

SOLID WASTE COLLECTION AGREEMENT

THIS AGREEMENT made and entered into this 21st day of June, 1988, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as the "COUNTY", and WESTERN WASTE INDUSTRIES, INC. and HARRIS SANITATION, INC. of BREVARD COUNTY, Florida, hereinafter referred to as the "COLLECTOR".

WITNESSETH:

WHEREAS, the Board of County Commissioners of Brevard County desires the continued collection of solid waste in certain areas within the said Board's jurisdiction in order that the health and general welfare of the citizens of the COUNTY be protected; and

WHEREAS, HARRIS SANITATION, INC. and WESTERN WASTE, INC. is qualified to provide solid waste collection services within the boundaries described herein.

¹ WHEREAS, the Florida State Legislature through the enactment of the Solid Waste Management Act of 1988, has mandated that counties develop and implement recycling programs within their jurisdictions to valuable materials to productive use, to conserve energy and nature resources, and to protect capacity at solid waste management facilities; and

WHEREAS, the parties hereto desire to implement a program for the collection of recyclable materials within said service area, in order to comply with the statutory mandate herein above described; and

WHEREAS, Collector is qualified to provide curbside recycling collection service within the boundaries described in Exhibit "A" of that certain Agreement between the parties dated June 21, 1988; and

WHEREAS, the parties hereto hereby desire to amend that certain Agreement between the parties dated June 21, 1988, so as to incorporate the requirements of said recycling collection program.

¹ Addendum 1, Board approved 10/23/89

² WHEREAS, the County and Collector by Agreement dated October 23, 1989 provided for the implementation of a recycling program (“Addendum No. 1”); and

WHEREAS, the County and Collector have agreed to provide for implementation of a program for separate garden trash collection, an extension of the term of the Agreement (through October 1, 1998) and continued promotion of the recycling program (Harris Sanitation, Addendum 2, February 18, 1992 and Western Waste, Addendum 2, March 3, 1992 & Addendum 3, May 19, 1992); and

WHEREAS, it is necessary to amend the Agreement to incorporate the garden trash, term and recycling provisions.

³ WHEREAS, the County and Collector have agreed to expand the collection services to provide additional holiday pickups, “backdoor” service for qualified customers, additional litter barrel service, garden trash pickup from medians and common areas as approved by the director, and electronic media compatibility and accessibility of the Collector’s records to the County’s system; and

WHEREAS, it is necessary to amend the Agreement to incorporate the new service conditions.

⁴ WHEREAS, the County and Collector have agreed starting October 1, 2003 to a four-point-three (4.3%) rate increase for annual residential collection service and an additional two dollars and 40 cents (\$2.40) per year fee per residence for waste tire and appliance collection service; and

WHEREAS, the County and the Collector have agreed, starting October 1, 2003 to a five percent (5%) increase for commercial container pick-up, rental and pull services;

WHEREAS, the County and the Collector have agreed, starting October 1, 2004, to an adjustment to collection service rates based on the annual Consumer Price Index (CPI) capped at three percent (3%) in any one year and eight and one-quarter percent (8.25%) for the term of the agreement; and

² Addendum 2, Board approved 2/18/92 for Harris Sanitation and 3/3/92 for Western Waste

³ Addendum 4, Board approved 9/29/98

⁴ Addendum 5 Board approved May 6, 2003

WHEREAS, the County and Collector have agreed to a five year extension of the Agreement to October 1, 2008, with an option for a 5 year renewal; and

WHEREAS, it is necessary to amend the Agreement to incorporate the new residential collection service rates, commercial container pickup, rental and pull service rates, the CPI adjustment provision, and the extension of the term of the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises and conditions contained herein, it is mutually agreed between the parties as follows:

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

A. BENEFIT UNIT: The term “benefit unit” refers to the Brevard County Solid Waste Municipal Service Benefit Unit, as described in Brevard County Ordinance No. 88-07, as amended.⁵

B. BOARD: The word “Board” shall refer to the Board of County Commissioners of Brevard County, Florida.

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

D. BULK MULTIPLE-FAMILY RESIDENCE: All trailers and trailer parks and any building or buildings containing more than one (1) permanent living unit or more than one (1) trailer and receiving solid waste collection service at an accessible, centralized location or at a commercial container.

⁵ [Chapter 94 as amended](#)

E. COLLECTION AREA: Those areas within the subject benefit unit where the schedule of rates, charges and fees established in SECTION 8 of this Agreement are applicable, it being the intent to include in such area, those areas being serviced on the collection routes in existence as of the effective date of this Agreement.

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

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

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

I. CONSTRUCTION AND DEMOLITION DEBRIS: Non-hazardous material generally considered not to be water soluble, including, but not limited to steel, concrete, glass, brick, asphalt roofing material, or lumber from a construction or demolition project including trees and vegetation from land clearing for a construction project. Contamination of construction and demolition debris with any amount of other types of solid waste will cause it to be classified as other than construction and demolition debris.

J. CUSTOMER: All persons person owning improved residential real property within that portion of the benefit unit that is within the Collector’s service area, except for persons obtaining exemptions and all other persons subscribing to solid waste collection service provided by the collector under the terms of this collection agreement.

K. DIRECTOR: The term “Director” means the Director of the Solid Waste Management Department of Brevard County, or his duly authorized representative.

L. GARBAGE: The word “garbage” shall mean every refuse accumulation or deposit of animal, fruit or vegetable matter that attends the manufacture, preparation, use, cooking and dealing in, or storage of edibles, and any other matter, of any nature whatsoever, which is subject to

decay, putrefaction and the generation of noxious or offensive gasses or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects, or any container of the material defined herein.

M. GARBAGE RECEPTACLE: The term “garbage receptacle” shall mean a galvanized metal, durable plastic, or other suitable impervious material container commonly sold as a garbage can, including wheeled containers, of not greater than 32 gallon or less than 5 gallon capacity which shall be free of jagged or sharp edges and shall be watertight and equipped with two (2) handles upon the side or bail by which it may be lifted, and provided with a tight fitting watertight cover suitable to protect the contents from flies, insects, rats and other animals, and which shall not have any inside structures, such as inside bands or reinforcing angles or anything within that would prevent the free discharge of the contents. Such receptacle may include a waterproof bag of a material and construction that can be safely and securely closed. Such waterproof bag shall be of adequate strength to hold the contents when the bag is lifted and of a type and size acceptable to the Collector and approved by the Director.

⁶N. GARDEN TRASH or YARD WASTE: The terms “garden trash” or “yard waste” shall mean any vegetative matter generated from improved real property such ~~all accumulations of~~ as leaves, grass or shrubbery cuttings resulting from the care of lawns ~~and other refuse attending the care of lawns, shrubbery, vines, trees and tree limbs~~ or landscape maintenance. Such term does not include large quantities of sod, dirt and trash from land clearing or other materials requiring special handling.

O. HAZARDOUS WASTE: The term “hazardous waste” shall mean a solid waste identified by the Florida Department of Environmental Regulation as a hazardous waste in Florida Statute F.S. 403.703(21)(1995) and the Florida Administrative Rule 17-30 as amended.⁷ This includes any solid waste which is ignitable, corrosive, reactive, infectious or toxic, and which poses a substantial or potential hazardous to human health and safety, or to the environment when improperly managed.

⁶ [Addendum 5, Board approved 5/6/03](#)

⁷ [FDEP Chapter 62-730 as amended](#)

P. IMPROVED REAL PROPERTY: The term “improved real property” refers to all real property located in the unincorporated areas of Brevard County that generates or is capable of generating solid waste; and, that contains buildings, structures or other improvements designed or constructed for and capable of use or used for human habitation or human activity or commercial enterprise. Real property becomes “improved real property” following the initial connection of permanent electric utility service or whenever the first solid waste is generated.

Q. INDIVIDUAL COMMERCIAL UNIT: Any commercial, non-residential unit receiving solid waste collection service from said commercial unit in a normal volume not in excess of an amount capable of being placed in three (3) thirty-two gallon garbage receptacles twice a week.

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

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

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

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

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

W. RESIDENTIAL IMPROVED REAL PROPERTY: The words “residential improved real property” shall mean all improved real property used for either a multi-family residence or a single-family residence.

X. ROLL-OFF CONTAINER: Any container used for the collection and storage of construction and demolition debris that can be picked up and transported on a specially equipped truck to the disposal site.

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

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

AA. SOLID WASTE: The term “solid waste” means dewatered sludge from a waste treatment works, water supply treatment plant, or air pollution control facility or garbage, rubbish, refuse, or other discarded material, including solid material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Materials not regulated as solid wastes pursuant to Florida Administrative Rule 17-7 as amended ⁸ are: nuclear source or by-product materials regulated under Chapter 404 F.S. or under the Federal Atomic Energy Act of 1954 as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows, or other regulated point source discharges; regulated air emissions; fluids or waste associated with natural gas or crude oil exploration or production. Solid waste does not include scrap, or new or used material, separated at the point of generation and held for purposes of recycling subject to state and local public health and safety laws.

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

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

(1) Single-family residence and individual multiple-family residence: Any type of solid waste not reasonably capable of being placed in a garbage receptacle or any item not reasonably capable of being reduced in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. This should include normal household furnishings, appliances, and other bulk items.

(2) Individual commercial unit: Any type of solid waste not reasonably capable of being placed in a garbage receptacle.

(3) Bulk commercial unit and bulk multiple-family residence: Any type of solid waste not reasonably capable of being placed in a commercial container, or any pickup of a commercial container on a frequency in excess of that normally established for the customer or any solid waste placed in garbage receptacles at a centralized location not in conformity with the requirements specified above for a single-family residence.

² DD. CURBSIDE RECYCLING: The collection of recyclable materials from single-family residences, individual multiple-family residences, individual commercial units, bulk multiple-family residences and bulk commercial units at curbside or at the designated collection point for recyclable materials.

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

⁸ FDEP Chapter 62-701 as amended

² Addendum 1, Board approved 10/23/89

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

- (1) Newspapers – (Daily newspapers, no phone books, or magazines)
- (2) Glass Jars and Bottles – (clear, brown and green glass, food and beverage bottles)
- (3) Plastic Bottles – (milk, water and soft drink bottles)
- (4) Aluminum and Bi-metal Cans – (soft drink and beer cans)

GG. RECYCLING CONTAINER: A portable plastic container or bin approved by the County used for storing and collecting recyclable materials in the home and identifying the recyclable materials at the curb.

HH. RECYCLING PROGRAM: The program designated by the Board for meeting the solid wastereduction goals as mandated by the Solid Waste Management Act of 1988 and any subsequent amendments thereto.

JJ. SET-OUT RATE: The total number of residences placing recyclable materials at the designated collection point on a given collection day divided by the total number of residences having the opportunity to place recyclable materials at the curb.

¹⁰ KK. Consumer Price Index (CPI): A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, 1982-1984 equals 100, as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics.

SECTION 2. AREA AND TERM.

A. The Collector shall have the sole and exclusive right and duty to collect all solid waste as provided under the terms and provisions of this Agreement within the service area described in “Exhibit A”, said exhibit being hereby incorporated into this Agreement by reference.

¹⁰ Addendum 5, Board approved 5/6/03

B. Subject to the termination provisions contained in SECTION 10 of this Agreement, the term of this Agreement shall ¹¹ [commence upon execution of this Agreement by both parties and extend until October 1, ¹² 1998 ~~2008~~ ¹³ 2013](#) ~~be for a period of five years from October 1, 1988 with a~~ ~~an option for a five year extension, which shall automatically follow the initial five year term~~ unless notification is given in writing to the Collector at least six (6) months in advance of the Agreement's termination date.

C. The Collector shall have exclusive right to provide roll-off boxes for materials generated in the construction of buildings and structures or the clearing of land and preparation of sites for construction within the ¹⁴ [service area as described in Exhibit "A" of this Agreement, unless otherwise authorized by the County.](#) ~~unincorporated area of Brevard County~~

D. Despite the language of sub-sections "A" and "C" of this section of this Agreement to the contrary, it is hereby acknowledged by the COLLECTOR, that the COUNTY shall have the right to permit persons to haul solid waste generated only on the applicable property owned or occupied by the person, to the solid waste facilities maintained and operated by the COUNTY.

SECTION 3. DUTY OF THE COLLECTOR.

A. With the exception of the solid waste defined as special collection solid waste, the Collector shall pick up and deliver to a solid waste disposal facility all garbage, rubbish and garden trash placed by a customer at the collection point set fourth in SECTION 6 hereof, from each single-family residence, individual multiple family residence and individual commercial unit within the subject service area not less often than two (2) times per week with collections at least three (3) days apart. It is intended that all such solid waste be picked up and delivered to the disposal site each collection day. The Collector shall notify the customers within the subject service area of the applicable schedule of collection at least ten (10) days prior to an alteration in said schedule.

¹¹ [Addendum 2, Board approved 2/18/92 for Harris Sanitation & Addendum 3, Board approved 5/19/92 for Western Waste](#)

¹² [Addendum 5, Board approved 5/6/03](#)

¹³ [Board approved renewal of existing contract @ meeting of Jan. 8, 2008](#)

¹⁴ [Addendum 1, Board approved 10/23/89](#)

B. The Collector shall pick up and deliver to a solid waste disposal facility all garbage, garden trash, and rubbish generated by a customer, from a bulk multiple-family residence and a bulk commercial unit and placed in a commercial container located at the designated collection point or in cans placed at a centralized location. The size and type of a commercial container including compactor boxes and the frequency of collection for each residence or unit shall be established by the Collector in consultation with the customer and shall be subject to approval by the Director in the event of a dispute. Provided, however, that the frequency of collection shall not be less than two (2) times per week with collections at least three (3) days apart.

C. The Collector shall pick up and deliver to the solid waste disposal facility special collection solid waste generated from a single-family residence, individual multiple-family residence and bulk multi-family residence of a customer and placed at the applicable collection point within seventy-two (72) hours of notice by the customer or the Director to the Collector, excluding Sundays and legal holidays.

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

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

E. The Collector shall not be required to furnish collection services on the following specified holidays: ¹⁵ ~~New Year's Day; the 4th of July; Labor Day;~~ ¹⁶ Memorial Day, Fourth of July, Veteran's Day, Thanksgiving Day and Christmas Day. The Collector shall notify all customers whose normal collection day falls upon such holidays that no collection service will be provided on such day and the date of the next normal collection day at least ten (10) days and not more than thirty (30) days prior to said holiday. Said notice shall be in the form of an advertisement in a newspaper of general circulation published within the COUNTY. Notwithstanding the other provisions of this Agreement, the Collector shall not be required to collect rubbish or garden trash during the first scheduled collection day following such holidays, unless rubbish and garden trash is placed in containers.

¹⁵ [Addendum 4, Board approved 9/29/98](#)

¹⁶ [Program Change Justification FY 2009 effective 10/1/08](#)

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

G. The Collector shall pick up and deliver to a solid waste disposal facility without charge to the COUNTY, all solid waste contained in ¹⁷ up to twenty (20) litter barrels, placed by the COUNTY at roadsides within the subject service area at least two (2) times per week, or more often if necessary to insure sanitary conditions. ~~Attached hereto as "Exhibit B" is a listing of the number and~~ The County shall provide the Collector, in writing, with the location of said litter barrels. ~~at roadsides within the subject service area.~~ The COUNTY reserves the right to increase said number of litter barrels by twenty percent (20%) without charge. The COUNTY shall have the right to use either the regular commercial type trash cans with covers or fifty-five (55) gallon cans, or both, for use by the public.

SECTION 4. STANDARDS OF COLLECTION AND OPERATION.

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

¹⁷ [Addendum 4, Board approved 9/29/98](#)

The Collector shall describe on an attachment to the required inventory the service yards or contracts to be used in maintaining vehicles and equipment. The Collector shall give notice to the Director as to any material changes that might affect the performance of work under this Agreement immediately after becoming aware of the same and shall make suitable remedial arrangement when needed.

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

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

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

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

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

C. It is recognized that disputes may arise between the COUNTY and the Collector with regard to the collection of certain items due to disputes over the specific language of this Agreement. In such event, the Director shall inspect the subject area at the request of the Collector. The Director may from time to time notify the COLLECTOR of the location and nature of solid waste which has not been collected due to dispute between the COUNTY and the Collector; and it shall be the duty of the

Collector to remove all such solid waste within seventy-two (72) hours from the date of the notice. Should the Collector fail to remove said solid waste when obligated to do so pursuant to this Agreement, the COUNTY will remove the solid waste and the costs incurred by the COUNTY shall be assessed against the Collector. In the event the Collector disagrees with the decision of the Director he shall have the right to appeal such decision to the Board and the decision of the Board shall be final.

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

E. The Collector shall make collections with a minimum of noise and disturbance to the occupant of the building and shall not collect from residential collection points prior to the hour of 6:00am nor after the hour of 9:00pm, except the week following holidays and during COUNTY designated emergency times. Garbage receptacles and other containers shall be handled carefully by the Collector and shall be thoroughly emptied and then returned and placed at least three (3) feet from the edge of the pavement where possible, standing upright and with covers securely in place. Any solid waste spilled or scattered by the Collector shall be immediately picked up.

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

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

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

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

Care should be taken to prevent damage to property, including flowers, shrubs and other plantings. The Collector shall not be responsible for cleaning up unsanitary conditions about the solid waste containers caused by carelessness of the customer. Care shall be taken by employees to prevent damage to containers by unnecessarily rough treatment. The Collector shall report to the Director all situations which prevent or hinder the collection of solid waste on any premises.

H. The Collector shall establish such routes within the service area as will contribute to maximum efficiency of operation and will file a copy of such routes with the Director. The COUNTY reserves the right to deny the Collector's vehicles access to certain streets, alleys and public ways where it is in the interest of the general public to do so because of conditions of the streets or bridges or the nature of development of the general area. The Collector may request and the Director may declare certain streets, alleys and public ways closed for the purpose of collection vehicle operation because of dangers, inadequate clearance, poor road conditions and others. When these closures occur, the Collector shall supply other types of solid collection service acceptable the Director. Notice shall be given by the Director prior to such denial so as not to unduly interfere with the Collector's normal operations.

¹⁸ I. The Collector shall provide backdoor solid waste receptacle pickup from single family residences for customers who are physically disable and unable, and have no other means, to place their receptacles at the collection point as specified in SECTION 6. The customer shall provide the Collector with appropriate evidence that they are unable to place their receptacles at the collection point. The type of evidence required shall be determined by the Director.

SECTION 5. COMPLAINTS.

A. The Collector shall perform a service of high quality and keep the number of legitimate complaints to a minimum. In order that the COUNTY may be informed of the quality of service, the Collector agrees to maintain a record of all complaints for inspection by the COUNTY.

The Collector agrees to furnish a monthly report listing the name and address of the person complaining, the nature of the complaint, and the disposition of each complaint. All complaints whether received in person, by mail or telephone, shall be recorded in triplicate, one (1) copy to go to the COUNTY and two (2) copies to be retained by the Collector.

Complaints received before 12:00 noon each day shall be serviced by 5:00pm that day. Complaints received after 12:00 noon shall be serviced before 12:00 noon the following calendar day. For each month in which the number of legitimate complaints reaches twenty (20) or more for any cause the COUNTY shall be entitled to claim liquidated damages of Ten dollars (\$10.00) per complaint. Each claim shall be considered legitimate unless satisfactory disposition of the claim is furnished. The decision of the Director shall be final.

SECTION 6. DUTY OF CUSTOMERS.

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

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

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

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

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

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

SECTION 7. HAZARDOUS WASTE.

A. No customer shall dispose of hazardous or infectious waste at any COUNTY solid waste disposal facility, nor shall any customer place or deposit hazardous or infectious waste at any solid waste collection point or in any other place where it might reasonably be expected to be transported to a COUNTY solid waste disposal facility.

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

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

SECTION 8. COMPENSATION TO COLLECTOR; ESTABLISHMENT OF RATES

A. For ¹⁹ the curbside collection collecting of solid waste (including garden trash) and recyclable materials from all improved residential real property within the benefit unit, the Collector shall be compensated in accordance with paragraphs 8C and 8I of this Agreement at the rate as established by the Board of County Commissioners. Said sum shall be the only money the Collector shall be entitled to from the County. Provided, however, that the Collector may collect from any multiple-family customer an additional sum for pick-up in excess of twice per week, said sum to be negotiated between the Collector and the customer.

B. The monthly rates and charges the Collector may charge for (1) providing collection services to Attached hereto as “Exhibit C” is a schedule of rates, charges and fees for all non-residential improved real property within the unincorporated area of the County, (2) container rentals and pull services, and (3) providing collection service to residential improved real property within the unincorporated areas but not within the benefit unit shall be established by the Board of County Commissioners in accordance with paragraphs 8C and 8I of this Agreement. ~~categories plus certain other enumerated services. The Collector shall charge for all non-residential collection and other services within the established collection areas in conformity with said schedule.~~

C. Should the Collector desire to seek an increase of the rate established by the Board, the Collector shall petition the Board providing complete justification prior to July 1 of the fiscal year prior to the fiscal year that the rate will become effective.

In arriving at a sum to pay the COLLECTOR and in arriving at a schedule of charges, the COUNTY shall fix such amounts as may be reasonably intended to give the Collector a fair and reasonable return upon his actual and legitimate capital investment, excluding contributions, after allowance for reasonable depreciation and expenses for operation.

D. In the event a person occupying or owning residential improved property outside said benefit unit elects to contract with the Collector for the collection of said waste generated on such property, the rate, fee or charge for such collection shall be negotiated between the Collector and the customer after taking into consideration the following factors:

¹⁹ Addendum 5, Board approved 5/6/03

- (1) The rate, fee or charge for collection services established for similar improved property in the benefit unit.
- (2) The distance to such improved property from the established collection route of the Collector.
- (3) The frequency of collection by the Collector.
- (4) The average monthly amount of solid waste generated from such improved property.
- (5) The degree of additional costs to the Collector in collecting said solid waste.

E. The Director shall resolve any dispute between the customer and the Collector as to the rate, fee or charge for such collection services based upon his consideration of the factors specified above. Provided, however, that for residential improved property such rate shall not exceed twice the rate being charged for similar residential improved real property within the benefit unit.

F. The charge for the pickup of special collection solid waste generated by a bulk commercial unit and an individual commercial unit shall be negotiated between the Collector and the customer and billed by the Collector.

G. It is mutually understood between the parties that each customer shall have the right to purchase his own commercial container rather than rent same from the Collector. ~~at the rental rate specified in "Exhibit C".~~

H. Where applicable, the Collector shall bill each customer for collection services based on the rate, charge or fee for each customer as established under this section of this Agreement. In the event of a dispute between the Collector and customer as to a rate, fee or charge, or as to a charge for additional or special collection pickup, the Director shall arbitrate and resolve the dispute.

I. The Board shall, at a regular or special meeting prior to October 1 of each year, ~~establish~~ adopt the annual rate resolution establishing the rate of compensation to be paid to the Collector for the curbside ~~and the schedule of charges for~~ collection of solid waste (including garden trash) and recyclable materials from all improved residential real property within the benefit unit set forth in "Exhibit C" for the fiscal year beginning October 1 and ending September 30. At the same meeting the Board shall also establish the schedule of rates and charges the Collector may charge for providing collection services to nonresidential improved real property, for container rentals and pull

services, and for collection service to residential improved real property within the unincorporated areas but not within the benefit unit for the fiscal year beginning October 1 and ending September 30.

Beginning October 1, 2004 and on each October 1 thereafter the rate of compensation payable to the Collector by the County and the monthly rates and charges the Collector may charge for providing collection services as described in SECTION'S 8A and 8 B shall be adjusted annually to reflect changes in the Consumer Price Index. The foregoing rates shall be adjusted to reflect the increase or decrease in the CPI for the immediately preceding twelve (12) month period of April to April, any increase or decrease shall be limited to three percent (3%) per annum and eight and one-quarter percent (8.25%) over the term of the Agreement and any extension thereto. The Collector shall provide the County in writing, no later than June 1 of each year, of increases or decreases based on the CPI as provided in this section. If the Collector does not provide the County with notification of an increase or decrease in the CPI by the date stated, the County will determine whether an adjustment shall be made to the rates. Should the CPI be discontinued or substantially modified, then an alternate index shall be chosen by mutual agreement of the County and the Collector.

J. The Collector shall be required, if requested by the customer, to furnish a roll-off container or a compactable container; provided, however, such request shall not be granted if the type of solid waste generated requires a greater frequency of pickup than reasonably contemplated by the use of said containers. In the event any collector holding a franchise from the COUNTY is, on the effective date of this Agreement, furnishing a roll-off container or compactable container to a commercial customer within the service area of the Collector, such other franchised Collector may continue to furnish such specialized collection services to such commercial customer despite the language contained in this section to the contrary.

The rate and rental for such roll-off container and the rental for such compactable container shall be negotiated between the Collector and the customer and billed by the Collector. In the event of a dispute between the Collector and the customer as to such rate or rental, the Director shall arbitrate and resolve the dispute.

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

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

The Collector may not, under any circumstances, impose a delinquency fee for failure of a customer to make the required payments. However, the Collector may impose, in addition to the amount owed to the Collector, a re-connect fee not to exceed the greater of Twenty-five Dollars (\$25.00), or the normal charge for one (1) month's service for a commercial customer, where a commercial customer whose service has been terminated for non-payment wishes to be served by the Collector again. No customer's service may be terminated for non-payment unless such customer's account is at least seventy days delinquent, except that no residential customer's service within the benefit unit may be terminated for non-payment.

SECTION 9. HURRICANE OR OTHER DISASTER.

In the event excessive amounts of debris or refuse have accumulated by reason of any natural disaster declared by the Governor of the State of Florida which includes the Collector's service area or should the Director or a committee headed by the Director decide that a severe disturbance, riot or other calamity has produced enough excess debris to need special cleanup, the Collector shall offer to remove and dispose of the excess debris or refuse within the collection area at the rate to be established between the COUNTY and the Collector. Should the COUNTY wish to utilize the Collector to perform such work, the Director shall direct the Collector to perform such work at the specified rate. However, nothing herein shall require the COUNTY to utilize the services of the Collector, or to prevent the COUNTY from contracting with other parties to perform all or a portion of such work.

SECTION 10. COMMENCEMENT OF AGREEMENT; DISAGREEMENTS; DEFAULT OF COLLECTOR; TRANSFER OF WORK TO SURETY AND COUNTY'S USE OF COLLECTOR'S PROPERTY; BREACH OF AGREEMENT; NO WAIVER.

A. COMMENCEMENT OF AGREEMENT: This Agreement shall be effective October 1, 1988.

B. DISAGREEMENTS: To prevent all disputes or litigation, it is understood that all questions arising as to the proper performance and the amount of work to be paid for under this

Agreement shall be subject to the decision of the Director subject to the right of the Collector to appeal to the Board, whose decision shall be final and binding.

C. SERVICE DURING DISAGREEMENT: During any dispute which arises between the COUNTY, Director, and/or other interested party and the Collector, in any way relating to this contract, performance, or compensation hereunder, the Collector shall continue to render full compliance (and not seek injunctive relief) with all terms and conditions of this contract regardless of the nature of the dispute, unless the COUNTY Director specifically notifies the Collector otherwise.

D. DEFAULT OF COLLECTOR: The Collector may be held in default of the Agreement in the event the Collector:

- 1) Fails to perform the collections required by the Agreement and appears, to the Director, to have abandoned the work, or to be unable to resume performance within forty-eight hours; or
- 2) Has failed on three or more occasions of three working days duration in any year, to perform the collections required by the Agreement; or
- 3) Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Agreement, after having received notice of its obligation to so comply. ²⁰ ~~;~~

~~(4) Develops an "affiliated interest" prohibited by Section 14(L) of the Agreement.~~

Proceedings under this section are in addition to the remedies described in SECTION 9(F) for breach of their respective requirements.

To initiate proceedings under this section, the Director shall first request the Board of COUNTY Commissioners to declare the Collector in default.

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

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

²⁰ [Addendum 4, Board approved 9/29/98](#)

E. TRANSFER TO SURETY AND COUNTY'S USE OF COLLECTOR'S PROPERTY:

Upon receipt of a notice that the work has been transferred to the surety with termination of the Agreement, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the Director pursuant to SECTION 4 (A) of the Agreement, for the purpose of completing the work under the Agreement; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefore. Such employment shall not relieve the surety of its obligations under the Agreement and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Agreement subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance and the Collector shall have no claim upon the same.

In the event the surety on the Collector's performance bond fails to assume or continue performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Collector shall lease, sublease or otherwise license the COUNTY to use all, or whatever portion is desired by the COUNTY, of the materials and equipment described on the most recent inventory submitted to the Director pursuant to SECTION 4 (A) of the Agreement, for collection purposes for a period of up to six months following the date of the declaration of default by the Board of COUNTY Commissioners without requiring the COUNTY to execute any other document whatsoever to accomplish such lease, sub-lease or license and without requiring the COUNTY to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the COUNTY pay for the equipment and materials actually used for such collection a market rental that is not greater than the monthly lease, in the event such property is leased by the Collector; the periodic installment in the event such property is being acquired under a purchase contract; or the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided that under no circumstances shall the COUNTY be liable during its use of such property for any arrearage, balloon payment, accrued interest, accelerated charges in the event of a default or other extraordinary payment; nor shall the satisfaction thereof be a condition to the COUNTY'S interim use of such property; provided further that such lease, sub-lease or license shall be suspended on the date the surety on the Collector's bond or its agent accepts the transfer of work under the Agreement.

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

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

Notwithstanding the provisions of this section, a delay or interruption in the performance of all or any part of the Agreement resulting from changes ordered in the work, from labor disputes, or, from other causes beyond the Collector's control, shall not be deemed to be a default and the rights and remedies of the COUNTY provided for herein shall be applicable.

F. BREACH OF AGREEMENT: If the Collector fails to be at work at the time specified, persistently disregards laws, ordinances or instructions of the Director, or repeatedly fails to provide sufficient reserve workmen and equipment to insure the proper completion of the residential work by 9:00pm each day; or performs the work unsatisfactorily or fails to collect refuse on a regular schedule, or discontinues the prosecution of the work without authorization by the COUNTY, or becomes insolvent or declares bankruptcy or commits any act of bankruptcy or insolvency, or allows final judgment rising out of performance of the Agreement to stand against him unsatisfied for a period of ten (1) days, the COUNTY will consider such action a breach of Agreement and give notice, in writing by registered mail, to the Collector and his surety of such breach.

If the Collector or his surety within ten (10) days after such notices, does not proceed to take over and complete the work under the orders of the Director, then the Director, because of the breach of Agreement, shall have full power and authority, without violating the Agreement or bond, to take over the completion of said Agreement according to the terms and provisions thereof, or to use such other methods as in his opinion may be required for the completion of said Agreement in an acceptable manner. Furthermore, after the issuance by the COUNTY of its notice of intention to terminate the Agreement, the Collector shall not remove from its normal, daily workplace in the COUNTY any of the equipment listed on the inventory approved by the Director in accordance with SECTION 4 (A) of this Agreement until arrangements to continue the work, by Agreement, by surety, or otherwise, have been completed by the COUNTY.

For all costs, charges and damages incurred by the COUNTY, together with the costs of completing the work, the Collector and his surety shall be liable, and such costs may be deducted from any monies due or which may become due the Collector. Should the COUNTY incur any attorneys fees to seek enforcement of any of the provisions in this Agreement and prevails, the Collector and his surety shall be liable for those fees, and such expense may be deducted from any monies due or which may become due to the Collector. In case the expense incurred by the COUNTY is less than the sum

which would have been payable under the Agreement if it had been completed by the Collector, then the collector and his surety shall be liable and shall pay the COUNTY the amount of said excess.

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

SECTION 11. LIQUIDATED DAMAGES.

The following acts or omissions shall be considered a breach of the contract and for the purpose of computing damages under the provision of this Section, it is agreed that the Director may deduct from payments due to or become due to the Collector, the following amounts as liquidated damages.

1. Collection of residential solid waste prior to 6:00am or after 9:00pm
\$150.00 each case. [See SECTION 4 (E)]
2. Legitimate Complaints – SECTION 5 (Over twenty (20) per month).
\$10.00 each additional legitimate complaint. [See SECTION 5]
3. Failure to clean vehicles and maintain in good working condition.
\$24.00 each vehicle. [See SECTION 4 (B)]
4. Failure to keep vehicles closed or covered.
\$25.00 each vehicle. [See SECTION 4 (B)]
5. Loaded vehicles left standing on the street unnecessarily.
\$25.00 each vehicle. [See SECTION 4 (B)]
6. Failure to pick up “Special Collection Solid Waste” within seventy-two (72) hours.
\$10.00 each case. [See SECTION 3 (C&D)]

7. Failure to maintain schedule established and given as a requirement of this Agreement in writing to the public and the COUNTY.

\$25.00 per violation of route schedule. [See SECTION 4 (H)]

8. Failure to respond to complaints as required by this Agreement

\$5.00 each case. [See SECTION 5 (A)]

²¹ 9. Failure to pick up scattered debris

\$10.00 each case [See SECTION 4 (B)]

10. Failure to leave cans standing upright with covers securely in place

\$10.00 each case [See SECTION 4(E)]

11. Failure to pick up properly prepared Garden Trash

\$10.00 each case [See SECTION 22(B)]

SECTION 12. INSURANCE OF BOND.

A. The Collector shall furnish to the COUNTY evidence of insurance coverage for all insurance required under the provisions of this section of this Agreement immediately upon the execution of this Agreement by the parties. Failure of the Collector to maintain said insurance at any time during the term of this Agreement by the Collector shall be construed to be a material breach of the Agreement by the Collector.

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

C. The Collector agrees to indemnify and save harmless the COUNTY from any and all liability, claims, damages, losses, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the performance of his duties provided for under this Agreement.

²¹ Addendum 4, Board approved 9/29/98

The Collector further agrees to, at his own expense, defend any and all actions, suits or proceeding which may be brought against the COUNTY in connection with the performance of his duties under this Agreement and to satisfy, pay and discharge any and all judgment that may be entered against the COUNTY in any such action or proceedings.

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

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

A certificate of insurance indicating that the Collector has coverage in accordance with the requirements of this Agreement, shall be furnished by the Collector to the Director within ten (10) days from the date of the execution of this Agreement. The Director shall forward all such certificates of insurance to the Brevard County Risk Management Division Manager.

SECTION 13. PERFORMANCE BOND.

The Collector shall provide a Collector’s performance and payment bond in the amount of One Million Dollars (\$1,000,000) with a surety company acceptable to the COUNTY as surety, which bond shall be conditioned that such Collector shall faithfully perform all of the provisions of this Agreement and pay all laborers, mechanics and sub-contractors and material men, and all persons who shall supply such COLLECTOR or sub-contractors with provisions and supplies for the performance of this Agreement; and shall perform work or services, or furnish material to any sub-contractor, shall have the same right under the provisions of such bond as if such works, services or material was furnished

to the original Collector, and shall contain appropriate recitations; (1) that it is issued pursuant to this Section of this Agreement; (2) that it shall be construed to meet all the requirements specified herein and to give all of the rights specified in SECTION 10, and (3) that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void.

In lieu of the Performance Bond required herein the Collector may enter into an Agreement with the COUNTY, drafted to the satisfaction and approval of the COUNTY Attorney and the Comptroller, that the Collector shall make a deposit to an escrow account in a bank approved by the COUNTY, in cash or in negotiable government securities, equal at all times in market value to the face amount of the bonds. Such Agreement shall provide that the cash or negotiable securities may be claimed by the Director, under the same circumstances as provided for use of the Performance Bond. The bond or the cash or security deposit shall remain in effect for the initial term of the Agreement, and for the renewal period, or the Agreement is terminated by the COUNTY. If the Agreement is renewed, a Performance Bond in the amount stated above or the cash or security deposit shall be furnished forty-five (45) days prior to the beginning of the renewal period.

SECTION 14. MISCELLANEOUS.

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

B. The Collector shall keep such uniform books and accounts as agreed from time to time by the COUNTY. It shall be the responsibility of the Collector to maintain said books and records in accordance with generally accepted accounting principles. The COUNTY shall have the right to audit said books and accounts at any time during normal business hours upon giving reasonable notice to the Collector as to the time and place of such audit.

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

D. To prevent misunderstanding or litigation, the Director shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the manner of performance, the rate of progress of said work, the interpretation of the Agreement provisions, and the acceptable fulfillment of the Agreement on the part of the COLLECTOR. In addition, the Director shall determine the amount, quality and character of the work performed. The Director shall make such explanations as are necessary to complete, explain or make definite the provisions of this Agreement. The Collector shall have the right to appeal any decision or finding of the Director to the Board, whose findings and conclusions shall be final and binding except as otherwise provided herein.

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

F. No assignment or subletting of all or any portion of the work under this Agreement shall be permitted except with written approval of the Board. The Collector alone, subject to the provisions of his performance bond, shall be held responsible for the full and faithful performance of this Agreement.

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

H. In the event the Collector is comprised or more than one individual, corporation, or other entity, each of the entities comprising the Collector shall be jointly and severally liable under this Agreement.

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

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

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

~~²² L. No collector that performs work under the Agreement shall develop, after the award of the Agreement, any “affiliated interest” in Brevard County. The term “affiliated interest” means an interrelationship in which the Collector, (a) owns, directly or indirectly, five percent (5%) or more of the voting securities of another Collector or exercise a strong influence through participation in; or representation on its Board of Director’s; (b) holds debts or assets of another Collector in a manner to exercise effective control over any phase of its operation or contracts with the other through a management or service contract for a substantial portion of the work to be performed; and (c) another Collector is subject to the control of another or is related to another Collector by marriage or family tie closer than the second degree of consanguinity at common law.~~

SECTION 15. CERTIFIED AUDIT.

A. On or prior to June 30 of each year, Collector at its own expense shall provide the COUNTY with a certified audit performed by an independent certified public accountant. Such audit shall be performed in accordance with generally accepted accounting principles, shall cover an annual period ending not more than one hundred eighty (180) days prior to June 30, and shall identify and separate that portion of Collector’s business performed in the unincorporated area of Brevard County.

Such audit shall also include, but shall not be limited to, a statement of financial condition, a statement of gross receipts of the Collector for services rendered under this Agreement, the average number of customers, and a statement of expenditures indicating where and how such expenditures were incurred.

²² [Addendum 4, Board approved 9/29/98](#)

B. The COUNTY and the Collector understand and agree that time is of the essence regarding the receipt of the certified audits required by this section. Therefore, if the Collector fails to provide the COUNTY with said certified audit on or prior to the date prescribed herein, the Collector shall pay the COUNTY the sum of One Hundred Dollars (\$100.00) per day for each day the audit is received after June 30. Provided, however, that the COUNTY may, upon request by the Collector not later than June 15 of a given year, grant the Collector an extension not to exceed thirty (30) days for good cause shown.

If the COUNTY has not received the certified audit within the prescribed time, the Director shall notify the collector in writing. If the certified audit is not received within thirty (30) days of the date such notice is mailed, the COUNTY may conduct its own audit in accordance with SECTION 15(B) of this Agreement. In such event, in addition to the late fee set out above, the Collector shall reimburse the COUNTY for all costs it incurs in auditing the Collector and collecting the sums it is entitled to hereunder, including court costs and a reasonable attorney's fee.

C. The Collector shall make available to the COUNTY the work papers of the auditor in connection with the certified audit required by this section. The Collector shall not contract for audit services with an auditor that will not make said work papers available to the COUNTY.

²³ SECTION 16. RECYCLING PROGRAM COLLECTION.

A. This Agreement shall constitute a recyclable materials collection agreement with an authorized Collector, pursuant to the provisions of ²⁴ ~~Section 12-94, Division 3, Article V, Chapter 12, as amended,~~ Code of Brevard County, Florida.

B. The recycling program service area under this Agreement shall be that area described in Exhibit "A", attached hereto.

C. Collector is hereby granted an exclusive franchise to perform curbside recycling collection services within the recycling program service area described in Exhibit "A".

²³ Addendum 1, Board approved 10/23/89

²⁴ Chapter 94 as amended

SECTION 17. DUTIES OF THE COLLECTOR; RECYCLABLE MATERIALS
COLLECTION

A. The Collector shall fully comply with all terms and conditions of ²⁵ ~~Division 3, Article V, Chapter 12, as amended,~~ Code of Brevard County, Florida, relative to the duties of a Collector under recycling program collection agreements.

B. The Collector shall pick up all recyclable materials placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence, bulk multiple-family residence, individual commercial unit and bulk commercial unit within the subject service area on or before the dates set forth in SECTION 17 (D) below, not less than one (1) time per week and with said collection occurring on a normal solid waste collection day. The Collector shall notify the customers within the subject service area of the applicable schedule of recyclable materials collection at least ten (10) days prior to an alteration in said schedule.

C. The Collector shall develop by April 1, 1990, practical procedures and a collection schedule for the inclusion of all multiple-family residences in the recycling program. Further, Collector shall develop by April 1, 1991, practical procedures and a collection schedule for the inclusion of all commercial units in said recycling program.

D. Collector shall commence pickup of recyclable materials from the following types of occupancies, on the dates indicated:

(1) Single-family residences and individual multi-family residences:

a. The week of January 28, 1990 – first 1/3 of said residences in the service area.

b. The week of April 1, 1990 – second 1/3 of said residences in the service area.

c. The week of June 3, 1990 – third 1/3 of said residences in the service area.

²⁵ Chapter 94 as amended

(2) Bulk multiple-family residences: the County shall determine the applicable dates at such time as the Collector has developed those practical procedures mandated in Paragraph 2 B above. Said dates to be determined by the County shall be no later than the week of October 7, 1990.

(3) Individual and bulk commercial property: the County shall determine the applicable dates at such time as the Collector has developed those practical procedures mandated in Paragraph 2 B above. Said dates to be determined by the County shall no later than the week of October 6, 1991.

E. The Collector shall pick up all recyclable materials placed at the curb or designated collection point, and shall process and broker the recyclable materials on behalf of the County. The buyer of said recyclable materials, and any sales or purchase agreements between the Collector and said buyer, must be approved by the County. The County shall have the option of electing to competitively select buyers for the recyclable materials. In the event, the Collector shall deliver and sell the recyclable materials to the buyer selected by the County.

²⁶ F. In the event a recyclable materials collection is normally scheduled on a day of the week upon which Christmas and New Year's Day occurs, Collector shall arrange for a New Year's Day collection of recyclable materials.

G. In ²⁷ ~~October 1993~~ March 1999, the Collector shall conduct a ~~second~~ mass delivery of recycling containers to single-family residences ~~whose recycling container has been lost, stolen or destroyed and~~ who have notified Collector or the County of their desire to have a container. The Collector shall purchase and deliver recycling containers at its expense. ~~up to an amount equal to twenty five percent (25%) of its current customer base on October 1, 1993. Any recycling container purchase or delivery costs in excess of Twenty five percent (25%) shall be paid for by the County.~~

Prior to the delivery of the recycling containers at a time agreed to by the County, the Collector, at its expense shall send or deliver a special flier to all residences requesting that the Collector or County be notified of the need by the residence of a replacement container. The flier shall be approved by the County.

²⁶ Addendum 2, Board approved 2/18/92 for Harris and 3/3/92 for Western Waste

²⁷ Addendum 4, Board approved 9/29/98

²⁸ SECTION 18. STANDARDS OF COLLECTION AND OPERATION.

A. The Collector shall furnish a recycling container at the Collector's expense to each single-family residence and individual multiple-family residence in the service area for the purpose of storing recyclable materials in the home and identifying the recyclable materials at the curb. Said container shall be the property of the County. The size of the container will be selected by the Collector and approved by the County, and the color selected by the County. Brevard County's name and selected logo shall be placed on the container.

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

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

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

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

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

²⁸ Addendum 1, Board approved 10/23/89

G. All vehicles used to collect recyclable materials shall carry a logo to represent the recycling program and differentiate the Collector's recycling program vehicles from their vehicles used for collecting solid waste.

H. The Collector will maintain accurate weight records of each type of recyclable material collected within the service area. The materials may be mixed with similar materials collected from other recycling areas and may be held until enough volume is accumulated and the offering price appears to be in the best range under the existing conditions. At such time the materials will be sold through commercial markets, which markets shall be developed jointly by the County and the Collector.

I. The Collector shall test certain areas, designated by the County, one time per year to determine participation rates. The Collector shall supply this information to the County upon request. The Collector shall provide set out rates to the County monthly.

J. The Collector is prohibited from landfilling any recyclable materials collected for the recycling program except that under extraordinary conditions the Collector may petition the County for permission to do so.

In addition, in the event the Collector is required to expend funds for disposal of the recyclable materials in an amount greater than the amount received from the combined sale of all recyclable materials, the County will either reimburse the Collector for such expenditures or allow disposal at the County's landfill, at the County's option.

SECTION 19. PUBLIC AWARENESS CAMPAIGN.

A. Collector shall assist the County in conducting a public awareness campaign to promote the County's recycling program. The Collector shall participate in the public awareness campaign, and shall cooperate in the implementation of promotional activities.

B. The Collector shall perform, as a minimum, the following:

1. Organizing and sponsoring a "kick off" event to promote the County recycling program as described herein.

2. Providing a special flier in the form of a door hanger that is to be delivered to the participating customers prior to initiation of the curbside recycling program.

3. Providing a special flyer with each recycling container that is to be delivered to the participating customers.

4. Attending and participating in public meetings regarding the recycling program, such as homeowners associations, schools, civic organizations, as requested by the Director.

SECTION 20. COMPENSATION FOR RECYCLING PROGRAM COLLECTION SERVICE.

A. For providing recycling program collection services as specified hereunder, ²⁹ to all improved residential real property within the benefit unit, ~~for each single family residence and each individual multiple family residence within the described service area,~~ the Collector shall be compensated in accordance with Section 8 (A), (C) and (I) of the Agreement. ~~at a rate of \$1.75 per month, per billing unit serviced.~~

³⁰ B. For collecting recycling materials from each bulk multiple-family residence, each individual commercial unit, and each bulk commercial unit within the above described service area, the applicable rate of compensation shall be established pursuant to the provisions of Section 8 (A), (C) and (I) of this Agreement.

C. Collector shall maintain accurate weight records of each type of recyclable material collected, and provide the County with copies of all invoices from the sale of recyclable materials, on at least a monthly basis.

D. Collector shall retain fifty percent (50%) of all proceeds received from the sale of recyclable materials, and remaining fifty percent (50%) of said proceeds shall be paid to the County. Proceeds paid to the County shall be forwarded to the County by the tenth of each month following the month the proceeds are received by Collector.

²⁹ Addendum 5, Board approved 5/6/03

³⁰ Addendum 1, Board approved 10/23/89

E. In the event Collector elects to mix the recyclable materials with similar materials collected from other recycling areas, and hold the materials until volume and price appear to be in the best range under the existing conditions, as permitted under ³¹ ~~Section 12-96(g), Division 3, Article V, Chapter 12,~~ Chapter 94 Code of Brevard County, Florida, Collector shall be allowed to deduct processing, handling and transportation expenses as agreed upon between the County and the Collector from gross materials sales revenue prior to paying the fifty percent (50%) of the proceeds to the County as required above. The determination of the amount of process, handling and transportation expenses allowed to be deducted by the Collector must be approved by the County prior to Collector electing to mix or hold recyclable materials as authorized herein. Further, in no event shall Collector pay the County less than that amount that Collector could have received without mixing or holding the recyclable materials.

SECTION 21. DUTIES OF THE CUSTOMER; RECYCLING PROGRAM.

A. The customer, or person occupying or in possession of premises located in the recycling program service area, shall have initially provided to them, by the Collector, a recyclable materials container to accommodate the amount of recyclable materials generated at said premises. The customer is responsible for proper care and cleaning of any recycling container provided to them.

B. The customer shall drain off all liquids from recyclable materials prior to deposit in the recycling container. Recyclable glass food and beverage containers should be rinsed prior to placement in the recycling container. Caps should be removed from all recyclable glass and plastic containers and disposed with the regular household trash. Newspapers shall be free of food or other contaminants when placed in a recycling container.

C. All recyclable materials generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in a recyclable container provided by the Collector. On the designated collection day, said recyclable container shall be placed at the curb that is a normal collection point as described in Paragraph 6 (C) (1) and (2) of this Agreement, but shall be kept separate and apart from regular solid waste. In the event that there

is an excess of recyclable materials that will not fit in the recycling container, such excess shall be placed in a heavy-duty plastic bag especially manufactured for rubbish collection, or trash compactor sacks, and placed directly beside the recycling bin, separate from regular solid waste.

D. All recyclable materials generated from a bulk commercial unit, or bulk multiple-family residence, shall be placed by the customer at the collection point described in Paragraph 6 (C) (3) of this Agreement.

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

³² SECTION 22. DUTIES OF THE COLLECTOR, GARDEN TRASH COLLECTION.

~~³³ A. The Collector shall fully comply with all terms and conditions of Division 3, Article V, Chapter 12, as amended, Code of Brevard County, Florida, relative to the duties of a Collector under Garden Trash Collection agreements.~~

~~B. The Collector, within sixty (60) days after the receipt of written notice from the County, shall commence separate collection of Garden Trash as described herein. Once collection commences,~~
‡ The Collector shall pickup all properly prepared Garden Trash placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence and bulk multi-family residence, not less that one (1) time per week. The Collector shall notify the customers of the applicable schedule of Garden Trash collection at least ten (10) days prior to an alteration of said schedule.

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

³¹ Chapter 94 as amended

³² Addendum 2, Board approved 2/18/92 for Harris and 3/3/92 for Western Waste

³³ Addendum 4, Board approved 9/29/98

³⁴ SECTION 23. STANDARDS OF COLLECTION AND OPERATION;
GARDEN TRASH.

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

SECTION 24. PUBLIC AWARENESS CAMPAIGN; GARDEN TRASH.

A. Collector shall assist the County in conducting a public awareness campaign to promote the County's Garden Trash program.

B. The Collector, at its expense, shall send or deliver a special flier to all residences prior to implementation of the Garden Trash collection program which explains proper preparation, separation and the collection schedule of the program. The flier shall be approved by the County.

SECTION 25. COMPENSATION FOR GARDEN TRASH COLLECTION SERVICE.

A. For providing Garden Trash Collection Service as specified herein,³⁵ to all improved ~~for each single family residence,~~ residential real property within the benefit unit, as described in Exhibit "D" attached hereto, ~~the~~ Collector shall be compensated in accordance with paragraphs 8A, 8C and 8I of this Agreement. ~~townhouse, mobile home and condominium units, Collector shall be compensated at the rate of eighty five (\$.85) per month, per unit serviced.~~

~~B. For providing Garden Trash Collection Service as specified herein, for each residential condominium units, cooperative unit, multi family residence, courts and trailer park, Collector shall be compensated at the rate of sixty four cents (\$.64) per month, per unit serviced.~~

³⁴ Addendum 2, Board approved 2/18/92 for Harris and 3/3/92 for Western Waste

³⁵ Addendum 5, Board approved 5/6/03

~~C. For providing Garden Trash Collection Service as specified herein, for each condominium-recreational vehicle unit, Collector shall be compensated at the rate of thirty-three (\$.33) per month, per unit serviced.~~

~~D. For purposes of this paragraph the definition of the units serviced shall be as described in Division 2., Article II, Chapter 12, Brevard County Code, as amended, for solid waste collection special assessments.~~

³⁶ SECTION 26. ELECTRONIC COMPATIBILITY

A. The Collector shall provide information data about each user of their service as required from time to time by the County in a format and on a media to be defined by the County. The County shall provide the Collector with a written request for information data and media required and shall specify the date the information is required.

B. The exact data and format of the data requested may change from time to time. The Collector shall provide the required change within thirty (30) days of being given written notice by the County of a required change. If the change involves new media that the Collector does not possess, the County shall determine the time in which the Collector shall provide the change.

C. The County may, upon written request by the Collector, grant the Collector an extension, not to exceed thirty (30) additional days, beyond the original specified date to deliver the information data. However, such request shall be made not later than thirty days prior to the original specified due date.

All terms and conditions of the Agreement not inconsistent with the terms and conditions of Addenda 1 through 5 shall remain in full force and effect.

³⁶ Addendum 4, Board approved 9/29/98