Recyclables Collection Franchise Agreement

IN WITNESS WHEREOF, the parties have executed by their respective duly authorized officers as of the day and year first written above.

**Attest:**

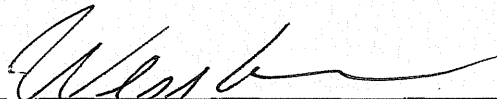
Jeffrey R. Smith, Clerk of Court and  
Comptroller

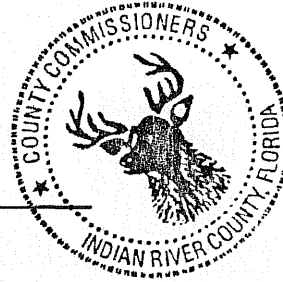
By:

  
Deputy Clerk

**By Owner:**

Solid Waste Disposal District  
Indian River County, Florida

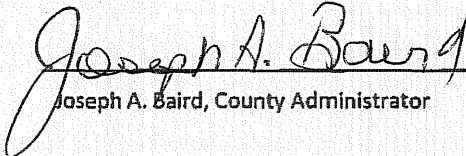
  
Wesley S. Davis, Chairman




**Date Approved by SWDD:**

April 21, 2015

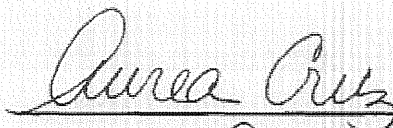
**Approved By:**

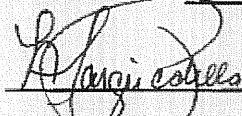
  
Joseph A. Baird, County Administrator

**Approved as to Form and Legal Sufficiency By:**

  
Dylan T. Reingold, County Attorney


**Signed, sealed, and delivered in the presence of:**

  
Print Name: Aurea Cruz

  
Print Name: Margie Padilla

**By Franchisee:**

Waste Management, Inc. of Florida

  
Print Name: RONALD KAPLAN

Print Title: ASST SEC S FLORIDA COUNCIL

**EXHIBIT 1 – COLLECTION SERVICE RATES**

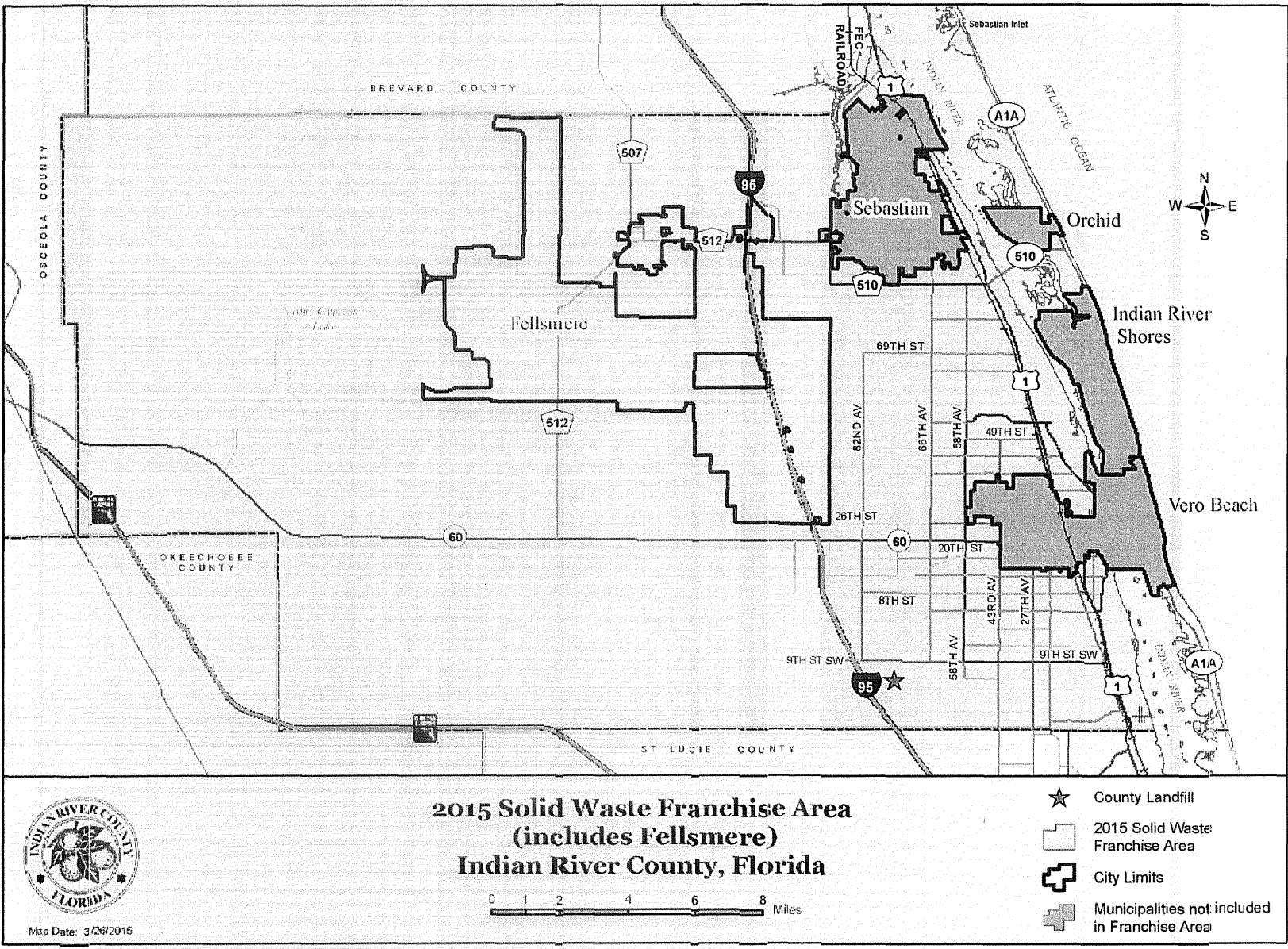
<b>RESIDENTIAL COLLECTION SERVICE SUBSCRIPTION SERVICE</b>	Monthly Collection Fee/Unit
Solid Waste: 1x/week in Franchisee-provided Roll Carts; Bulk Trash on call	\$6.80
Yard Trash: 1x/week	\$2.88
<b>Total Subscription Service</b>	<b>\$9.68</b>

<b>RESIDENTIAL COLLECTION SERVICE UNIVERSAL SERVICE IN URBAN SERVICE AREA (applicable only if SWDD initiates universal collection)</b>	Monthly Collection Fee/Unit
Solid Waste - Universal in USA: 1x/week in Franchisee-provided Roll Carts; Bulk Trash on call	\$4.85
Yard Trash - Universal in USA: 1x/week	\$2.88
<b>Total Universal Service in USA</b>	<b>\$7.73</b>

<b>COMMERCIAL COLLECTION SERVICE</b>		
Commercial Dumpster Service - includes container and maintenance		Fee/Cubic Yard
		\$4.73
Commercial Cart Service - in Franchisee-provided Roll Cart		Fee/Pickup
		\$9.46
	Container and Maintenance Fee/Month	Fee/Pull
Open Top Roll-Off - 15 cubic yards	\$100.00	\$155.00
Open Top Roll-Off - 20 cubic yards	\$100.00	\$170.00
Open Top Roll-Off - 30 cubic yards	\$100.00	\$205.00
Open Top Roll-Off - 40 cubic yards	\$100.00	\$235.00
Compactor - 20 cubic yards	\$100.00	\$245.00
Compactor - 30 cubic yards	\$100.00	\$245.00
Compactor - 40 cubic yards	\$100.00	\$245.00

<b>RESIDENTIAL RECYCLABLES COLLECTION SERVICE</b>	Monthly Collection Fee/Unit
Residential Units - Single Stream; 1x/week in Franchisee-provided Roll Carts	\$2.55
Multi-Family Units - Single Stream; 1x/week in Franchisee-provided Roll Carts/dumpsters	\$2.04

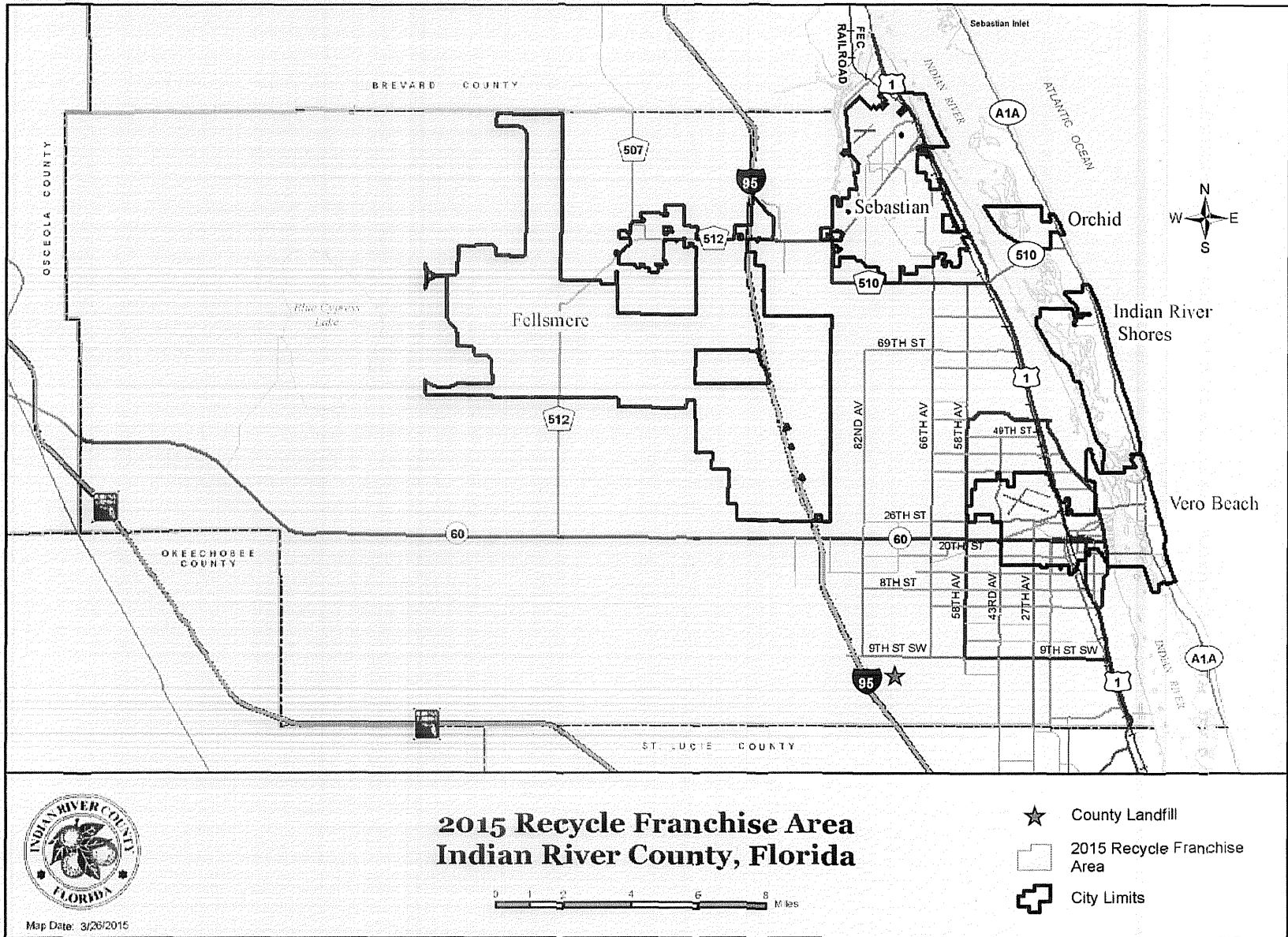
**EXHIBIT 2 – FRANCHISE AREAS**



**2015 Solid Waste Franchise Area  
 (includes Fellsmere)  
 Indian River County, Florida**



Map Date: 3/26/2016



### EXHIBIT 3 – PROGRAM RECYCLABLES

Following are Program Recyclables to be collected by Franchisee:

- All paper not contaminated by food, including newspaper, magazines, phone books, junk mail, office paper, cardboard, paper bags, paperboard, chipboard, file folders, envelopes, paperback books, mixed paper, etc.
- Shredded paper placed in clear plastic bag.
- Aluminum food and beverage containers.
- Aluminum foil, pie plates, and trays.
- Glass food and beverage containers.
- Ferrous cans, including aerosol cans not containing corrosive, toxic, ignitable, or reactive ingredients, including products such as paints, cleaners, oils, batteries and pesticides that contain potentially hazardous ingredients.
- Aseptic cartons, including juice boxes, gable top milk and juice containers, soy milk and soup cartons.
- All plastic containers except plastic film.
- Bulky rigid plastics.
- Scrap metal.

**EXHIBIT 4 – CALCULATION OF RATE ADJUSTMENT**

Ninety percent (90%) of the rate adjustment shall be based on seventy five percent (75%) of the change in the Consumer Price Index (CPI) between the month of April in the prior year (CPI1) and the month of April in the current year (CPI2). The CPI shall be the South Urban Region, All Items - All Urban Wage Earners and Clerical Workers, published by the United States Department of Labor, Department of Labor Statistics (Series ID = CWURO300SAO).

Ten percent (10%) of the rate adjustment shall be based on the percentage change in the average monthly fuel price from May through April in the prior year (FI1) and the average monthly fuel price from May through April of the most recent year (FI2). If Franchisee utilizes primarily CNG vehicles, fuel prices shall be based on the Henry Hub Gulf Coast Natural Gas Spot Price (dollars/million BTUs) published by the United States Energy Information Administration. If Franchisee utilizes primarily diesel vehicles, fuel prices shall be based on the Lower Atlantic (PADD1C) No. 2 Diesel Ultra Low Sulfur Diesel (0-15 ppm) Retail Prices (dollars per gallon) published by the United States Energy Information Administration.

If any of the designated indices are discontinued or substantially altered, SWDD may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three and a half percent (3.5%) of the previous rate.

**EXCEL FORMULA FOR CALCULATING RATE ADJUSTMENT**

$\text{Rate Adjustment (\%)} = \text{ROUND} \left( \left( \left( \left( \text{CPI2} - \text{CPI1} \right) / \text{CPI1} \right) * 0.75 * 0.90 \right) + \left( \left( \text{FI2} - \text{FI1} \right) / \text{FI1} \right) * 0.10 \right) * 100, 2 \right)$
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Where:

- “CPI1” = published CPI average for the month of April of the prior year
- “CPI2” = published CPI average for the month of April of the current year
- “FI1” = average published monthly fuel price from May through April of the year prior to FI2
- “FI2” = average published monthly fuel price from May through April of the most recent year

**SAMPLE CALCULATION OF RATE ADJUSTMENT**

Assumptions:	Current Rate = \$8.00	CPI1 = 225.838	FI1 = 3.9185
		CPI2 = 230.195	FI2 = 3.8747

Rate Adjustment:

$$= \text{ROUND} \left( \left( \left( \left( 230.195 - 225.838 \right) / 225.838 \right) * 0.75 * 0.90 \right) + \left( \left( 3.8747 - 3.9185 \right) / 3.9185 \right) * 0.10 \right) * 100, 2 \right) = 1.19\%$$

*Rate Adjustment of 1.19% is less than 3.5%, the maximum allowed.*

$$\text{New Rate} = \text{ROUND} (\$8.00 * (1 + 0.0119), 2) = \$8.10$$



**EXHIBIT 5 – TECHNICAL SPECIFICATIONS FOR ROLL CARTS**

Following are minimum requirements for the Roll Carts as required within the scope of this Agreement.

<b>Construction and Design</b>	<ul style="list-style-type: none"> <li>• Must meet ANSI Standards Z245.30 and A2245.60 “Type B/G” containers, all rules, regulation, and laws pertaining to this product.</li> <li>• Roll Carts must be produced by a major manufacturer.</li> <li>• Roll Carts must be universal and compatible with and capable of withstanding all U.S. industry-standard semi-automated and fully-automated collection systems.</li> <li>• The upper lift point shall be permanently molded into the Roll Cart and the lower must be a 1” diameter galvanized free floating metal bar or composite equivalent, securely attached to prevent failure or loss. Molded bars are unacceptable.</li> <li>• Roll Carts must be designed to prevent the Roll Cart from falling into the truck hopper when lifted and turned upside down using a semi-automated collection system.</li> <li>• Interior and exterior of Roll Cart body must be smooth and uniform in appearance, and must be free of pockets, recesses, or significant intrusions that could trap debris.</li> <li>• The Roll Cart must be manufactured with a narrow width design to fit through a 30” door opening.</li> <li>• The Roll Cart must be manufactured with a foot operated tilt feature designed into the axle area to facilitate easy tipping.</li> </ul>
<b>Size (Capacity)</b>	<ul style="list-style-type: none"> <li>• Three different sized Roll Carts are required:                         <ul style="list-style-type: none"> <li>○ Large = 94-96 gallon</li> <li>○ Medium = 64-66 gallon</li> <li>○ Small = 32-35 gallon</li> </ul> </li> </ul>
<b>Materials</b>	<ul style="list-style-type: none"> <li>• Must be rotationally or injection molded using medium to high density 100% recyclable polyethylene.</li> <li>• Minimum resin weight of unassembled Roll Cart, including cart body and lid, must be:                         <ul style="list-style-type: none"> <li>○ 30 pounds or greater for large Roll Cart</li> <li>○ 22 pounds or greater for medium Roll Cart</li> <li>○ 15 pounds or greater for small Roll Cart</li> </ul> </li> <li>• Resin used in the manufacturing process must contain a minimum of 25% post-consumer recycled material.</li> <li>• All plastic parts must be stabilized against ultraviolet light deterioration with an UV stabilizer additive with no less than two fifths of one percent (.4%) by weight.</li> </ul>
<b>Body</b>	<ul style="list-style-type: none"> <li>• The body of the Roll Cart must be one piece.</li> <li>• The Roll Cart wall and bottom thickness must be a minimum of .150 inches for injected molded carts. For carts manufactured through a rotational molding process, wall thickness must have a minimum nominal wall thickness of .172” throughout the cart.</li> <li>• The body of the Roll Cart must be designed with a drag rail on the container bottom and reinforced in the area that contacts the ground with a molded-in bottom wear strip.</li> <li>• The top of the body must be molded with a reinforced rim to add structural strength and stability to the container and to provide a flat surface for lid closure. This reinforced rim must have a raised inner perimeter. The rim of the Roll Cart must not be designed to have an inward radius to obstruct free flow emptying the material out of the container.</li> </ul>
<b>Lid</b>	<ul style="list-style-type: none"> <li>• Lids must be of a configuration that they will not warp, bend, slump, or distort to such an extent that it no longer fits the body properly or becomes otherwise unserviceable.</li> </ul>

	<ul style="list-style-type: none"> <li>• Lids must be watertight, prohibit vectors from entering, and odor emission from exiting.</li> <li>• The lid must be one-piece construction and securely attached to the rear of the wheeled section of the Roll Cart using a rustproof, weather-resistant fastener system.</li> <li>• The lid must be hinged to open by gravity to a position of 270 degrees from the closed position and hang open without stressing the lid, body, or tipping over the Roll Cart.</li> <li>• Lids must be designed to be easily removed in the event of damage or failure. Lid latches are unacceptable.</li> </ul>
<b>Handle</b>	<ul style="list-style-type: none"> <li>• Each Roll Cart must have a horizontal handle(s) to provide comfortable gripping areas for pushing or pulling the roll cart.</li> <li>• The handle shall be integrally molded into the body or lid, and only plastic surfaces shall be exposed to the hands of the user.</li> </ul>
<b>Wheels/Axle</b>	<ul style="list-style-type: none"> <li>• Roll Carts must be equipped with two (2) plastic molded or rubber wheels making the cart capable of being easily moved and maneuvered.</li> <li>• Wheels shall be snap-on or attached in a way that prevents unintended detachment.</li> <li>• Wheels must be a minimum of 10 inches in diameter for large and medium Roll Carts and a minimum of 8 inches in diameter for small Roll Carts.</li> <li>• Each Roll Cart shall be furnished with a minimum 5/8 inch diameter axle with a corrosion-resistant coating that must be securely attached to the body by molded axle retainers.</li> <li>• The wheels and axle must be rated to meet and exceed load requirements of 3.5 pounds per gallon.</li> </ul>
<b>Stability</b>	<ul style="list-style-type: none"> <li>• Roll Carts must be stable and self-balancing when in the upright position, whether loaded or empty, and maintain stability when returned to the ground at the end of the dumping cycle.</li> <li>• Roll Carts must be able to remain stable and upright in winds up to 30 miles per hour when empty.</li> </ul>
<b>Color</b>	<ul style="list-style-type: none"> <li>• Color must not be streaked in the finished product and must be colorfast so that the color does not alter significantly with normal use. Painted Roll Carts are unacceptable.</li> <li>• The Solid Waste Roll Cart shall be grey with a grey lid and black wheels.</li> <li>• The Recycling Roll Cart shall be blue with a blue lid and black wheels.                         <ul style="list-style-type: none"> <li>• The final color selection must be approved by the County/SWDD prior to manufacturing.</li> </ul> </li> </ul>
<b>Markings</b>	<ul style="list-style-type: none"> <li>• Sequential serial numbers must be molded, branded, or hot stamped into the front of the body with white color.</li> <li>• An eight to ten (8-10) alpha/numeric serial number shall be used as determined by SWDD.</li> <li>• A Indian River County logo and Recycling logo must be clearly molded, inscribed, or hot-stamped into both sides of the body with the following working in 1 inch lettering on the lid:                         <ul style="list-style-type: none"> <li>○ Property of the Indian River County.</li> <li>○ Instructions for which side of the Roll Cart must face the street for collection.</li> <li>○ Recycling Roll Cart lids must include program instructions as determined by SWDD.</li> <li>○ Any other ANSI and regulatory labeling required.</li> </ul> </li> <li>• SWDD must approve all markings prior to the manufacturing of the Roll Carts.</li> </ul>



<p><b>RFID Tags</b></p>	<ul style="list-style-type: none"> <li>• Each Roll Cart must have a unique integrated RFID tag installed into the Roll Cart.</li> <li>• RFID tags must be passive UHF with an optimal operating frequency of 860-960 MHz.</li> <li>• RFID tags must have an optimal operating temperature of -40°F to +149°F.</li> <li>• The dry inlay must meet ISO/IEC 18000-6C and EPD Global Gen 2 standards.</li> <li>• RFID tag values must be written and locked at the time of Roll Cart projection.</li> <li>• All RFID tags must be attached so that the tags have no exposure to outside elements, are not visible to the customer, and are tamper-resistant.</li> <li>• RFID tags placed inside of the body of the Roll Cart are unacceptable.</li> <li>• Adhesive or sticker RFID tags are unacceptable.</li> <li>• Each RFID tag must be tested at the manufacturing facility to ensure that it is working properly.</li> </ul>
<p><b>Warranty</b></p>	<ul style="list-style-type: none"> <li>• Roll Carts must be fully (100%) warranted against defects in materials and workmanship for a minimum period of ten (10) years from the date of delivery and be transferrable to SWDD at the expiration of this Agreement.</li> <li>• The warranty must be unconditional and non-prorated providing SWDD with assurance of full Roll Cart replacement. The warranty must survive the termination of any contract for the manufacture and/or assembly and distribution of the Roll Carts.</li> <li>• Warranty is understood to include the following coverage:             <ul style="list-style-type: none"> <li>○ Failure of the lid to prevent rainwater from entering the Roll Cart when the lid is closed on the body.</li> <li>○ Damage to the body, the lid, or any component parts through opening or closing the lid.</li> <li>○ Failure of the lid hinge to remain fully functional and continually hold lid in the originally-designed and intended positions when either opened or closed.</li> <li>○ Failure of the body and lid to maintain its original shape.</li> <li>○ Wear through of Roll Cart bottom so that it leaks liquid.</li> <li>○ Failure of the wheels to provide continuous, easy mobility, as originally designed.</li> <li>○ Failure of any part to conform to minimum standards as specified.</li> </ul> </li> </ul>
<p><b>Asset Management</b></p>	<ul style="list-style-type: none"> <li>• A manufacturing database must be maintained that includes each Roll Cart's RFID tag identification, serial number, date of manufacture, location of manufacturer, Roll Cart type, color, and size.</li> <li>• The manufacturing data must be associated with the address to which each roll cart is assigned.</li> <li>• The asset management database shall be maintained throughout the term of this Agreement and shall be accessible to SWDD upon request.</li> <li>• At the termination of this Agreement the asset management database shall be transmitted to SWDD in an acceptable format.</li> </ul>

**EXHIBIT 6 – TECHNICAL SPECIFICATIONS FOR RFID TAGS FOR COMMERCIAL APPLICATION**

Following are minimum requirements for the RFID tags required to be placed on all commercial collection containers used for Commercial Collection Service within the scope of this Agreement.

<b>Technical Specs</b>	<ul style="list-style-type: none"><li>• RFID tags must be passive Ultra High Frequency (UHF) with an optimal operating frequency of 860 – 960 MHz</li><li>• Read range: 6 foot minimum</li><li>• Protocol: EPC Class 1 Gen 2</li></ul>
<b>Environmental Specs</b>	<ul style="list-style-type: none"><li>• RFID tags must have an optimal operating temperature of -40°F to +149°F</li><li>• Waterproof</li><li>• Chemical resistant appropriate for Solid Waste collection application</li><li>• Mechanical resistant appropriate for Solid Waste collection application</li></ul>
<b>Mounting Specs</b>	<ul style="list-style-type: none"><li>• Encapsulated tag designed for mounting</li><li>• Mounting surfaces: Metal, plastic, etc.</li></ul>
<b>Memory Requirement</b>	<ul style="list-style-type: none"><li>• EPC 96 bits; User 512 bits; TID 64 bits. EPC and User memory reprogrammable, TID is locked at point of manufacturer</li></ul>