

RESOLUTION NO. 04-082

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED 20-YEAR CONTRACT BETWEEN THE CITY AND WASTE MANAGEMENT, INC. OF FLORIDA; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached contract between the City and Waste Management, Inc. of Florida is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18th day of February, 2004.

Authenticated by the presiding officer and Clerk of the Commission on February 19, 2004.

Filed with the Clerk February 19, 2004.

ATTEST:

Cheryl Smith
CHERYL SMITH, CITY CLERK

Jimmy Weekley
JIMMY WEEKLEY, MAYOR



EXECUTIVE SUMMARY

TO: Julio Avel, City Manager

FROM: E. David Fernandez, Utilities Director *EDF*
R.B. Havens, Plant Manager *RH*

DATE: February 9, 2004

ACTION STATEMENT:

The approval of a Resolution by the City Commission to award a 20-Year Hauling and Disposal Contract to Waste Management Inc. of Florida allowing for the termination of the Chambers Waste/Waste Management Inc. of Florida contract on the commencement date of the new contract. The resolution authorizes the City Manager to execute the contract, transfer necessary funds from un-appropriated fund balances, and process an amendment to the FY04 Solid Waste Budget.

BACKGROUND:

The City Commission approved this 20-year contract to be advertised for formal RFP on August 6, 2003 Resolution #03-278. Waste Management Inc. of Florida (WMIF) was the only company to submit a proposal to the RFP that was responsive. This contract is crucial to assure the City has guaranteed disposal space and prices for as long as practical to implement the Commission resolution to close the Southernmost Waste to Energy Facility.

The proposal WMIF submitted to the City agreed to all the terms of the contract and also included language that will allow the City's waste to be hauled and disposed of at one of two waste-to-energy facilities in Broward County. WMIF has guaranteed the use of these incinerators as the primary disposal site for at least ten years. WMIF has also guaranteed to agree to the proposed pricing of \$58.25 per ton for 20 years with an annual allowance for .75% of CPI not to exceed 5% in any given year. Please see the other benefits and details memo dated February 9, 2004, attached to this document.

The City is currently using the Chambers Waste/Waste Management Inc. of Florida (Chambers) contract to haul ash and other materials for landfill. This contract has only five years left until it will terminate and is more expensive per ton for hauling and disposal than the 20-year contract. The Chambers contract will be terminated on the same date that the WMIF 20-year contract commences. This will allow for better pricing and longer-term protection of disposal rates.

OPTIONS / ADVANTAGES / DISADVANTAGES:

The Commission could choose not to award the contract; however, this not recommended. The new contract will save the City approximately \$4 million dollars over 20-years as compared to the current Chambers contract pricing. As mentioned above, the Chambers contract does not have enough term left to provide for long-term protection of pricing and disposal capacity for the City's future needs.

Another option, awarding a 20-year hauling and disposal contract to WMIF is the best way to guarantee future disposal capacity and controlled pricing. These guarantees are both very critical to a stable solid waste fund. This contract does not affect the curbside contract with WMIF in any way until the transfer station site changes. This contract does not prevent the Commission from future privatization of the transfer station. The contract has clauses that will allow flexibility and or termination/renegotiation if the City Commission decides to relocate the transfer station or join the County in a combined solid waste venture. If the City decides to use its site on Stock Island, the initial term of the Agreement will remain in effect for 7 years. The City may extend the Agreement for a total duration of 40 years.

FINANCIAL IMPACT:

The financial impact of this contract should be a hauling and disposal cost savings for the City as compared to the Chambers contract. Funds are available as provided by the Solid Waste Rate Model.

RECOMMENDATION:

Staff recommends awarding the 20-year hauling and disposal contract to Waste Management Inc. of Florida with the extension as offered by Waste Management, Inc.

GUARANTEE

This Guarantee is made as of this 30th day of March, 2004, by Waste Management, Inc. a Delaware corporation ("Guarantor"), having its principal place of business at 1001 Fannin Street, Suite 4000, Houston Texas 77002, to and for the benefit of the City of Key West, a municipal corporation organized and operating under the laws of the State of Florida ("City").

WITNESSETH:

WHEREAS, Waste Management Inc. of Florida, a Florida corporation (the "Contractor"), has entered into an Agreement for the Transportation and Disposal of Solid Waste (the "Agreement") dated March 30, 2004, with the City; and

WHEREAS, Guarantor is willing to guarantee, as set forth below, part of the Contractor's performance under the Agreement; and

WHEREAS, the City would not enter into the Agreement unless the Guarantor provided this Guarantee;

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

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Contractor of all of the Contractor's obligations under Section 10.1.2 of the Agreement, in accordance with and subject to the terms and conditions therein, but solely with regard to claims that involve, are based on, relate to or arise from Pollution at the Disposal Facility.

2. This Guarantee shall be governed by the laws of the State of Florida. Guarantor hereby agrees to service of process in Florida for any claim or controversy arising out of this Guarantee or relating to any breach hereof. Guarantor agrees to submit to the jurisdiction of any court of competent jurisdiction in the State of Florida for the resolution of any claim or controversy concerning this Guarantee.

3. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, or assigns (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Guarantor), whether or not such obligations are expressly assumed by such successor, assignee, or transferee. This Guarantee is for the benefit of the City and any permitted successors and assigns under this Agreement.

4. Each and every event of default under the Agreement shall give rise to a separate cause of action hereunder. Separate actions may be brought hereunder by the City as each cause of action arises.

5. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing between the parties, but solely by a written instrument duly executed by the party against whom any such waiver, amendment, release or modification is sought to be enforced.

6. Guarantor shall not assign its obligation hereunder, except to a successor by merger or consolidation or to a transferee of all or substantially all of the assets of the Guarantor. Notice of any such assignment shall be given in writing to the City promptly, but in no event more than ninety (90) days after the effective date of any such merger, consolidation or transfer.

7. This Guarantee may be enforced immediately by the City upon Contractor's default of its obligations under Section 10.1.2 of Agreement as provided in Section 1 of this Guarantee and Contractor's failure to cure any such default, pursuant to the provisions of Section 9.1 of the Agreement. This Guarantee shall not be subject to any claim of Guarantor against any other person.

8. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of the City, and may be enforced against Guarantor by the City.

9. The Agreement is attached hereto.

10. Notices provided pursuant to this Guarantee shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

To the City: Director
 Utilities Department
 City of Key West
 P.O. Box 1409
 Key West, Florida 33041

With a copy to: City Attorney
 City of Key West
 P.O. Box 1409
 Key West, Florida 33041-1409


To Guarantor: Waste Management, Inc.
 1001 Fannin Street, Suite 4000
 Houston, Texas 77002
 Attention: Treasurer

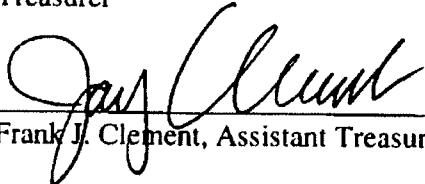
With copy to: Waste Management, Inc.
1001 Fannin Street, Suite 4000
Houston, Texas 77002
Attention: General Counsel

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt, and if delivered by hand, upon delivery.

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

GUARANTOR:
Waste Management, Inc.

By: 
Cherie C. Rice, Vice President and
Treasurer

By: 
Frank J. Clement, Assistant Treasurer

Witness:



Signature

Kristi Rector

Printed Name

Witness:



Signature

Chantelle Reynolds

Printed Name

2/9/04

AGREEMENT FOR THE TRANSPORTATION AND
DISPOSAL OF SOLID WASTE

THIS AGREEMENT is made and entered into in duplicate this 30 day of March, 2004, by and between the City of Key West (the "City"), a municipal corporation organized and existing under the laws of the State of Florida, and Waste Management Inc. of Florida (the "Contractor"), a Florida corporation.

WITNESSETH :

WHEREAS, the City is responsible for the disposal of the Solid Waste generated in the City; and

WHEREAS, the City issued a Request for Proposals for the transport and disposal of the City 's Solid Waste; and

WHEREAS, the Contractor submitted a proposal to provide Solid Waste hauling and disposal services for the City; and

WHEREAS, the City wishes to enter into an agreement with the Contractor for certain services; and

WHEREAS, the City and Contractor have negotiated the terms of this Agreement, which constitutes the entire agreement of the parties.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Contractor and the City agree that they shall comply with and be bound by all of the terms of this Agreement.

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ARTICLE 1. DEFINITIONS

Whenever the following words and expressions (or pronouns used in their stead) appear in this Agreement, they shall be construed as follows:

1. "Acceptable Waste" is that portion of the Solid Waste that may be disposed of lawfully in a Class I Landfill.
2. "Agreement" shall mean this "Agreement for the Transportation and Disposal of Solid Waste" between the City and the Contractor.
3. "Applicable Law" means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, Permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the Term of this Agreement, and relate in any manner to the performance of the City or Contractor under this Agreement.
4. "Base Rate" shall mean the component of the Service Fee that compensates the Contractor for all of its basic services under this Agreement, including but not limited to the transport and disposal of the City's Acceptable Waste.
5. "Certificate of Insurance" shall mean a certificate evidencing the existence and current validity of the insurance policies required to be obtained by the Contractor under this Agreement.
6. "Change in Law" means (i) the adoption, promulgation, or modification of any Applicable Law after the Effective Date or (ii) the imposition of any condition in connection with the issuance, renewal, or modification of any Permit after the Effective Date, which in the case of either (i) or (ii) establishes requirements which directly and substantially affect the Contractor's or City's performance under this Agreement. A change in any tax law or workers' compensation law shall not be a Change of Law. A Change in Law also does not include any increase in the amount of any Host Fee or similar fee paid by the Contractor to the community where the Disposal Facility is located.
7. "Citation" shall mean any governmental warning letter, notice of violation, emergency order, cease and desist order, or other governmental enforcement action based on a failure to comply with Applicable Law.
8. "City" shall mean the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida.

9. "Class I Landfill" shall be as defined in Rule 62-701.340(3)(a), F.A.C.
10. "Commencement Date" means the date when the Contractor must commence operations at the Transfer Station, as stated in the City's Notice to Proceed.
11. "Commission" shall mean the City Commission of the City of Key West, Florida.
12. "Consequential Damages" shall mean all direct and indirect damages resulting from any act or omission.
13. "Construction and Demolition Debris" shall mean discarded materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction, demolition, or renovation project, and including rocks, soils, tree remains, and other vegetative matter that normally results from land clearing or land development operations for a construction project.
14. "Contractor" shall mean Waste Management Inc. of Florida, a Florida corporation.
15. "Department" shall mean the City 's Utilities Department.
16. "Director" shall mean the Director of the Department or his or her designee.
17. "Disposal Facility" shall mean a solid waste disposal facility, which has received all of the necessary Permits to lawfully receive and dispose of the City's Acceptable Waste. .
18. "Effective Date" means the date when this Agreement is signed by the City.
19. "EPA " means the United States Environmental Protection Agency.
20. "F.A.C." means the Florida Administrative Code.
21. "FDEP" means the Florida Department of Environmental Protection.
22. "Finance Director" shall mean the chief financial officer of the City or his or her designee.

23. "Force Majeure" shall mean:

(a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, fire, flood, explosion, acts of a public enemy, war, terrorism, blockade or insurrection, riot, or civil disturbance;

(b) The order or judgment of any federal, state, or local court, administrative agency or governmental body, excepting decisions of federal courts interpreting federal tax laws and decisions of state courts interpreting state tax laws, if it is not also the result of the misconduct or negligent action or inaction of the party relying thereon or of a Person for whom the party relying thereon is responsible; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

(c) The failure to issue, suspension, termination, interruption, denial, or failure of renewal of any Permit or approval essential to the operation of the Transfer Station or Disposal Facility; provided that such act or event shall not be the result of the misconduct or negligent action or inaction of the party relying thereon or of a Person for whom the party relying thereon is responsible; and provided further that neither the contesting in good faith of any such action nor the failure to so contest shall constitute or be construed as a measure of willful or negligent action or inaction of such party;

(d) A Change in Law;

(e) The failure of any appropriate federal, state, or local public agency or private utility having operational jurisdiction in the area in which the Transfer Station or Disposal Facility is located, other than the City, to provide and maintain utilities, services, water and sewer lines, and power transmission lines which are required for and essential to the operation of the Transfer Station or Disposal Facility;

(f) Any unforeseen condition (including the presence of Hazardous Waste) which shall prevent, or require redesign or change in, the construction or operation of the Transfer Station or Disposal Facility, provided that the condition was actually and constructively unknown to the party claiming a Force Majeure Event, and could have not been discovered with reasonable diligence by the party on or before the date of this Agreement; or

(g) The condemnation, taking, seizure, involuntary conversion, or requisition of title to or use of the Site or any material portion or part thereof taken by the

action of any federal, state or local governmental agency or authorities, other than the City;

(h) Any act, event, or condition which is determined by mutual agreement of the City and Contractor to be of the same general type, and subject to the same conditions, as those set forth in subparagraphs (a) through (h) above.

"Force Majeure" shall not be deemed to include any act, event, or condition not described in subparagraphs (a) through (h) above, or any act, event, or condition over which a party relying thereon (including any Person for whose performance such party is responsible) reasonably has any influence or control or any act, event, or condition arising out of labor difficulties, labor shortages, or changing economic conditions. Force Majeure also does not include normal weather conditions for the City of Key West or the county where the Disposal Facility is located as determined by historic rainfall and weather conditions reported at the Key West Airport and the airport nearest the Disposal Facility.

24. "Hazardous Waste" means a Solid Waste identified by the FDEP or EPA as a hazardous waste pursuant to Chapter 62-730, F.A.C.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601, et. seq.; or other Applicable Law. Hazardous Waste does not include "household hazardous waste" or Solid Waste generated by "conditionally exempt small quantity generators," as those terms are defined under RCRA and Chapter 62-730, F.A.C., but only if and only for so long as such materials may be disposed of lawfully in a Class I Landfill.

25. "Host Fee" shall mean a fee paid by the Contractor to the community where the Disposal Facility is located, which is intended to help compensate the community for the Contractor's right to dispose of Solid Waste at the Disposal Facility.

26. "Leachate" shall be as defined by Rule 62-701.200(66), F.A.C.

27. "Manager" means the chief executive officer of the City or his or her designee.

28. "Notice" shall mean a written notice delivered by certified or registered mail, return receipt requested, or by hand delivery, or by overnight delivery service.

29. "Notice to Proceed" shall mean the Notice given by the City to the Contractor establishing the Commencement Date.

30. "Objectionable Odor" shall be as defined by Rule 62-210.200(181), F.A.C.
31. "On-site" means on the land described in Exhibit "A."
32. "Operating Day" means any day the Transfer Station is open for the receipt of Solid Waste.
33. "Operating Manual" shall mean the manual that describes the operation of the Transfer Station and all of the associated Solid Waste management activities.
34. "Operating Month" means, with respect to the initial Operating Month, the period beginning on the Commencement Date and ending on the last day of the calendar month. Thereafter, an Operating Month shall be the same as a calendar month.
35. "Operating Year" means, with respect to the initial Operating Year, the period beginning on the Commencement Date and ending on the following September 30th. Thereafter, an Operating Year shall be the twelve month period commencing October 1 and ending the following September 30.
36. "Performance and Payment Bonds" shall mean the surety to be provided by the Contractor as required by this Agreement.
37. "Permit" shall mean any local, state or federal permit, license, franchise, registration, certification, authorization or other approval required for the performance of a party's obligations under this Agreement.
38. "Person" means any and all persons, natural or artificial, including any individual, firm, association, joint venture, partnership or other entity, however organized, and any combination of the foregoing; any public or private corporation; any city or county; and any governmental agency or branch of local, state or federal government.
39. "Pollution" shall be as defined in Section 403.031(7), Florida Statutes.
40. "Prohibited Wastes" are those waste materials that the City will prohibit at the Transfer Station, including Hazardous Waste, asbestos, biomedical wastes, biological waste, mercury-containing devices, radioactive waste, sludge and liquid wastes.
41. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, and the rules implementing RCRA, including but not limited to the 1984 Hazardous and Solid Waste Amendments and 40 CFR parts 257 and 258.
42. "Recovered Materials" shall be as defined by Rule 62-701.200 (102), F.A.C.

43. "Recyclable Material" shall be as defined by Rule 62-701.200(104), F.A.C.
44. "Recycling" shall be as defined by Rule 62-701.200(105), F.A.C.
45. "Service Fee" shall mean the City's monthly payment to compensate Contractor for all of Contractor's duties, obligations and responsibilities under this Agreement. The Service Fee is comprised of the Base Rate and Host Fees, if any.
46. "Site" means the real property that is located on Stock Island, in Monroe County, Florida, and described more specifically in Exhibit "A", which is attached hereto and incorporated herein by reference. The Site includes the City's Transfer Station and any other structures on or improvements to the real property.
47. "Solid Waste" shall be as defined by Rule 62-701.200(113), F.A.C.
48. "Special Waste" shall be as defined in Rule 62-701.200(119), F.A.C.
49. "Subcontractor" shall mean any Person (other than an employee of the Contractor) who contracts with the Contractor to furnish or actually furnishes labor, services, materials, or equipment for the performance of this Agreement.
50. "Surety" shall mean one or more insurance companies, duly licensed or authorized to transact business in the State of Florida, which execute and issue the Performance and Payment Bonds required by this Agreement.
51. "Term" shall mean the duration of this Agreement, as described in Article 8 herein.
52. "Ton" shall mean 2,000 pounds.
53. "Transaction Summary Report" means the report produced by the City's computer systems for each Operating Month, which summarizes the daily transactions at the scale house for the City's Transfer Station.
54. "Transfer Station" means the Solid Waste transfer, processing and transportation facility that the City will build at the Site. Until this new facility is built and operational, the "Transfer Station" shall mean the existing ash management building at the Site.
55. "Unacceptable Waste" means any Solid Waste that cannot legally be disposed at a Class I Landfill under Applicable Law. Unacceptable Waste includes Hazardous Waste.

- 56. "Waste Tire" shall be as defined by Rule 62-701.200(134), F.A.C.
- 57. "White Goods" shall be as defined by Rule 62-701.200 (141), F.A.C
- 58. "Yard Trash" shall be as defined by Rule 62-701.200 (143), F.A.C.

For ease of reference, FDEP Chapter 62-701 (effective May 27, 2001), F.A.C., is attached hereto as Exhibit "E".

ARTICLE 2. SCOPE OF CONTRACTOR'S SERVICES

This Agreement establishes the terms and conditions that shall govern the Contractor's performance when providing the services required herein for the proper management and disposal of the City's Solid Waste. In accordance with the requirements in this Agreement, the Contractor shall: (a) transport Acceptable Waste from the Transfer Station; and (b) dispose of that Acceptable Waste at the Disposal Facility. Except as otherwise provided herein, the Contractor shall at its expense provide all labor, services, supervision, materials, and equipment necessary to accomplish these tasks throughout the Term. It is the sole responsibility of the Contractor to perform the necessary activities under this Agreement in accordance with the requirements of this Agreement, the Permits, and Applicable Law.

ARTICLE 3. GENERAL TERMS AND CONDITIONS CONCERNING CONTRACTOR'S RESPONSIBILITIES

3.1 Commencement of Operations

The City shall deliver a Notice to Proceed to the Contractor at least thirty (30) calendar days before the Commencement Date. The City's Notice to Proceed shall identify and establish the Commencement Date. On the Commencement Date and each Operating Day thereafter throughout the Term of this Agreement, the Contractor shall transfer all of the City's Acceptable Waste from the Transfer Station and shall dispose of such material at the Disposal Facility.

Prior to the Commencement Date, the Contractor shall have reasonable access to the Transfer Station to prepare for the commencement of operations.

At least five (5) days prior to the Commencement Date, a joint meeting shall be held with representatives of the Contractor, the City, and other parties or government agencies

which may be affected by or have jurisdiction over the Transfer Station or the Contractor's activities under this Agreement. The purpose of this meeting is to introduce the key personnel from each organization and provide an opportunity for discussions concerning the start of operations and other pertinent issues associated with the Transfer Station and this Agreement.

The City may limit its operations at the Transfer Station for the first fourteen (14) days following the Commencement Date. The City shall use this fourteen (14) day period of time to test the equipment at the Transfer Station and optimize the City's operations. The City shall coordinate with the Contractor to ensure that both parties have appropriate staffing and equipment available during this initial start-up period.

3.2 Minimum Standards

This Agreement contains performance standards and other requirements that shall govern the Contractor's activities under this Agreement. These requirements establish the minimum levels of performance that will be deemed acceptable by the City. It is the objective of this Agreement that every aspect of the Contractor's work under this Agreement shall be performed safely and in accordance with the highest professional standards and best management practices for the solid waste industry.

3.3 Representations of the City and Contractor

The City and Contractor recognize that the successful implementation of this Agreement and the efficient operation of the Transfer Station is dependent upon the good faith performance of their respective obligations. The City and Contractor hereby warrant that they will take all reasonable actions necessary to promptly and efficiently carry-out their responsibilities under this Agreement and they will cooperate with each other, as necessary, to ensure the effective, continuous performance of their respective obligations hereunder. The Contractor shall promptly inform the City about any problems, situations or issues that may adversely affect the operation of the Transfer Station.

3.4 Prohibitions

Contractor's activities under this Agreement shall not cause: (a) Pollution; (b) Objectionable Odors at the boundary of the Site; or (c) nuisance conditions.

3.5 Regulatory Compliance

The Contractor shall transport and dispose of the City's Acceptable Waste in strict conformance with all of the provisions of each Permit, Applicable Law and this Agreement.

The Contractor shall respond promptly to all Citations concerning or related to the

Contractor's activities under this Agreement. The Contractor shall provide Notice and a copy of each Citation to the City no later than the next Operating Day after the Citation is received by the Contractor. Thereafter, the Contractor shall keep the City informed about the on-going status of the Contractor's efforts to address the Citation, and shall provide Notice to the City when the Citation has been satisfactorily resolved. The Contractor shall pay all costs of investigating and responding to Citations, all costs of correcting deficiencies and achieving compliance with Applicable Law, and any fines assessed as a result of Contractor's non-compliance.

Whenever the Contractor submits a report, form or other document to FDEP or other regulatory agency concerning the Site or the Contractor's activities under this Agreement, the Contractor shall send a copy to the Director on the same day. The requirements of this paragraph specifically apply to any documents concerning a spill or release of Solid Waste, Leachate, or other material.

3.6 Customer and Community Relations

All customer and public complaints and inquiries (collectively "complaints") about the Contractor's operations under this Agreement shall be the sole responsibility of the Contractor. The Contractor shall respond to all complaints as soon as possible, but no later than the end of the next Operating Day following receipt of the complaint.

The Contractor shall use a standard form to record the hour, date and nature of any complaint. A copy of the form shall be submitted to the Director no later than the next Operating Day after the complaint is received by the Contractor. Copies of written complaints shall be attached to the standard form. The form shall be updated, and resubmitted to the Director, to show how and when the Contractor responded to the Complaint. The Contractor shall keep copies of all complaints and forms in the Transfer Station at all times.

The Contractor's standard form shall be submitted to the Director for review and approval at least five (5) days before the Commencement Date.

3.7 Contractor's Personnel and Equipment

The Contractor shall provide all equipment and personnel necessary to perform Contractor's duties under this Agreement in a safe, timely and efficient manner. All of the Contractor's employees shall be competent and appropriately trained for the tasks assigned to them. All of the equipment used by the Contractor shall be appropriately designed, maintained and operated, in accordance with the manufacturer's recommendations. The Contractor shall make arrangements for or have access to additional equipment and workers, as necessary, to ensure that the operation of the Transfer Station is not interrupted or halted.

At all times when Contractor's employees are On-site, the Contractor's employees shall wear a standard shirt or uniform identifying them as employees of the Contractor.

At all times when Contractor's employees are driving at, to, or from the City's Transfer Station, the employees shall carry a valid Florida driver's license for the type of vehicle that is being driven.

At least five (5) days before the Commencement Date, the Contractor shall provide the Director with a list of all key personnel assigned to the Contractor's work under this Agreement. The Contractor shall provide the Director with an updated list within five (5) days if there are any changes in key personnel.

The Director reserves the right to direct the Contractor to dismiss, or relocate away from the Transfer Station, any employee of the Contractor or a Subcontractor who materially or repeatedly violates any requirement of this Agreement or who is wanton, negligent, or discourteous in the performance of his duties. The Director shall coordinate with the Contractor before exercising this right.

Notwithstanding the foregoing, the City shall not take any action and the Contractor shall not be required to take any action with regard to the Contractor's personnel that would violate the Contractor's written personnel policies or any Applicable Law.

At least five (5) days before the Commencement Date, the Contractor shall provide the Director with a list of the trucks and trailers that will be used to transport the City's Solid Waste under this Agreement. The Contractor shall provide the Director with an updated list within five (5) days if the Contractor replaces or adds any trucks or trailers. The list shall identify the make, model, year and license tag number of each truck and trailer.

At least five (5) days before the Commencement Date and every September thereafter, the Contractor shall provide the City with written documentation to demonstrate that the Contractor can repair or replace any one of its trucks or trailers within four (4) hours of an unanticipated breakdown.

3.8 Subcontractors

The Contractor may utilize Subcontractors in the performance of the work required hereunder. The Contractor shall secure from each Subcontractor an indemnification agreement in favor of the City that is equivalent to the indemnification required of the Contractor by this Agreement. The Contractor shall be responsible to the City for the acts and omissions of its Subcontractors and for any Person that is directly or indirectly employed by the Subcontractors.

The Contractor agrees to employ only those Subcontractors that have been approved by the Director. Such approval shall not be unreasonably withheld and shall be based on the Director's reasonable determination that the Subcontractor has the experience, equipment, personnel and financial resources to satisfactorily perform the work required by this Agreement.

Nothing in this Agreement shall create any contractual relationship between any Subcontractor and the City or any obligation on the part of the City to pay or see to the payment of any monies which may be due to any Subcontractor. No subcontract shall relieve the Contractor of its responsibilities under this Agreement.

3.9 Operating Manual And Supplemental
Operating Requirements

The Contractor shall prepare an Operating Manual that describes how the Contractor will conduct its operations to comply with the requirements in this Agreement.

The Contractor's Operating Manual shall be submitted for the Director's review and approval at least five (5) days before the Commencement Date. The Operating Manual shall be updated, as necessary, and shall be resubmitted for the Director's review and approval each September following the Commencement Date.

The Operating Manual shall include the Contractor's Safety Plan, which shall describe the Contractor's plans and procedures for ensuring that all aspects of the Contractor's work under this Agreement will be performed in a safe and responsible manner. The Contractor's Safety Plan also shall describe the safety and loss control training that will be provided to all of the Contractor's employees that will be providing services for the City under this Agreement. All such employees shall receive appropriate training before they commence work under this Agreement and they shall receive updated, refresher training on a routine basis throughout the Term of this Agreement.

The Operating Manual shall include an Emergency Plan, which shall describe the procedures that will be followed if there is an accident or emergency at the Site, or at the Disposal Facility, or while the Contractor's trucks are in transit. At a minimum, the Emergency Plan shall address the procedures that will be followed if there are: (a) spills or releases of Solid Waste, Leachate, or Hazardous Waste; (b) traffic accidents; (c) hurricanes or severe weather; (d) prolonged road blocks on the approved truck route; or (e) conditions that preclude or seriously hinder the use of the Disposal Facility.

Within 60 days after the Commencement Date, the Contractor shall provide the Director with a plan for removing the City's Acceptable Waste by barge in the event that the Contractor's highway access to the mainland is interrupted. This plan shall be incorporated

into the Emergency Plan after it is approved by the Director.

The Operating Manual supplements this Agreement and establishes additional requirements for the Contractor's performance under this Agreement. The Director is authorized to approve the Operating Manual on behalf of the City. However, if there is any conflict or inconsistency between the requirements of this Agreement and the Operating Manual, the provisions of this Agreement shall govern the parties' conduct.

3.10 Payment of Expenses

Except as otherwise specifically provided for herein, the Contractor shall be solely responsible for and shall pay all costs and expenses incurred in the performance of its duties under this Agreement.

3.11 Permits and Licenses

Except as otherwise provided in Section 6.16, the Contractor shall secure, renew, modify if necessary, and pay for all Permits, licenses, inspections, and other governmental charges that are necessary for the Contractor's activities under this Agreement (e.g., environmental permits at the Disposal Facility; truck registrations; etc.).

3.12 Taxes, Charges and Levies

The Contractor shall pay all sales, consumer, use, and other taxes and fees required by Applicable Law for the Contractor's activities under this Agreement. However, the Contractor shall have no liability under this Agreement for the payment of any ad valorem taxes on the Transfer Station or the payment of any taxes, charges, levies or fees of any kind that are imposed by the City in a discriminatory manner on the Contractor's activities under this Agreement.

3.13 Maintenance of Records

The Contractor shall develop and implement an organized system for keeping records concerning the Contractor's activities under this Agreement. At a minimum, the Contractor's records shall include copies of: (a) all Permits required for the Contractor's activities under this Agreement; (b) all complaints and forms, as described in Section 3.6; (c) all Citations, as described in Section 3.5; (d) all correspondence to and from FDEP and other regulatory agencies directly or indirectly concerning the Contractor's activities under this Agreement; (e) documents from the Disposal Facility (e.g., scale house tickets; billing invoices) that are acceptable to the City, and demonstrate that the City's Solid Waste has been delivered to the Disposal Facility; and (f) any other documents necessary to confirm that Contractor has performed in accordance with this Agreement.

The Contractor's records and documents concerning this Agreement shall be retained by the Contractor for a minimum of five (5) years after the termination of this Agreement. The City and its authorized agents shall have the right to audit, inspect, and copy all such records and documents as often as the City deems necessary during the Term and for five (5) years after the termination of this Agreement. The right to audit, inspect and copy records and documents may be exercised during normal business hours, at the City's sole expense, but shall not extend to confidential or proprietary information.

3.14 Monthly Reports

The Contractor shall provide monthly reports to the City concerning the Contractor's performance under this Agreement. At a minimum, the reports shall discuss the key events that occurred after the last report, plus any key events that are anticipated during the next month. Each report shall address: (a) any complaints received by the Contractor from the public or the City; (b) any Citations, as described in Section 3.5; (c) any spills or emergencies in transit, as described in Section 5.7; (d) any accidents or injuries at the Site, in transit, or at the Disposal Facility; (e) any new or revised operating practices or procedures; (f) any Pollution, Objectionable Odors, or nuisance conditions at the Site or the Disposal Facility; (g) the amount of soil or other material that the Contractor hauled to the Lower Keys pursuant to Section 5.2; (h) the amount of alternate fuel that the Contractor used pursuant to Section 5.2; and (i) any other unusual or extraordinary occurrences affecting the Contractor's performance under the Agreement. Each monthly report shall identify the number of tons of Acceptable Waste, and the number of tons of each other type of Solid Waste, that were delivered to the Disposal Facility from the City's Transfer Station during the prior month.

3.15 Communications Between the City and Contractor

The Contractor shall designate one or more qualified Persons to supervise and be responsible for the Contractor's operations under this Agreement. The Contractor shall develop, implement and maintain a system that will allow the Contractor's supervisor(s) and the Director to communicate with each other at any time, 24 hours per day, seven days per week. The Contractor's proposed communications system shall be subject to the Director's prior approval.

3.16 Litter and Spillage

The Contractor shall not cause or allow any litter or spillage of Solid Waste or other materials to occur as a result of Contractor's activities under this Agreement. When transporting Solid Waste or other materials, the materials shall be contained or enclosed so that leaking, spilling and blowing is prevented. The Contractor shall immediately clean up any litter or spillage caused by the Contractor's activities. The Contractor also shall immediately

clean up any oil, hydraulic fluid, or other liquids that leak or spill from the Contractor's trucks or trailers.

3.17 Annual Certification

The Contractor shall timely file with the City all of the documents and reports required by this Agreement. During the month of September in each year this Agreement is in effect, the Contractor shall verify and certify in writing to the City that all required documents are current and on file with the City, including but not limited to certificates of insurance, performance bonds, equipment lists, personnel lists, the Operating Manual, and the Safety Plan.

ARTICLE 4. THE CONTRACTOR'S RESPONSIBILITIES
AT THE TRANSFER STATION

4.1 Schedule of Operations

The City shall receive deliveries of Solid Waste at the Transfer Station, and the Contractor shall remove Acceptable Waste from the Transfer Station, between the hours of 6:00 A.M. and 3:00 P.M., Monday through Friday, and 6:00 A.M. to 2:00 P.M. on Saturday. After the City stops receiving Solid Waste, the City will continue to operate the Transfer Station, and the Contractor shall continue to remove Acceptable Waste from the Transfer Station, until all of the filled trailers are removed from the Transfer Station, which shall be accomplished by 4:00 P.M., Monday through Friday, and by 3:00 P.M. on Saturdays. The operating hours for the City's scale house shall be the same as the operating hours for the Transfer Station.

The Transfer Station shall be open to receive Solid Waste every day of the year, except Sundays. However, the Transfer Station also shall be open to receive Solid Waste on any Sunday that is the day after a major holiday or a major event in the City (e.g., Fantasy Fest), provided that operations on Sundays shall not occur more than five times per calendar year. Operations on Sunday, if any, shall be scheduled for the same hours as Saturday operations. The City shall provide appropriate Notice to the Contractor at least five days before the City operates the Transfer Station on a Sunday.

The hours of operation for the Transfer Station may be changed by the City upon reasonable Notice to the Contractor. The total number of hours of operation shall not be increased unless the City agrees to revise the Service Fee accordingly.

During any of the City's hours of operation at the Transfer Station, the Contractor may

deliver empty transport trailers to the Transfer Station, or remove trailers from the Transfer Station that have been filled with Acceptable Waste, or perform other tasks that are necessary to ensure the Contractor's compliance with this Agreement.

If emergency conditions (e.g., extreme wind or weather conditions) make it impractical to handle all of the City's Acceptable Waste during the normal hours of operation for the Transfer Station, the City may open the Transfer Station on other days (up to a maximum of five days per year) or at other times reasonably determined by the City. Under such circumstances, the Contractor shall haul and dispose of the City's Acceptable Waste, without additional charge to the City, except for the City's payment of the Service Fee for the Acceptable Waste that is delivered from the Transfer Station to the Disposal Facility.

4.2 Equipment and Personnel at Transfer Station

The Contractor shall have a sufficient number of trailers, equipment and personnel available at the Transfer Station at all times to ensure that the operation of the Transfer Station is not delayed or interrupted and the requirements of this Agreement are satisfied. The Contractor shall have trailers, equipment and personnel available to properly handle and transport the first load and the last load of Acceptable Waste received each day at the Transfer Station.

4.3 Right of Access For City

The City shall have the unrestricted right to inspect the Contractor's equipment and activities at the Site to verify the Contractor's compliance with the requirements of this Agreement. The City also shall have the right to inspect the Disposal Facility during its normal operating hours. The Contractor may require the City's representatives to comply with reasonable safety rules at the Disposal Facility.

4.4 Safety

The Contractor shall be responsible for the personal safety of its personnel and Subcontractors when they are at the Site. The City may require the Contractor and any other Person entering the Site to comply with reasonable safety rules.

4.5 Cooperation with City and Waste Haulers

The Contractor's activities at the Transfer Station will necessarily interface with the activities of the City and other Persons. The Contractor shall not impede or interfere with the City's efforts to ensure the efficient operation of the Transfer Station, or with the ingress, unloading, and egress of waste hauling vehicles. The Contractor's methods and procedures for delivering and removing its trucks and trailers shall be subject to review and approval by the

Director. Similarly, the City shall not impede or interfere with the Contractor's duties and responsibilities under this Agreement.

4.6 Payment of Contractor's Telephone Bills

Except as otherwise provided herein, the City shall pay all of the monthly bills for the electricity, water, and sanitary sewer services provided to the Transfer Station and scale house.

At its expense, the Contractor may install for its use separate telephone lines to the Transfer Station or the Site. The Contractor shall pay the monthly bills for the telephone services used by the Contractor.

4.7 Use of Premises

The Contractor shall not use the Transfer Station or Site for any activity unless the activity is expressly authorized by this Agreement or the Contractor has received the advance written approval of the Director.

The Contractor shall confine its equipment, materials and personnel to the areas designated by the Director. The Contractor shall not unreasonably encumber the Site with materials, equipment, trailers, or trucks.

The City shall provide a fenced and gated parking lot on the Site for the Contractor's use. Trucks and empty trailers may be left in the parking lot overnight. The Contractor may work in this parking lot until 8:00 P.M., Monday through Saturday.

The Contractor shall not use the Site for vehicle repairs or maintenance, except the repair or replacement of flat tires or other similar activities that do not pose a threat of Pollution on the Site.

The Contractor shall not change or alter the City's Transfer Station, equipment or Site without the City's prior written approval.

4.8 Contractor's Testing Rights

The Contractor may conduct environmental assessments or otherwise test the air, soil, water, or Leachate at the Site at any time after the Effective Date. Any such tests shall be at the Contractor's sole expense. The Contractor shall immediately furnish to the City the results of any tests, as well as any reports or other documents resulting from said tests.

**ARTICLE 5. THE CONTRACTOR'S RESPONSIBILITIES
FOR THE TRANSFER AND DISPOSAL
OF ACCEPTABLE WASTE**

5.1 Transport and Disposal of Acceptable Waste

On the Commencement Date, the Contractor shall begin transporting Acceptable Waste from the Transfer Station to the Disposal Facility. Throughout the Term, the Contractor shall be responsible for the safe and lawful transport and disposal of all Acceptable Waste delivered to the Transfer Station. The Contractor's activities shall be conducted in accordance with Applicable Law, including laws governing highway weight limits, equipment inspections, safety standards, and speed limits.

5.2 Trucks and Trailers

The Contractor shall provide all of the trucks and "top loading" trailers needed to haul the City's Acceptable Waste to the Disposal Facility. The Contractor shall replace the trucks and trailers as necessary to ensure that the Contractor has the ability to provide reliable service under this Agreement.

The Contractor's trucks and trailers shall be maintained by the Contractor in a clean and sanitary condition to prevent odors, vectors, or nuisance conditions. The Contractor's trucks shall have leakproof seals, which shall be maintained to ensure that any leakage of leachate is minimized.

The Director shall have the right to require the Contractor to: (a) repair the tarp or leakproof seals on any trailer; (b) wash any truck or trailer; or (c) otherwise service or maintain any truck or trailer to meet the requirements of this Agreement. In such cases, the Contractor shall comply with the Director's instructions within 72 hours or replace the truck or trailer until it can be serviced.

The Contractor's trucks shall be equipped with emissions controls (i.e., exhaust filters), which shall be designed and maintained to remove at least 80% of the particulate matter emissions caused by burning diesel fuel. The Contractor shall use reasonable commercial efforts to obtain and use alternate fuels (e.g., soybean oil) to reduce its truck emissions, when such fuels become available on a commercial basis.

Whenever practicable, the Contractor shall use its trailers to haul dirt or other materials to the Lower Keys (i.e., Big Pine Key and areas closer to the City) when those trailers are returning to the Transfer Station.

5.3 Loading, Covering and Inspecting Vehicles

The Contractor shall deliver empty transport trailers to the Transfer Station for filling with Acceptable Waste. In accordance with the City's instructions, the Contractor either shall drive the trailer inside the Transfer Station for filling by the City or the Contractor shall park the trailer outside the Transfer Station until it is needed. When requested by the City, the Contractor promptly shall drive the empty trailer to the designated location inside the Transfer Station. The Contractor shall move the trailer out of the Transfer Station immediately after the trailer is filled. The City may move the Contractor's trailers into or out of the Transfer Station when the Contractor is unavailable, or unwilling or unable to do so promptly.

The Contractor may park filled trailers On-site temporarily, but the Contractor shall not allow more than two (2) trailers filled with Acceptable Waste to be parked On-site at anytime. If requested by the City, within five (5) hours the Contractor shall remove any trailer from the Site that is filled with unusually odorous waste. The Contractor shall remove all filled trailers from the Site at the end of each Operating Day (i.e., 4:00 P.M., Monday through Friday, and 3:00 P.M. on Saturday).

All trailers shall be securely covered by the Contractor promptly after they are removed from the Transfer Station. All trailers shall remain securely covered until they are unloaded at the Disposal Facility.

All trucks and trailers shall be inspected by the Contractor at the Transfer Station before every trip as part of Contractor's routine safety and operations program.

5.4 Approved Truck Routes

The Contractor shall use only the truck routes designated in Exhibit "D", which is attached hereto, when transporting Acceptable Waste from the Transfer Station to the Disposal Facility. The approved routes may be changed, if necessary, with the prior approval of the Contractor and the Manager.

5.5 Signage on Trucks and Trailers

Each truck used by the Contractor to transport the City's Acceptable Waste shall bear the name and phone number of the Contractor, and an identification number, in letters and numbers that are plainly visible and at least four inches tall, on the sides of the cab. Each trailer shall be labeled by the Contractor in the same manner as trucks, on the tail gate. The Contractor's labels on the trucks and trailers shall be subject to the Director's prior written approval.

5.6 The Disposal Facility

The Contractor shall accept all of the Acceptable Waste delivered to the Transfer Station and shall dispose of all such Acceptable Waste at one or more of the following Disposal Facilities: (a) the waste-to-energy facility that is operated by Wheelabrator Technologies, Inc. ("Wheelabrator"), and located at 4400 South State Road 7 in Fort Lauderdale, Florida; (b) the waste-to-energy facility that is operated by Wheelabrator and located at 2600 N.W. 48th Street in Pompano Beach, Florida; (c) the Contractor's Central Landfill, which is located at 2700 N.W. 48th Street in Pompano Beach, Florida; (d) the Contractor's Medley Landfill, which is located at 9350 N.W. 89th Avenue, in Medley, Florida; and (e) the Contractor's Okeechobee Landfill, which is located at 10800 N.E. 128th Avenue, Okeechobee, Florida. The Contractor shall not take the City's Acceptable Waste to any other facility unless the Commission gives its prior written approval for the use of a different Disposal Facility. The Commission may withhold its approval of any other Disposal Facility, at its sole discretion.

From the Commencement Date until February 1, 2014, the City's Acceptable Waste shall be delivered to one or both of the waste-to-energy facilities operated by Wheelabrator in Broward County. After February 1, 2014, the Contractor shall deliver the City's Acceptable Waste to the waste-to-energy facilities for as long as the waste-to-energy facilities have capacity to receive the City's Acceptable Waste. The Contractor shall not displace the City's use of the waste-to-energy facilities to accommodate a Person that is located outside of Broward County, unless that Person has the right to use the waste-to-energy facilities pursuant to a written contract that was in effect prior to the Effective Date of this Agreement. If the Contractor concludes that it will not have capacity at the waste-to-energy facilities to receive the City's Acceptable Waste, then the Contractor shall give the City at least 6 months advance Notice of the Contractor's plan to change the Disposal Facility that the Contractor uses for the disposal of the City's Acceptable Waste.

Notwithstanding the requirements in the preceding paragraph, the Contractor may divert the City's Acceptable Waste from the two waste-to-energy facilities to the Contractor's three landfills (i.e., the Medley, Central and Okechobee landfills), whenever necessary; provided, however, that such diversions shall be at no additional cost to the City, and the City shall not be required for any reason to implement new curbside collection practices (e.g., to segregate Yard Trash) if the City's Acceptable Waste is diverted from the waste-to-energy facilities.

Notwithstanding the provisions of the preceding paragraphs, the Contractor may dispose of the City's Acceptable Waste at an alternate Disposal Facility if the Contractor has received the Manager's prior written approval to do so. The Manager's approval of an alternate facility shall be limited to sixty (60) days or less. The Manager's approval shall be granted only when necessary to respond to emergencies, Force Majeure events, and similar problems.

5.7 Spills and Emergencies in Transit

If the Contractor's activities under this Agreement result in a spill or emergency, or the release of a reportable quantity of any substance, the Contractor shall implement the emergency plan that is contained in the Operation Manual. The Contractor shall promptly notify the Florida Highway Patrol or local sheriff, or the FDEP, as required by law. The Contractor shall promptly initiate and complete clean-up activities, if necessary. The Contractor shall notify the Director verbally within twelve (12) hours and shall provide a written report to the Director within twenty-four (24) hours concerning the cause of the problem, the clean-up activities that were implemented, and the current status of the situation.

5.8 Disposal of Unacceptable Waste

The Contractor shall arrange and pay for the disposal of any Unacceptable Waste, Special Waste, or Prohibited Waste that is removed from the Site by the Contractor, except when the Contractor has received the Director's prior written approval to remove such material.

ARTICLE 6. THE CITY'S RESPONSIBILITIES

6.1 Ownership of Real Property

The City shall own all rights, title and interest in the Site necessary to enable the City and the Contractor to perform their respective obligations at the Site pursuant to this Agreement. The City shall obtain and maintain any and all land use servitudes, easements, and rights-of-way necessary for the performance of the obligations of both the City and the Contractor at the Site pursuant to this Agreement.

6.2 Ownership of Transfer Station and Equipment

The City shall own the Transfer Station and the other permanent improvements to the Site, including the buildings, structures and associated built-in equipment.

6.3 Access to Transfer Station for Contractor

The City shall provide access to the Transfer Station for the Contractor. Access shall be provided by the City during normal operating hours and, with the Director's prior approval, at other times when necessary to enable the Contractor to carry out the requirements of this Agreement.

6.4 Solid Waste Processing at the Transfer Station

The City shall have at least one trained spotter on duty all times when Solid Waste is received at the Transfer Station. The City's spotter(s) shall inspect all of the Solid Waste received at the Transfer Station and shall determine whether the material constitutes Acceptable Waste. The City shall load all of the Acceptable Waste into the Contractor's trailers for transport to the Disposal Facility. However, the Contractor may refuse to accept any Solid Waste that the Contractor reasonably believes is not Acceptable Waste.

The Contractor and the City shall use their best efforts to ensure that Unacceptable Waste and Prohibited Waste are not taken to the Disposal Facility. If Unacceptable Waste or Prohibited Waste is received at the Transfer Station, the City shall remove such material from the Transfer Station and dispose of it in a lawful manner, at the City's expense, unless the Contractor delivered the Unacceptable Waste or Prohibited Waste.

The City shall provide the containers needed for the temporary storage of Special Waste and other materials that are segregated from the Acceptable Waste at the Transfer Station. The City shall arrange and pay for the removal of these materials from the Transfer Station.

The Contractor shall be provided access at all reasonable times to observe the operations in the Transfer Station. At its expense, the Contractor may assign one or more inspectors to observe the City's operations while loading the Contractor's trucks. The City shall cooperate with said inspectors in the performance of their duties. The Contractor and its inspectors shall not interfere with or impede the City's operation of the Transfer Station.

The City's employees shall perform their responsibilities safely, efficiently and in accordance with the Agreement, Permit and Applicable Law. The City's spotters and other employees at the Transfer Station shall be trained in accordance with Applicable Law. The City shall prepare and follow an operating plan that satisfies the requirements of Applicable Law. At a minimum, the City's operating plan shall describe how: (a) the Transfer Station will be operated; (b) the Solid Waste will be inspected; (c) Unacceptable Waste will be segregated from Acceptable Waste; and (d) emergencies will be handled. The City's operating plan shall be provided to the Contractor for review prior to the Commencement Date. The City shall accept and fairly consider the Contractor's comments and recommendations concerning the operating plan.

The City shall use its best efforts to load the Contractor's trailers in a timely manner and fully, without exceeding any maximum load limits under Applicable Law. The City shall install scales in the new Transfer Station to help ensure that the Contractor's trailers are filled appropriately. The scales shall be connected to a large visual display, which shall be located where it is readily visible, so that the City and the Contractor can easily determine the weight of the Contractor's trailers while they are being filled.

Any major damage to the Contractor's trucks or trailers caused by the City's operations, other than normal wear and tear, will be the responsibility of the City, which shall take steps to promptly effect any necessary repairs.

6.5 Restrictions on Special Waste

The Contractor shall not accept any segregated loads of Special Waste at the Transfer Station, unless the Contractor has received the Director's prior written approval.

6.6 Prohibited Waste

Neither the City nor the Contractor shall knowingly deliver or accept any Prohibited Waste at the Transfer Station. The City shall not knowingly send and the Contractor shall not knowingly transport Prohibited Waste to the Disposal Facility.

6.7 Leachate Management

The City shall operate and maintain a Leachate collection and disposal system in accordance with the Permits and Applicable Law. All Leachate generated in the Transfer Station or on the Site shall be collected in the Leachate collection system. The City shall be responsible for the treatment and disposal of Leachate collected in the Leachate collection system. The Contractor shall not cause or allow Leachate to be released into the soils, surface water or groundwater at the Site.

6.8 Site Access and Security

The City shall control access to the Transfer Station. Other than during hours of operation, the Transfer Station shall be secured and all gates locked.

6.9 Collection of Solid Waste Fees

The City shall be responsible for collecting the appropriate fees from any Person that delivers Solid Waste to the Transfer Station. The City shall determine the amounts of such fees, if any.

6.10 Payment to the Contractor

The City shall pay the Contractor every month in accordance with Article 7. The City shall pay any amounts owed to other Persons hired directly by the City, and the Contractor shall have no liability for such payments.

6.11 Measurement of Solid Waste Tonnage

After the Contractor's trailers are filled with Acceptable Waste at the Transfer Station, they shall be weighed, before they leave for the Disposal Facility. If agreed upon by the City and Contractor, tare weights may be used for these purposes.

The City shall be responsible for determining the number of tons of Acceptable Waste taken from the Transfer Station by the Contractor and shall do so by utilizing the City's automated data collection system at the City's scale house. The City shall produce reports that summarize the scale house data for each Operating Day, Operating Month and Operating Year.

6.12 Scale House Operations

The City shall be responsible for the operation and maintenance of the scales and scale house at the Transfer Station. The City shall perform all required calibration of the scales or shall arrange for such services to be performed by an independent contractor at the City's expense. The scales shall be calibrated at least four times each year. If requested, the City shall provide the Contractor with copies of all relevant documents verifying the calibration of the City's scales.

The City's scale operators shall retain the original weight records. All disposal tickets issued by the City will be consecutively numbered. Hand receipts will be utilized if the City's automated data collection system is inoperable. The disposal tickets and other scale house records shall be available for inspection by the Contractor upon request.

The Contractor shall be provided access at all reasonable times to observe the operations of the scale house. The Contractor may, at its expense, assign one or more inspectors to observe the City's operations. The City shall cooperate with said inspectors in the performance of their duties.

The City and the Contractor shall work together in a cooperative manner to resolve any questions concerning the accuracy of the City's scales and weight records. The Contractor may, at its expense, hire an independent third party to verify the accuracy of the City's scales and records.

6.13 Environmental Monitoring

The City shall perform and pay for any groundwater, surface water, Leachate, or other routine environmental monitoring at the Transfer Station that is required by FDEP or any regulatory agency with jurisdiction over the activities at the Transfer Station. However, the Contractor shall pay for any enhanced or extraordinary environmental monitoring that is required as a result of Pollution or other problems caused by Contractor's activities. The

Contractor shall not be responsible, under this Agreement, for Pollution on the Site that was not caused by the Contractor's activities and was present on the Site before the Contractor commenced operations under this Agreement.

6.14 Solid Waste Flow Control

To the extent allowed by law, the City shall deliver or cause to be delivered all Acceptable Waste within its lawful control to the Transfer Station. The City shall instruct its permitted, franchised and licensed haulers to deliver all Acceptable Waste collected within the City to the Transfer Station. However, the City is not obligated to file a lawsuit or take any other enforcement action against any hauler to compel compliance with this requirement. Further, the requirements in this paragraph do not apply to the delivery of Construction and Demolition Debris, Yard Trash, or other types of Special Waste.

The City reserves the right to divert any or all of the City's Solid Waste to any other facility or location of the City's choice for the purpose of Recycling, removing Recovered Materials, removing organic materials, composting, or otherwise using or processing the Solid Waste. These activities also may be conducted at the Transfer Station or Site. The City shall give Notice to the Contractor at least ninety (90) days before the City begins to divert Solid Waste pursuant to the provisions of this paragraph. After the City's Solid Waste is processed in this fashion, the City shall deliver or have delivered all remaining Acceptable Waste to the Contractor at the Transfer Station.

Nothing in this Agreement shall be construed to require the City to deliver a minimum amount of Acceptable Waste to the Contractor on a daily, annual or other basis.

6.15 Ownership of Solid Waste

The City shall possess all right, title, and ownership of all Solid Waste, Recyclable Material, and Recovered Material that is delivered to the Transfer Station. All right, title, ownership and responsibility for the Solid Waste, Recyclable Material, and Recovered Material shall pass to the Contractor when the Contractor removes such materials from the Site.

6.16 Licenses and Permits

Except as provided in Section 3.11, the City shall take all actions necessary to obtain, renew and modify, if necessary, each Permit needed for the construction and operation of the Transfer Station.

6.17 City Decisions and Appeals

All of the Contractor's work under this Agreement shall be performed to the reasonable

satisfaction of the Director. The Director shall be the City's representative for the purpose of resolving any questions or disputes arising under or related to this Agreement. The Director's decisions may be appealed to the Manager. If the Contractor is dissatisfied with the Manager's decision, the Contractor may pursue mediation pursuant to Section 12.19.

6.18 Monroe County Waste

The City may receive Acceptable Waste generated in Monroe County and the City may deliver or arrange for the delivery of that material to the Contractor at the Transfer Station. The City shall provide Notice to the Contractor at least thirty (30) days before the City undertakes any such activity on a routine basis. In such cases, the indemnification provided by the Contractor in Article 10 of this Agreement shall be extended automatically to cover and protect Monroe County.

ARTICLE 7. GENERAL PAYMENT PROVISIONS

7.1 Service Fee

After each Operating Month, the City shall pay a Service Fee in the amount and in the manner specified in this Agreement. The Service Fee is intended to fully and completely compensate the Contractor for all of Contractor's duties, obligations and responsibilities under this Agreement.

7.2 Method of Calculating Service Fee

The Contractor shall be paid a Service Fee for each Ton of Acceptable Waste that the Contractor takes from the Transfer Station and disposes at the Disposal Facility. The Department will use the Transaction Summary Report produced by the City's automated data collection system to calculate the total amount of the payment to be made to the Contractor.

On the Effective Date, the Service Fee for Acceptable Waste and Special Waste shall be \$58.25 per Ton, as set forth in Exhibit "F". This Service Fee is comprised of a Base Rate of \$58.25 and a Host Fee of \$0.

7.3 Reductions In Service Fee

The amount of the Service Fee to be paid to the Contractor each month shall be reduced by the amount of any administrative charges assessed by the City pursuant to Section 10.4.

7.4 Procedure For Payment of Service Fee

Each month the Department shall calculate the amount of the Service Fee that is owed to the Contractor, based on the provisions of this Agreement. Thereafter, the Department shall prepare a request for the payment of the Contractor's Service Fee. The Department's request for payment will be submitted to the Finance Director, and a copy of the request for payment will be provided to the Contractor, within ten (10) days after the end of the Operating Month.

If the Contractor disagrees with the amount stated in the Department's request for payment, the Contractor shall notify the Director within five (5) days after the request for payment is received by the Contractor. The existence of a dispute shall not delay the payment of undisputed amounts. Payments to the Contractor of undisputed amounts shall be made within thirty (30) days after the request for payment is received by the Finance Director.

7.5 Adjustments to Fees

From time to time, the fees described in this Agreement may be adjusted in the manner provided below.

7.5.1 Consumer Price Index Adjustment

The Service Fee shall be adjusted on the Commencement Date, and on October 1 of each calendar year after the Commencement Date, in a manner consistent with the provisions of this Section 7.5.1. and Section 7.5.4.

The Base Rate component of the Service Fee for Acceptable Waste shall be adjusted on the Commencement Date to account for the change in the Consumer Price Index (CPI) that occurred between the Effective Date and the Commencement Date. The Base Rate shall be adjusted on October 1 following the Commencement Date to account for the change in the CPI between the Commencement Date and October 1. The Base Rate also shall be adjusted each October 1 thereafter to account for the change in the CPI during the prior twelve (12) months.

Each time the Service Fee is adjusted to account for changes in the CPI, the Base Rate component of the Service Fee shall be revised upward or downward in an amount equal to seventy-five percent (75%) of the change in the CPI during the relevant time period; however, the CPI adjustment shall not exceed five percent (5 %) in any twelve (12) month period. If a CPI adjustment would exceed five percent (5 %), but for the provisions of the preceding sentence, the Base Rate shall be increased by five percent (5 %) at that time and the Contractor shall be entitled to receive the additional CPI increase (i.e., the amount that exceeds five percent) when the Base Rate is adjusted the next year, provided the total CPI adjustment never exceeds five percent (5 %) in any twelve (12) month period. If this Agreement is terminated

by either party for any reason, the City shall have no obligation to pay damages or otherwise compensate the Contractor for any previously unpaid CPI adjustment.

When calculating the CPI adjustment for an Operating Year in which the CPI increased, the amount of the CPI adjustment shall be determined by using the following formula:

$$\text{New Price} = \frac{[(\text{CPI2} - \text{CPI1}) \times 0.75 + 1] \times \text{Current Price}}{(\text{CPI1})}$$

"CPI" = the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for all items in the national urban category.

"CPI1" = the published CPI for July in the preceding year.

"CPI2" = the published CPI for July in the year in which the Service Fee is being adjusted.

Adjustments to the Service Fee made in accordance with this section are intended to reflect changes in the purchasing power of a given amount of money expressed in dollars. If the method of establishing the CPI is revised to more accurately reflect inflation or deflation, the revised CPI shall be used thereafter when calculating the adjustments to the Service Fee. If CPI1 and CPI2 are not expressed in relation to the same base period, the City shall make an appropriate statistical adjustment or conversion. If the CPI is discontinued, the City shall select another index, which must be representative of the inflationary or deflationary trends affecting the parties' performance under this Agreement, and which is published by the United States government or by a reputable publisher of financial and economic indices.

7.5.2 Legal Changes Adjustment

After the Effective Date, if there is a Change in Law which has the effect of establishing a requirement that directly causes or will cause a significant increase or a decrease in the Contractor's cost of performing its obligations under this Agreement, then:

(a) In the event of an increase in costs, Contractor may notify the City of such event and seek an increase in the Service Fee to reflect the increased cost of performing those contract obligations that have been or will be affected by the Change in Law.

(b) In the event of a decrease in costs, the City may notify the Contractor of

such event and seek a decrease in the Service Fee to reflect the decreased cost of performing those contract obligations that have been or will be affected by the Change in Law. Decreases in cost shall be calculated on the same basis as increases in costs.

The City shall bear 100% of any cost increase and obtain the benefit of 100% of any cost reduction.

If a Change in Law meets the requirements for an adjustment to the Service Fee, nothing in this Agreement shall be construed to require the City to pay more than its proportionate share of any increased cost resulting from the Change in Law.

To the extent either party is seeking an increase or reduction in the Service Fee pursuant to this Section, that party (the "requesting party") shall provide the other with as much detail as possible as to the nature of the Change in Law, the basis for the assertion that such change has had or will have an effect on the Contractor's costs, the total dollar amount associated with such effect, and a calculation of the change being sought in the Service Fee. Upon the receipt of such information, the other party (the "responding party") promptly shall review the information and within sixty (60) days shall respond to the requesting party in writing, stating whether it agrees or disagrees with the requesting party's proposal. If the responding party agrees, then the parties promptly shall meet and adjust the Service Fee. If the responding party disagrees with the request, then the parties shall attempt to resolve the dispute through mediation pursuant to Section 12.19 of this Agreement.

If the Contractor requests an increased fee, the Contractor's request shall include an audited statement of Contractor's historical and current expenses, confirming a significant increase in Contractor's costs due to factors beyond the Contractor's control, which have occurred due to a Change in Law. The audit shall be prepared by a certified public accountant, licensed in the State of Florida, that is not an employee of the Contractor or its affiliates. The auditor shall disclose any prior consulting or auditing work performed for the Contractor. At its expense, the City may have its own accountant audit the Contractor's records to verify the impact of a Change in Law on the Contractor's cost of performing under this Agreement.

If an adjustment to the Service Fee is made as a result of a Change in Law, the adjustment shall be applied retroactively to the date when the Contractor's costs first changed as a result of the Change in Law.

7.5.3 Adjustments to Transportation and Disposal Costs

The Service Fee established in this Agreement is based on the cost of transportation to and disposal at any one of the five Disposal Facilities described in Section 5.6, above. The Service Fee paid by the City shall remain the same if the Manager authorizes the use of a

different Disposal Facility on a temporary basis pursuant to Section 5.6, above. Except for these circumstances, the Service Fee shall be adjusted if the City's Acceptable Waste is taken to any other facility for disposal. If the City and the Contractor cannot mutually agree on the amount of the adjustment, the City may refuse to allow the Contractor to use a different Disposal Facility, pursuant to Section 5.6.

7.5.4 Adjustments to Host Fees

Subject to the limitations set forth herein, the Service Fee paid to the Contractor is sufficient to reimburse the Contractor for the Host Fees, if any, paid by the Contractor for the disposal of the City's Solid Waste. As of the Effective Date, there shall be no separate Host Fees paid by the City for the transport or disposal of the City's Acceptable Waste and Special Wastes.

The City is not obligated to reimburse the Contractor for the payment of any Host Fee that is (a) established after the Effective Date or (b) increased after the Effective Date.

7.5.5 Extraordinary Rate Adjustment

Once each calendar year, the Contractor may petition the City for a rate adjustment based on extraordinary changes in the cost of providing services under this Agreement. The Contractor shall submit appropriate documentation to support and fully explain any proposed adjustment. The Contractor's request shall include an audited statement of Contractor's historical and current expenses, confirming an extraordinary increase in Contractor's costs due to factors beyond the Contractor's control, which have occurred through no fault or negligence of the Contractor. The audit shall be prepared by a certified public accountant, licensed in the State of Florida, that is not an employee of the Contractor or its affiliates. The auditor shall disclose any prior consulting or auditing work performed for the Contractor. At its expense, the City may audit the Contractor's records to evaluate the Contractor's request. In its sole discretion, the Commission shall approve or deny the request within sixty (60) days after the Director receives all of the information needed to evaluate Contractor's proposal. The Commission's decision shall be final and non-appealable. If Contractor's request is granted, the Commission shall have the right to reduce Contractor's rates when Contractor's costs are reduced. Every twelve (12) months after a request is granted, the Director shall have the right to request, and Contractor shall prepare promptly upon request, an updated audit and explanation of whether the extraordinary rate increase should remain in effect.

Subject to the provisions of this Section 7.5.5, the Commission may consider a new or increased Host Fee as the basis for an extraordinary rate adjustment, if the new or increased Host Fee was unilaterally imposed on the Contractor against its wishes, and the Contractor satisfies the criteria set forth in the preceding paragraph.

ARTICLE 8. TERM

Unless terminated earlier in the manner provided herein, this Agreement shall have a minimum duration of twenty (20) years, which shall be divided into an initial Term of seven (7) years, a renewal Term of seven (7) years, and another renewal Term of six (6) years. The initial Term shall begin on the Commencement Date.

At the end of the initial Term and at the end of each renewal Term, the Commission shall have the right, in its sole discretion, to extend, renegotiate, or terminate this Agreement. The City shall provide at least 180 days advance Notice to the Contractor as to whether the City wishes to extend, renegotiate or terminate this Agreement at the expiration of the initial Term or any renewal Term. If the Commission has not voted to extend this Agreement by the end of any such Term, this Agreement shall terminate 180 days thereafter.

At the end of the second renewal Term (i.e., 20 years after the Commencement Date),

the Commission shall have the right to extend this Agreement for two additional Terms of ten years each, subject to the CPI adjustments in Section 7.5.1 and the other provisions of this Agreement.

ARTICLE 9. TERMINATION AND SPECIAL CONDITIONS

9.1 For Cause

Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the material covenants or conditions contained herein for five (5) working days after the other party has given the party breaching or defaulting Notice of such breach or default, the other party may (i) terminate this Agreement as of any date; (ii) cure the breach or default at the expense of the breaching or defaulting party; and/or (iii) have recourse to any other right or remedy to which it may be entitled at law or in equity. The non-defaulting party's selection of any remedy specified herein shall not be construed as a waiver of any other rights at law or in equity related to the defaulting party's breach.

If a default does not endanger the health, safety, or welfare of the City or its citizens, and in the exercise of due diligence during the aforesaid five (5) day period a cure cannot reasonably be effected, such five (5) day period shall be extended to include such additional time as is reasonably necessary to effect a cure, provided the defaulting party exercises continuous diligent efforts to cure the default during the extended cure period.

In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

Each of the following shall constitute an event of default:

9.1.1 Failure or Refusal of a Party to Comply with Terms of the Agreement

The persistent, repeated, or substantial failure or refusal by either party to substantially fulfill any of its material obligations in accordance with this Agreement, unless excused or justified by a Force Majeure event, default by the other party, or other legally recognized cause customarily justifying or excusing non-performance; provided, however, that the first failure of the Contractor to meet its obligations in accordance with Section 10.4 shall not be an event of default so long as the Contractor pays the applicable deductions; and provided, that no such default shall constitute an event of default unless and until:

(a) The non-defaulting party has given Notice to the defaulting party that a default or defaults exist which will, unless corrected, constitute an event of default on the part of the defaulting party; and

(b) The defaulting party either has not corrected such default, or has not initiated reasonable steps expeditiously to correct such default within five (5) days from the date of such Notice.

The events by which the Contractor shall be deemed to have failed to fulfill a material obligation of this Agreement shall include, but not be limited to:

- (i) Failing to begin work on the Commencement Date;
- (ii) Discontinuing prosecution of the work required by this Agreement;
- (iii) Willful or negligent failure to comply with any Applicable Laws or Permit;
- (iv) Breaching any material warranty or making any representation in this Agreement that is materially untrue;
- (v) Failing to pay, when due, any sums owed to a Subcontractor for services or materials provided pursuant to this Agreement;
- (vi) Failing to perform the work or satisfy the requirements established in this Agreement; or
- (vii) Failing to provide or continuously maintain the insurance or bonds required by this Agreement.

9.1.2 Voluntary Bankruptcy

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

9.1.3 Involuntary Bankruptcy

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

9.1.4 Habitual Violations

If the Contractor has frequently, regularly or repetitively defaulted in the performance of any of the conditions or requirements contained in this Agreement, the City may in its sole discretion deem the Contractor to be a "habitual violator", regardless of whether the Contractor has corrected each individual condition of default. Under such circumstances, the Contractor shall forfeit its right to any further notice or grace period to correct or cure future defaults. All of the Contractor's prior defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The City shall issue the Contractor a notice that the Contractor has been deemed a "habitual violator." Thereafter, any single default by the Contractor of whatever nature shall be grounds for immediate termination of this Agreement. In the event of any such default, the City may terminate this Agreement by giving a written Notice to the Contractor, which shall be effective upon the date specified in the Notice. The Contractor shall immediately cease all activities under this Agreement. This section creates a supplemental and additional means of terminating this Agreement and it shall not be deemed to be in lieu of any other remedy available at law or equity.

9.2 Termination Due To Environmental Contamination

The City may terminate this Agreement at any time if the Commission reasonably concludes that the continued use of the Disposal Facility exposes the City to significant liability under Applicable Law because of Pollution or environmental contamination at the Disposal Facility. Among other things, the Commission may consider whether: (a) the Disposal Facility has been or soon will be included in EPA's National Priorities List or an analogous state or federal list of highly contaminated sites; (b) a state or federal agency has identified significant Pollution or contamination at the Disposal Facility that cannot be readily corrected; or (c) the City's continued use of the Disposal Facility is contributing to Pollution or contamination that poses a significant risk to human health or the environment.

The Commission shall provide at least thirty (30) days advance Notice to the Contractor before the City terminates this Agreement pursuant to the provisions of this Section 9.2. The Commission also shall hold a public hearing and provide an opportunity for the Contractor to present information concerning any relevant issue.

Regardless of the facts concerning the Disposal Facility, the Commission shall not terminate this Agreement pursuant to this Section 9.2 if the Contractor agrees to take the City's Acceptable Waste to another Disposal Facility that does not suffer from the same concerns about Pollution or contamination, and provided that the Contractor agrees to use the alternate Disposal Facility under the same terms, conditions and prices that were prevailing at the original Disposal Facility.

9.3 Force Majeure

Force Majeure events shall be subject to the following provisions and limitations.

9.3.1 Obligations Excused

Notwithstanding any other provision in this Agreement, except the provisions of Section 10.1.2, neither the City nor the Contractor shall be liable to the other for any failure or delay in performance of any obligation under this Agreement due to the occurrence of a Force Majeure event. As a condition precedent to the right to claim excuse of performance, the party experiencing a Force Majeure event shall:

(a) Promptly notify the other party verbally; and

(b) As soon as practical, but in no event more than ten (10) days thereafter, prepare and deliver to the other party a Notice with a written description of (1) the commencement of the Force Majeure event, (2) its estimated duration and cost impact, if any, on the party's obligations, under this Agreement, and (3) its estimated impact (other than cost), if any, on the party's obligations under this agreement.

9.3.2 Continuing Obligations

Whenever a Force Majeure event occurs, the parties shall, as quickly as possible, to the extent reasonable, eliminate the cause therefor, reduce the costs thereof, and resume performance under this Agreement. Additionally, either party shall provide prompt Notice to the other of the cessation of a Force Majeure event.

The party claiming a Force Majeure event shall affirmatively prove to the other party the occurrence of the Force Majeure event and all resulting impacts, if any, to the performance of the Agreement.

The parties recognize that nothing in this subsection shall in any way limit each 's duty, as otherwise specified within this Agreement, to comply with all Applicable Laws.

Although strikes, slowdowns, walk-outs, block-outs, industrial disturbances, or other labor disputes are not Force Majeure events, if such events occur, the Contractor shall take all reasonable steps to continue normal operations. Among such steps which may be required are the transfer of personnel from any other locations, hiring of additional short-term employees, and contracting with other entities to provide the necessary equipment or labor required to perform the Contractor's responsibilities under this Agreement.

9.3.3 City's or Contractor's Right to Terminate
Due to Force Majeure Event

In the event that the City or the Contractor in good faith determines that a Force Majeure event will prevent or alter performance permanently or for such period of time or at such additional expense as to make performance unreasonable, the City or the Contractor may declare the Agreement terminated and neither party shall be further obligated to the other except for amounts due upon the date of termination of the Agreement.

9.4 Interim Operations

In the event that this Agreement is terminated before the end of any Term, the Contractor shall continue operations for an interim period of up to one hundred eighty (180) calendar days if requested to do so by the City in order to allow the City to obtain the services of a successor contractor or to make arrangements to transport and dispose of the Acceptable Waste with its own forces. The Contractor shall be paid for its services during said interim period at the rates in effect prior to issuance of the Notice of termination. Any additional services will be paid for at an agreed upon rate.

9.5 Vacating the Site

Upon vacating the Site, the Contractor shall properly dispose of any accumulations of waste materials, rubbish, and other debris resulting from the Contractor's activities. The Contractor shall remove Contractor's tools, equipment, machinery, and materials from the premises and shall leave the Transfer Station and premises clean. The Contractor shall restore to original condition any portions of the Transfer Station or Site that were altered or changed by the Contractor without the City's approval, unless otherwise directed by the City.

9.6 Termination for Convenience

Seven years after the Commencement Date and anytime thereafter, the City shall have the right to terminate this Agreement, without cause, for the City's convenience. This seven year period shall not be suspended or extended, even if this Agreement is suspended in accordance with the provisions of Section 9.7, below.

The City shall provide advance Notice to the Contractor before the City terminates this Agreement for convenience. The City's Notice shall designate the date when the Contractor shall cease providing its services, and such date shall be at least 180 days but not more than one year after the City delivers its Notice to the Contractor. The Contractor and the City shall comply with all of the other provisions of this Agreement until the date designated in the City's Notice for the termination of this Agreement.

If the City exercises its right to terminate this Agreement for the City's convenience, the City shall pay the Contractor's Service Fee for the work that is completed under this Agreement though the last day service is provided, but the City shall not be liable to the Contractor for any damages, expenses, lost profits, or other costs as a result of exercising its right to terminate this Agreement at the City's convenience.

9.7 Termination to Relocate Transfer Station

Subject to the limitations contained herein, the City shall have the right to suspend this Agreement if the Commission decides that the City will use Monroe County's transfer station at Cudjoe Key, and the City shall have the right to terminate this Agreement if the Commission decides to use a transfer station that is not on the Site, instead of using the City's Transfer Station.

If the City decides to use Monroe County's transfer station, the City will execute an interlocal agreement with the County. This Agreement shall be suspended when the interlocal agreement takes effect or at any other time that is mutually agreeable to the City and the Contractor. If the City subsequently stops using the County's transfer station, the City and the Contractor shall have the right to resume their operations pursuant to this Agreement. Upon the resumption of operations under this Agreement, the Service Fee shall be adjusted pursuant to Section 7.5.1 to account for changes in the Consumer Price Index that occurred while the Agreement was suspended. In addition, the Service Fee shall be equitably adjusted to account for any changes in the location of the City's transfer station. If operations under this Agreement are not resumed within twenty (20) years after this Agreement is suspended, this Agreement shall terminate automatically, unless the City provides Notice to the Contractor that the City wishes to hold this Agreement in suspension for a longer period of time.

If the City decides to use a transfer station at any other off-Site location, then the City and the Contractor shall negotiate a new contract concerning the services that the Contractor shall provide at the new location. This Agreement may be terminated when the new contract takes effect. The new contract shall be substantially the same as this Agreement, but the Service Fee shall be equitably adjusted to account for the change in the location of the transfer station. The Contractor agrees that, at a minimum, under the new contract the Contractor will: (a) provide all of the services required under this Agreement; (b) provide such services for the same Service Fees that are established in this Agreement, subject to any adjustments that have been made in the Service Fees prior to the execution of the new contract; (c) provide the same guarantees, insurance and other commitments that are required in this Agreement; and (d) comply with all of the minimum standards and requirements set forth in this Agreement.

If the City decides to terminate this Agreement in accordance with the provisions of this section, the City shall provide at least 180 days advance Notice to the Contractor. The City shall pay the Contractor's Service Fee for the work that is completed under this Agreement through the last day service is provided, but the City shall not be liable to the Contractor for

any damages, expenses, lost profits or other costs as a result of exercising its right to terminate this Agreement pursuant to this section.

ARTICLE 10. DAMAGES, INDEMNIFICATION, AND DEDUCTIONS

10.1 Liability, Indemnification, and Contribution

The provisions of this Article 10 shall survive the termination of this Agreement.

10.1.1 Liability

The Contractor shall be liable for all injuries and conditions that are caused by or result from the Contractor's actions, including but not limited to the Contractor's failure to transport or dispose of Acceptable Waste in accordance with the terms of this Agreement. To the extent that the City and Contractor are joint tortfeasors, losses shall be apportioned in the manner described in Section 10.1.3, below.

10.1.2 Indemnification

To the extent of the Contractor's fault, the Contractor shall protect, defend, hold harmless and indemnify the City (including its elected officials, agents, representatives and employees) from and against any and all claims, damages, demands, liabilities (including strict liabilities), losses, delays, fines, penalties, settlements, injuries and expenses of any kind or nature, including court costs and reasonable attorney's fees (including costs and fees for appeals, mediations, arbitrations, and administrative proceedings) (collectively "claims"), which in any way arise out of, result from or relate to the Contractor's actions under this Agreement, provided that any such claim is (a) attributable to, resulting from, or related to bodily injury, sickness, disease, or death, or injury to or destruction of tangible personal property or natural resources, including the loss of use resulting therefrom, or Pollution or contamination of the environment, or actual or alleged violations of Applicable Law, or the breach of, misrepresentation in, untruth in, or inaccuracy in any representation, warranty or covenant by the Contractor in this Agreement, and (b) is caused by an act, omission, misconduct or negligence of the Contractor, any Subcontractor, any Person employed by any of them, or any Person for whose acts any of them may be liable. The Contractor's obligations shall not be limited by, or in any way to, any insurance coverage, including but not limited to benefits payable under any Workers' Compensation acts, disability benefit acts, or other employee benefit acts, or by any provision in or exclusion or omission from any policy of insurance. Notwithstanding anything to the contrary set forth above, the Contractor shall investigate, handle, respond to, provide a defense for and defend against any such claim at the Contractor's sole cost and expense, and shall bear any and all other costs and expenses related

thereto, even if the claims are groundless, false, fraudulent or ultimately are determined to have not occurred as the result of the fault of the Contractor. The Contractor acknowledges that the first Five Thousand Dollars (\$5,000.00) paid to the Contractor pursuant to this Agreement is in consideration for the indemnification granted to the City in this paragraph.

Notwithstanding any other provision contained in this Agreement, the Contractor's obligations under this Section 10.1.2 shall extend to and include claims that are based upon, arise out of, result from, or relate to strict liability (i.e., where fault is not an issue) or Force Majeure events (i.e., where the Contractor's other obligations under this Agreement may be excused).

If the City is entitled to be indemnified and defended by the Contractor in the manner described above and the Contractor fails to promptly assume and pay for the defense of any such claim, then the City may contest or settle any such claim after notice to Contractor and an additional opportunity to defend, and the Contractor shall pay any and all sums expended by the City in contesting or settling such claim (including costs, expenses, and attorney's fees). Any attorney or law firm hired by the Contractor to defend or represent the City with regard to any claim must first be approved in writing by the City and not have a conflict with its representation of the City. If the City and the Contractor are defendants with regard to any claim and it is determined by the City that there are or may be legal defenses available to the City which are different from or in addition to those defenses available to the Contractor, or if it is determined by the City that the City has or may have a claim against the Contractor, then the City shall have the right to select separate counsel to represent the City and to assert the City's legal defenses and claims against the Contractor. In such cases, the Contractor shall promptly pay all costs and expenses for the City's defense or claim, when and as such costs and expenses become due and payable.

10.1.3 Contribution

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

10.2 Parent Corporation Guarantee

If the Contractor fails or refuses to satisfy the requirements of Section 10.1.2 with regard to any claims based on, related to or arising out of Pollution at the Disposal Facility, then the Contractor's parent corporation (Waste Management Inc.) shall satisfy the Contractor's obligations under Section 10.1.2, in accordance with the guarantee that is attached hereto as Exhibit "C."

10.3 Damages

Except where otherwise specifically provided, the measure of damages to be paid by the Contractor to the City or by the City to the Contractor, due to any failure by the Contractor or the City to meet any of its obligations under this Agreement, shall be the actual damages incurred by the City or the Contractor, including any and all Consequential Damages. Said damages shall include, but shall not be limited to, the following damages:

10.3.1 Damages in the Event of Termination

If the City terminates this Agreement because of a default by the Contractor, the Contractor shall be liable to the City for all actual damages incurred by the City as a result of Contractor's default. The foregoing shall apply without regard to the City's rights pursuant to the Performance and Payment Bond, but in no event shall the City recover more than its actual damages.

10.3.2 Damages Due to Failure to Remove and Dispose of Acceptable Waste

If, after Notice to Contractor and failure to cure pursuant to Section 9.1 of this Agreement, the Contractor fails or refuses to remove Acceptable Waste from the City's Transfer Station and dispose of the Acceptable Waste in accordance with this Agreement, the City shall have the right to take such actions as were required to be taken by the Contractor (including but not limited to contracting with third parties) and the Contractor shall pay the City all costs and expenses reasonably incurred by the City. The foregoing shall apply regardless of whether the City terminates this Agreement and shall be in addition to any other damages for which the Contractor may be liable pursuant to other sections of this Agreement.

10.3.3 The City's Damages Due to Contractor's Failure to Comply with Environmental Or Other Applicable Laws

If the Contractor or Subcontractor fails to comply with any applicable environmental regulations or other Applicable Laws, the Contractor shall pay to the City the following:

(a) All lawful fines, penalties, and forfeitures charged to the City by any judicial orders or by any governmental agency responsible for the enforcement of environmental or other Applicable Laws; and

(b) The actual costs incurred by the City as a result of the failure to comply with the environmental or other Applicable Laws, including any costs incurred in investigating and remedying the conditions which led to the failure to comply with the Applicable Laws.

10.4 Administrative Charges

The parties acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would or might be incurred by the City due to those failures or circumstances described in this Section 10.4 and for which the Contractor would otherwise be liable. Therefore, the following administrative charges shall constitute liquidated damages, not penalties, for the Contractor's breach of this Agreement. These administrative charges may be deducted from the Service Fee.

- (a) The Contractor shall:
- (1) promptly move empty trailers into the Transfer Station when requested by the City;
 - (2) promptly move filled trailers out of the Transfer Station when requested;
 - (3) securely and completely cover each trailer promptly after the trailer is filled with Acceptable Waste;
 - (4) keep each trailer securely and completely covered when transporting Solid Waste to the Disposal Facility;
 - (5) remove all filled trailers from the Site by the end of each Operating Day;
 - (6) have a sufficient number of empty trailers available at the Site when the Transfer Station opens each morning;
 - (7) clean up any litter, spillage or leakage within two (2) hours after it is reported to the Contractor; and
 - (8) wash, repair or service a truck or trailer within seventy-two (72) hours after being requested to do so by the Director.

If the Contractor fails to comply with any one of these requirements, the Director shall give Notice to the Contractor of the foregoing failure, and the City may assess an administrative charge in the amount of Two Hundred Fifty Dollars (\$250) per occurrence against the

Contractor.

(b) If, due to Contractor's acts or omissions, the quality of surface water discharged from the Transfer Station falls below the standards established by the Permits or Applicable Law, the Director shall give Notice to the Contractor of the foregoing failure. If the Contractor fails to commence actions to remedy the conditions which produced the substandard surface water quality within two (2) Operating Days of Notice from the Director, an administrative charge in the amount of Four Hundred Dollars (\$400) per day may be assessed against the Contractor until such time as the Director determines that the Contractor has commenced actions to remedy the conditions which produced the substandard surface water quality.

(c) If the Contractor fails to maintain and utilize the levels of labor and equipment required by this Agreement, the Director shall give Notice of the foregoing failure to Contractor. If Contractor fails to remedy the foregoing failure within one (1) Operating Day of Notice from the Director, an administrative charge in the amount of Four Hundred Dollars (\$400) per day may be assessed against Contractor until such time as the Director determines that Contractor has remedied the foregoing failure.

(d) If the Contractor's activities at the Transfer Station result in Objectionable Odors at or beyond the boundary of the Site, the Director may give Notice to the Contractor. If the Contractor fails to remedy the odor problem within one (1) Operating Day of Notice from the Director, an administrative charge in the amount of Four Hundred Dollars (\$400) per day may be assessed against the Contractor until such time as the Director determines that the Contractor has remedied the foregoing problem.

(e) If the Contractor fails to submit a report, record, or other document in compliance with the schedules in this Agreement, the Director may assess an administrative charge of One Hundred Dollars (\$100) for delays up to thirty (30) days. If the Contractor fails to file the appropriate document within seven (7) days after receiving Notice from the Director, and the document is more than thirty (30) days late, the Director may assess a charge of One Hundred Dollars per day thereafter.

If the Contractor fails to comply with any one of the requirements identified in subparagraphs (a) -(e), above, on three or more occasions in one Operating Year, the amount of the deduction for that one requirement shall be doubled.

10.4.1 Exemptions from Administrative Charges

The Contractor shall not be required to pay administrative charges in those cases where the delay or failure in Contractor's performance was (a) excused in advance by the Director or (b) due to unforeseeable causes and beyond Contractor's reasonable control, and without the fault or negligence of the Contractor.

10.4.2 Payment of Administrative Charges

The Director may assess administrative charges on a monthly basis. At the end of each month, the Director shall notify Contractor in writing of any administrative charges assessed and the basis for each assessment. If Contractor wishes to contest an assessment, it shall, within ten (10) working days after receiving the Director's notice, request in writing an opportunity to present its case to the Manager. If the Manager's decision is unacceptable, Contractor may request in writing an opportunity to present its case to the Commission. The Commission shall provide Contractor an opportunity to be heard at a public meeting and then shall notify Contractor in writing of its decision concerning the administrative charges. The decision of the Commission shall be final and non-appealable.

10.5 Settlement And Release

If this Agreement is terminated, the City shall pay to the Contractor any and all sums due, owing, and unpaid to the Contractor by the City for work performed through the date of termination, less any and all sums owed by the Contractor to the City and less any and all deductions or other offsets the City may have. In exchange for this payment and the payment of any damages which may be owed to Contractor by the City, the Contractor shall execute and deliver to the City a general release of the City, its elected officials, employees, representatives, and agents. This payment to the Contractor shall constitute Contractor's full and final compensation under this Agreement and the Contractor shall have no right to receive any further payments. This provision does not limit the rights of either party to receive indemnification in the future.

ARTICLE 11. STATEMENT OF ASSURANCE

The Contractor assures the City that said Contractor will not on the grounds of race, color, national origin, religion, sex, age, handicap, or marital status, discriminate in any form or manner against said Contractor's employees or applicants for employment (as provided in Title VI of the 1964 Civil Rights Act, the Florida Human Rights Act of 1977, and Applicable Law). The Contractor understands and agrees that this Agreement is conditioned upon the veracity of this Statement of Assurance. Furthermore, the Contractor herein assures the City

that said Contractor will comply with Title VI of the Civil Rights Act of 1964 when federal grant(s) and other applicable federal and State laws are involved. Executive Orders and regulations prohibiting discrimination as hereinabove referenced are included by this reference thereto. This Statement of Assurance shall be interpreted to include Vietnam-Era Veterans and Disabled Veterans within its protective range of applicability.

The Contractor also agrees to comply with the applicable provisions of the Civil Rights Act of 1866; Civil Rights Act of 1871; Equal Pay Act of 1963; Civil Rights Act of 1964; Civil Rights Restoration Act of 1987; Age Discrimination Act of 1975; Florida Statute Sections 112.041, 112.043, and 413.08; Age Discrimination and Employment Acts of 1967; Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Federal Civil Rights Act of 1991; Florida Civil Rights Act of 1992; any and all amendments to the foregoing; the City's ordinances dealing with discrimination; and all other Applicable Laws.

ARTICLE 12. GENERAL CONDITIONS

12.1 Proposal Bond

On or before the Effective Date, the Contractor shall deliver a Proposal Bond to the City. The Proposal Bond shall be in an amount not less than \$100,000. On or before the first anniversary of the Effective Date, the Contractor shall increase the amount of the Proposal Bond to \$250,000. The Proposal Bond shall remain in full force and effect until the Contractor delivers the required Certificates of Insurance and the Performance and Payment Bond to the City and receives the City's confirmation that the Certificates of Insurance and Performance and Payment Bond are in compliance with the requirements of this Agreement.

The Proposal Bond shall be in a form that is acceptable to the City. The surety or sureties shall be a company or companies acceptable to the City.

The Proposal Bond, as well as the Performance and Payment Bond, shall be delivered to the City at the following address:

Director
Utilities Department
City of Key West
P.O. Box 1409
Key West, Florida 33041

12.2 Forfeiture of Proposal Bond

The City may declare this Agreement and the Proposal Bond to be forfeited if:

- (a) the Contractor fails to increase the amount of the Proposal Bond to \$250,000 within one year after the Effective Date;
- (b) the Contractor fails to deliver the required Certificates of Insurance at least 10 days before the Commencement Date; or
- (c) the Contractor fails to deliver the Performance and Payment Bond at least 10 days before the Commencement Date, or fails to record said bond in the public records of the City before the Commencement Date.

The forfeiture of the Proposal Bond shall constitute liquidated damages to the City, not a penalty.

12.3 Performance and Payment Bond

The Contractor shall execute a Performance and Payment Bond as security for the faithful performance and payment of all its obligations under this Agreement. The Performance and Payment Bond shall be in the form specified in Exhibit "B", unless an alternate form is requested or approved by the City. The surety or sureties shall be a company or companies acceptable to the City. The Performance and Payment Bond shall remain in full force and effect until all liabilities and obligations covered thereby have been performed, discharged, or are otherwise barred by Applicable Law.

Initially, the Performance and Payment Bond shall be in an amount not less than 110% of the total amount of the Service Fees that are expected to be paid to the Contractor during the first Operating Year. The amount of the Performance and Payment Bond shall be adjusted on or before October 1 each year following the Commencement Date, and shall be in an amount not less than 110% of the total amount of the Service Fees paid to the Contractor during the prior Operating Year.

12.4 Insurance Coverages Required of the Contractor

12.4.1 General Information about Insurance

The Contractor shall purchase at its cost and maintain the following insurance coverages with insurance companies acceptable to the City for limits of liability of not less than as required herein. The Commission is to be an additional named insured under the Commercial General Liability, Automobile Liability, Umbrella Liability, and Environmental Impairment Liability policies with the Severability of Interest Provision applicable to each policy. Other local governments using the Transfer Station shall be added as named insureds

within thirty (30) days after the Contractor receives the City's written request to add such governments. All liability insurance shall be on the "occurrence form." Each policy shall also provide that the Contractor's coverage is primary to any insurance or self-insurance program of the City and that the City shall not be directly responsible for the payment of any insurance premium due the insurance companies. The insurance coverages and limits required must be evidenced by properly executed Certificates of Insurance supplied by the Contractor as shown herein. Policies of insurance shall be with carriers admitted to do business in the State of Florida. Carriers shall be "A" rated and have a financial rating size of "IX" or better, according to the A. M. Best Key Rating Guide. Certificates of Insurance shall show the certificate holder as: The City Commission of the City of Key West, Florida. The Certificate of Insurance shall reflect thirty (30) days' Notice of any cancellation or reduction in insurance coverage. No City property shall be occupied or work started under this Agreement until the properly executed Certificates of Insurance have been received and approved by the City. On renewal at the end of each policy term, properly executed Certificates of Insurance must be delivered to the City at least thirty (30) days before expiration of the insurance policies for the City's review and approval so that there will be no interruption in the Contractor's work under this Agreement due to the lack of proof of insurance. Certificates of Insurance, along with any subsequent Notices of change or cancellation, shall be provided to the City as specified at the following address:

Director
Utilities Department
City of Key West
P.O. Box 1409
Key West, Florida 33041

12.4.2 Workers' Compensation and
Employer's Liability Insurance

Workers' Compensation and Employer's Liability Insurance shall be maintained by the Contractor in compliance with the laws of the State of Florida. The Employer's Liability limit shall not be less than Five Hundred Thousand Dollars (\$500,000) for each person-accident, \$500,000 each person-disease. If a Self-Insurance Workers' Compensation Program is used, it must be approved by the Insurance Commissioner of the State of Florida in accordance with the laws of the State of Florida.

12.4.3 Commercial General Liability Insurance

Commercial General Liability insurance shall be maintained by the Contractor with minimum combined single limits of One Million Dollars (\$1,000,000) including coverage parts of bodily injury, personal injury, broad form property damage, blanket contractual liability, independent contractors, and products and completed operations. The exclusion for explosion,

underground damage and collapse shall be removed.

12.4.4 Automobile Liability Insurance

Automobile Liability insurance shall be maintained by the Contractor with minimum combined single limits of One Million Dollars (\$1,000,000) for all owned, hired, and non-owned vehicles.

12.4.5 Umbrella Liability Insurance

Umbrella Liability "Form Following" Insurance shall be maintained by the Contractor with a limit of not less than Five Million Dollars (\$5,000,000). Coverage shall be form following and drop down to underlying coverages where limits are eroded. Umbrella coverage shall mirror and be no more restrictive than the underlying coverage.

The Contractor may belong to a self-insured fund or group or be individually self-insured in a plan approved under the laws of the State of Florida. Such self-insured funds or groups are subject to the prior approval of the City, which shall not be unreasonably withheld.

12.4.6 Environmental Impairment Liability Insurance

Environmental Impairment Liability Insurance shall be maintained by the Contractor with a limit of not less than Ten Million Dollars (\$10,000,000) for claims based on or arising from Pollution or other conditions at the Disposal Facility, including but not limited to claims based on CERCLA, RCRA, the Permits, Applicable Law, common law or equity. The Environmental Impairment Liability Insurance shall cover both sudden and non-sudden Pollution incidents.

12.4.7 Adjustments to Insurance Requirements

At the end of the initial Term and each renewal Term, the City shall have the right to require the Contractor to increase the amount(s) of the insurance coverage provided under this Agreement. The Contractor shall pay for any increases in coverage that are based on the changes in the CPI during the Term. The Contractor shall be reimbursed by the City for any new insurance coverage requested by the City or for any increase in coverage that exceeds the effect of inflation, as shown by the CPI.

12.4.8 Noncompliance

Should the Contractor at any time fail to maintain the insurance coverages required in this Agreement, the City, at its discretion, is authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to

purchase such insurance or to be responsible for the coverages purchased or the financial stability of the insurance companies used.

12.4.9 Notice of Claims

The Contractor shall notify the City of all accidents, incidents, events or injuries which the Contractor reasonably believes may result in a claim of \$50,000 or more, arising out of the Contractor's performance of this Agreement, including but not limited to claims relating to workplace injuries. The Contractor shall notify the City of any claim established and accepted as a liability under its commercial insurance or self insurance which is paid in an amount equal to or greater than \$50,000.00. The Contractor shall notify the City of any death arising out of the Contractor's performance under this Agreement. The Contractor shall notify the City of any and all events, accidents, injuries, incidents, suits, claims, or Citations which name or otherwise may involve or create a liability for the City, including events involving Pollution or environmental contamination at the Transfer Station, Site or Disposal Facility. The Contractor's obligations hereunder do not include claims based upon any rights which exist or may exist under the laws pertaining to employment rights such as, but not limited to the 1964 Civil Rights Act, as amended, the National Labor Relations Act, the Florida Human Rights Act, the Americans With Disabilities Act or the Family Medical Leave Act. The Contractor's obligations hereunder are subject to any confidentiality agreement relating to any claim. All Notices required under this Section 12.4.8 shall be provided promptly.

12.5 Assignment or Transfer

This Agreement may not be assigned by either the City or the Contractor without the written consent of the other, which shall not be unreasonably withheld, and subject to such consent, shall be binding upon, and inure to the benefit of, the assignor's successors and assigns. This Agreement also shall not be transferred to or assumed by another entity (by sale, merger or other process), without the City's prior written consent, which shall not be unreasonably withheld. As part of its evaluation of any assignment, assumption or transfer of this Agreement, the City may require the Contractor's successor to verify in writing that (a) it will comply with all of the Contractor's obligations under this Agreement and (b) it has the financial resources, technical expertise, facilities, equipment and personnel to comply with the Contractor's requirements under this Agreement.

12.6 Agreement Governed by Florida Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and it shall be binding upon, and inure to the benefit of, the parties, their successors, and assigns. The Contractor shall submit to service of process and the jurisdiction of the State of Florida for any controversy or claim arising out of or relating to the Agreement. Any action to interpret or enforce the Agreement shall be brought and maintained in the State

of Florida. Venue shall be in Monroe County, Florida.

12.7 Representatives of the Parties

The authorized representative of the City for purposes of this Agreement shall be the Director. The authorized representative of the Contractor for purposes of this Agreement shall be the Contractor's Manager of Government Affairs and Municipal Marketing for the City of Key West. Either party may change its representative upon five (5) days' prior Notice to the other party.

12.8 Notices

All Notices and consents required or permitted by this Agreement shall be in writing and transmitted in person or by registered or certified mail, return receipt requested, with notice deemed to be given upon receipt, as follows:

If to the City:

Director
Utilities Department
City of Key West
P.O. Box 1409
Key West, Florida 33041

With a copy to:

City Attorney
City of Key West
P.O. Box 1409
Key West, Florida 33041-1409

If to the Contractor:

District Manager for Key West
Waste Management Inc. of Florida
125 Toppino Industrial Road
Key West, Florida 33040

With copies to:

Ron Kaplan, Esquire
Florida Counsel

Waste Management Inc. of Florida
2700 NW 48th Street
Pompano Beach, Florida 33073

Copies also shall be provided by hand-delivery or regular U.S. Mail to the On-site representative of the City and Contractor.

Changes in the respective addresses to which such Notices may be directed may be made from time to time by either party by Notice to the other party.

12.9 Waiver

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

12.10 Representations of the Contractor

The Contractor represents that: (a) it is a corporation duly organized under the laws of the State of Florida and is qualified to do business in the State of Florida; (b) this Agreement has been duly authorized, executed, and delivered in the State of Florida; (c) the Contractor has the required power and authority to perform this Agreement; (d) the Contractor, the Disposal Facility, and the [Alternate Disposal Facility] are in compliance with Applicable Law; (e) the Disposal Facility and the [Alternate Disposal Facility] do not contain and will not accept regulated quantities of Hazardous Waste; (f) the Disposal Facility and the [Alternate Disposal Facility] have not been included and are not proposed for inclusion in the CERCLA National Priorities List or any other analogous inventory of contaminated sites; and (g) there are no civil, criminal or administrative claims, cases, or Citations pending or threatened against the Contractor based on, related to, or associated with Pollution or environmental contamination at the Disposal Facility or [Alternate Disposal Facility].

12.11 Representations of the City

The City represents that (a) this Agreement has been duly authorized, executed, and delivered by the City Commission in accordance with law, and (b) the City has the required

power and authority to enter into this Agreement.

12.12 Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

12.13 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

12.14 Severability

If any term, condition, covenant or obligation of this Agreement is declared illegal, void or unenforceable, the remaining terms will not be affected but will remain in full force and effect, and this Agreement shall be construed as if such illegal, void or unenforceable provision had never been contained herein.

12.15 Survivability

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

12.16 Third Party Beneficiaries

Except as may be required with regard to any bonds provided under this Agreement, it is agreed between the parties hereto that no provision of this Agreement is intended to create any third-party beneficiaries hereunder, or to authorize anyone not a party to this Agreement to maintain an action pursuant to the terms or provisions of this Agreement.

The Contractor expressly acknowledges that the City is or may become a party to various agreements which affect or may affect the Transfer Station, including but not limited to interlocal agreements. The Contractor understands and agrees that it is not an intended or third-party beneficiary under any of these agreements, and hereby waives any right to claim any interest therein.

12.17 Personal Liability

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

12.18 Independent Contractor

When performing the activities required by this Agreement, the Contractor will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or associate of the City. The Contractor shall be solely responsible for the means, methods and procedures used by the Contractor to perform under this Agreement. Neither the Contractor nor any of its employees, officers, agents or Subcontractors shall represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the City. The Contractor shall have no authority to bind the City to any agreement or contract. No person performing any work or services for the Contractor under this Agreement shall be entitled to any benefits available or granted to employees of the City.

12.19 Resolution of Disputes

The parties agree to reasonably cooperate with each other so as to allow each other to comply with their respective obligations hereunder. Prior to the filing of any action at law or in equity, the parties agree to submit any dispute to a formal mediation process for resolution. The Contractor and the City agree to participate in this mediation process in good faith and conscientiously attempt to resolve their dispute. Each party shall bear its own expenses in connection with the mediation. Both parties shall pay equally for the services of the mediator.

Notwithstanding the foregoing, if either party terminates this Agreement for cause pursuant to Section 9.1, the terminating party shall have the right, in its sole discretion, to proceed directly with litigation of any claims or disputes relating to the termination for cause (and may include other claims and disputes unrelated to the termination) and shall not be required to submit such claims or disputes to the mediation process set forth in this Section. The parties agree that any claim filed in state or federal court concerning the interpretation or enforcement of this Agreement shall be heard by a judge, sitting without a jury. The City and the Contractor hereby waive their right to a jury trial concerning any such claim.

12.20 Merger Clause

This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein. This Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

12.21 Organization Employment Disclaimer

The Contractor hereby agrees that no person supplied by it in the performance of the Agreement shall be an employee of the City and further agrees that no rights of the City's rules

accrue to any such person. The Contractor shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, taxes, other benefits and premiums appurtenant thereto of its employees in the performance of this Agreement.

12.22 Fair Dealing

The Contractor declares and warrants that the Contractor enters into the Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no City Commission member, City officer, or City employee, directly or indirectly owns more than 1% of the total assets or capital stock of the Contractor, nor will any such person directly or indirectly benefit by more than 1% from the profits or emoluments of this Agreement, nor has the Contractor provided any gift to any such person or their family. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this contract and the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this contract. Further, the Contractor declares and warrants that the Contractor is not subject to the restrictions in Sections 287.133 and 287.134, Florida Statutes, for a public entity crime.

12.23 Sovereign Immunity

Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits on liability set forth in 768.28, Florida Statutes.

12.24 Amendment

Except as otherwise specifically provided herein, this Agreement may be amended only by written instrument specifically referring to this Agreement and executed by both parties with the same formalities as this Agreement.

12.25 Order of Precedence

In the event of any conflict between the provisions of this Agreement and those of the exhibits attached hereto, the provisions of this Agreement shall govern.

12.26 Construction of Agreement

Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions

contained herein shall not be construed against the party that physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

12.27 Terms Generally

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. Unless otherwise specifically noted, the words "include," and "including" as used herein shall be deemed to be followed by the following phrase "without limitation." The words "agree," "agreement," "consent," "establish," "impose" as used herein shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed" except as specifically noted. Words or phrases which are defined herein by reference to a statute, rule or regulation shall have the meaning ascribed to such word or phrases as of the Effective Date, without regard to subsequent changes in such statutes, rules or regulations, except where this Agreement expressly provides otherwise.

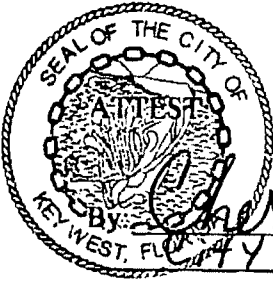
12.28 Exhibits

All exhibits attached hereto are specifically incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates noted below.

CITY COMMISSION OF THE CITY OF KEY WEST

By: Jimmy Weekly
Mayor Jimmy Weekly



Cheryl Smith
Clerk

(SEAL)

WASTE MANAGEMENT INC. OF FLORIDA

By: Charles J. Campagna
Its: Vice President

Printed Name: Charles J. Campagna
Date: 3/23/04

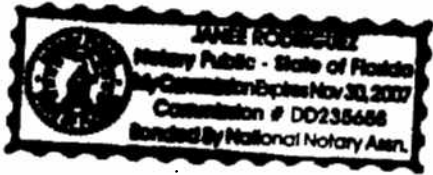
Witness

Ronald Kaplan 03-23-04
Signature Date
Ronald Kaplan
Printed Name

Witness
John M Albert 3-23-04
Signature Date
JOHN M. ALBERT
Printed Name

STATE OF FLORIDA
CITY OF Orlando

The foregoing instrument was acknowledged before me this 23rd day of March, 2004, by Charles Campagna as vice president of waste management, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



Jane Rodriguez
Notary Public - State of Florida

Print name: Jane Rodriguez
Commission number: DD235658
Commission expiration date: 11/30/07

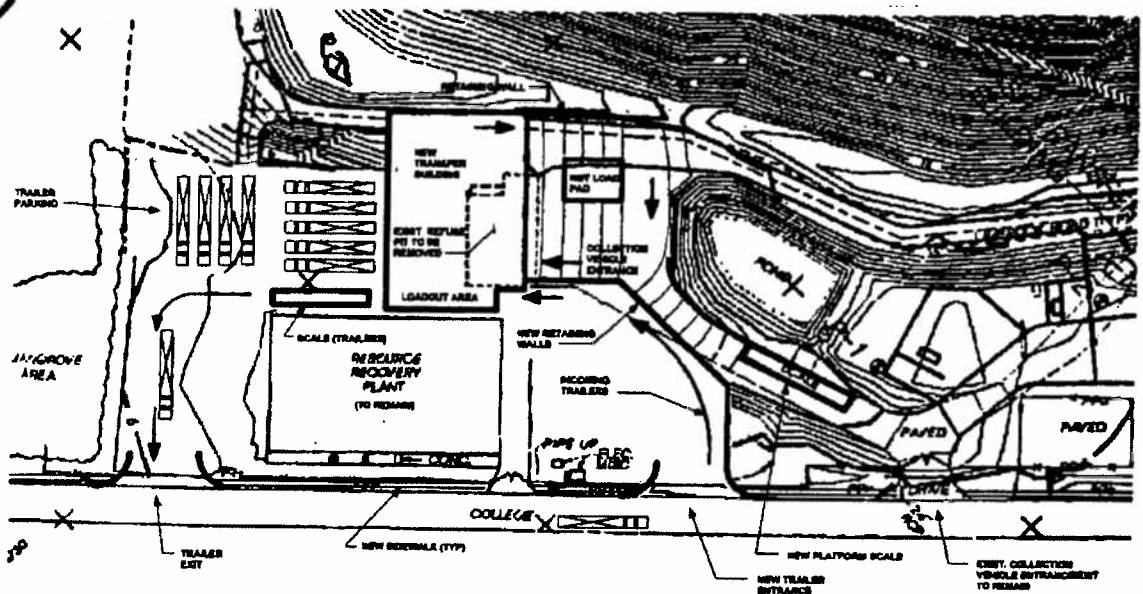
EXHIBIT "A"

Field	Value
Owners Name	CITY OF KEY WEST
Mailing Address	P.O. BOX 1409
City, State	KEY WEST FL
Zip	33041
Province	
Country	
Mailcode	
Physical Location	5701 COLLEGE RD
Legal	26/27-67-25 DD87527-02 AN ISLAND NW OF STOCK ISLAND G52-32-3
Description	3116.77/AC (CITY DUMP) OR 888-2092/2102E OR 1306-32/34 (TERM) O
Key(Location)	KEY WEST
PC Code	89
RE Number	72080.0005

EXHIBIT "A"

SITE DESCRIPTION

Proposed Site Layout



 BLACK & VEATCH

ATTEST:

Waste Management Inc. of Florida

[Signature]
Witness

BY: *[Signature]*
(Authorized Signature)

(Principal) Donna L. Meals, Director, Financial Assurance

[Signature]
Witness

(Printed Name)

(Title of Person Signing Above)

3831 N.W. 21st Avenue
Pompano Beach, Florida 33073
(Business Address)

—OR—

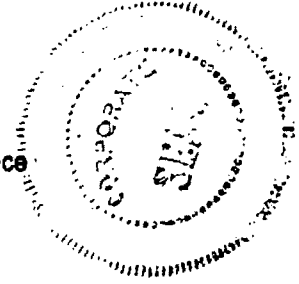
Witness

BY: _____
As Attorney in Fact

Witness

(Printed Name)

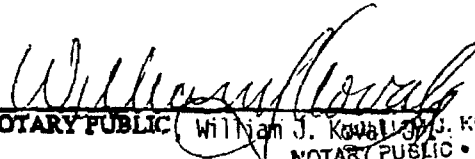
(Business Address)



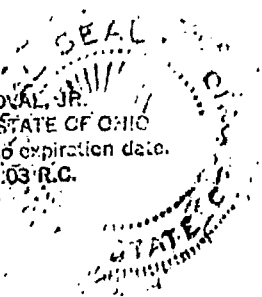
STATE OF Ohio
COUNTY Cuyahoga

I, the undersigned authority, hereby certify that on this 24th day of February, 2004,
before me personally appeared Maria Jackson and _____
to me known to be the person(s) described in and who executed the foregoing instrument, and
acknowledges that execution thereof to be a free act and deed for the uses and purposes therein
mentioned.

WITNESS my hand and official seal the date aforesaid.


NOTARY PUBLIC William J. Koval, Jr.
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

Notary Public, State of _____
At Large: My Commission expires: _____
Print Name: _____
Commission Number: _____



SURETY: Evergreen National Indemnity Company

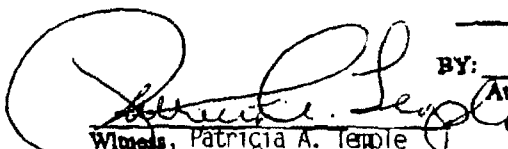
(Printed Name)

6140 Parkland Blvd., Ste. 300, Cleveland, OH 44124

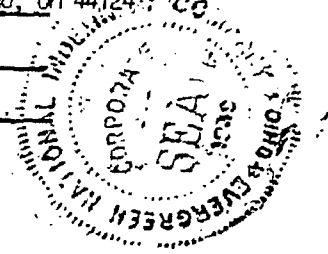
(Business Address)

BY: _____

Authorized Signature Maria Jackson
Attorney-In-Fact


Witness, Patricia A. Temple


Witness, Nicole Skedel



EVERGREEN NATIONAL INDEMNITY COMPANY
COLUMBUS, OHIO
POWER OF ATTORNEY

PRINCIPAL Waste Management Inc. of Florida EFFECTIVE DATE 4/5/2004

CONTRACT AMOUNT _____ AMOUNT OF BOND \$3,601,015.00

POWER NO. **850623**

KNOW ALL MEN BY THESE PRESENTS: That the Evergreen National Indemnity Company, a corporation in the State of Ohio does hereby nominate, constitute and appoint:

Maria Jackson

its true and lawful Attorney(s)-In-Fact to make, execute, attest, seal and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed

Three Million Six Hundred One Thousand Fifteen and No/100 Dollars

This Power of Attorney is granted and is signed by facsimile pursuant to the following Resolution adopted by its Board of Directors on the 23rd day of February, 1994:

"RESOLVED. That any two officers of the Company have the authority to make, execute and deliver a Power of Attorney constituting as Attorney(s)-in-fact such persons, firms, or corporations as may be selected from time to time.

FURTHER RESOLVED, that the signatures of such officers and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile; and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company; and any such powers so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Evergreen National Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officers this 27th day of August, 2001.

EVERGREEN NATIONAL INDEMNITY COMPANY



Roswell P. Ellis

Roswell P. Ellis, President

Glenn D. Southwick

Glenn D. Southwick, Treasurer

Notary Public)
State of Ohio)

SS:

On this 27th day of August, 2001, before the subscriber, a Notary for the State of Ohio, duly commissioned and qualified, personally came Roswell P. Ellis and Glenn D. Southwick of the Evergreen National Indemnity Company, to me personally known to be the individuals and officers described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that they are the officers of said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of said Corporation, and that the resolution of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Columbus, Ohio, the day and year above written.



Sue E. Duffy

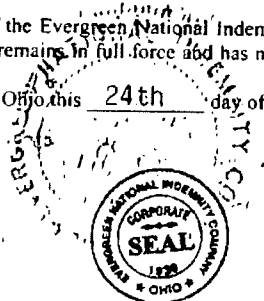
Notary Public State of Ohio
My Commission expires August 6, 2004

State of Ohio)

SS:

I, the undersigned, Secretary of the Evergreen National Indemnity Company, a stock corporation of the State of Ohio, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth herein above, is now in force.

Signed and sealed in Columbus, Ohio, this 24th day of February, 2004



John A. Marazza

John A. Marazza, Secretary
Any reproduction or facsimile of this form is void and invalid.

EVERGREEN NATIONAL INDEMNITY COMPANY

Is hereby authorized to transact
insurance in the State of Florida.

This certificate signifies that the company
has satisfied all requirements of the
Florida Insurance Code for the issuance
of a license and remains subject to
all applicable laws of Florida.

Date of Issuance: November 28, 1983
No. 94-36-2467238



Tom Gallagher
Treasurer and Insurance Commissioner



**Florida
Department
of Insurance**



Century Surety Company | Evergreen National Indemnity Company | Continental Heritage Insurance Company

EVERGREEN NATIONAL INDEMNITY COMPANY
Certificate
2002

The following financial information was excerpted from the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance on March 1, 2003.

STATEMENT OF INCOME

Direct Written Premium	\$ 26,706,948
Reinsurance Assumed	17,190,364
Reinsurance Ceded	<u>(27,565,643)</u>
Net Written Premium	16,331,669
Change in Unearned	<u>2,557,287</u>
Net Earned Premium	13,774,382
Losses & LAE incurred	<u>(6,983,756)</u>
Commission Expense	<u>(5,925,246)</u>
Other Expenses	<u>(2,028,608)</u>
Underwriting (Loss)	<u>(1,163,228)</u>
Investment Gain	1,096,045
Other Income/(Expense)	<u>244,395</u>
Income Before FIT	177,212
Federal Income Tax	<u>(219,000)</u>
Net Income	<u>\$ (41,788)</u>

BALANCE SHEET

<u>Assets</u>	
Invested Assets	\$ 33,969,295
Agents' Balances (net of Reins.)	957,803
Reinsurance Recoverable	1,137,423
Other Assets	<u>1,408,741</u>
Total Assets	<u>\$ 37,473,262</u>
<u>Liabilities & Surplus</u>	
Unearned Premium Reserve	\$ 5,402,722
Loss & LAE Reserves	9,450,603
Other Liabilities	<u>306,657</u>
Total Liabilities	<u>15,159,982</u>
Surplus	<u>22,313,280</u>
Total Liabilities and Surplus	<u>\$ 37,473,262</u>

I hereby certify that the above information is that contained in the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance for the year ending December 31, 2002.


John A. Marazza, Secretary

EXHIBIT "F"

**BASE RATE AND HOST FEES FOR TRANSPORTATION AND DISPOSAL
OF ACCEPTABLE WASTE AND SPECIAL WASTE**

Base Rate for Acceptable Waste

\$ 58.25 per ton

Base Rates for Other Wastes

- | | | |
|----|--|-------------------------|
| 1. | Construction and Demolition Debris | \$ <u>58.25</u> per ton |
| 2. | Yard Trash | \$ <u>58.25</u> per ton |
| 3. | Waste Tires | \$ <u>58.25</u> per ton |
| 4. | White Goods | \$ <u>58.25</u> per ton |
| 5. | Base Rates for other types
of solid waste, if any | \$ <u>58.25</u> per ton |

Host Fees

- | | | |
|----|--|-----------------------|
| 1. | Acceptable Waste | \$ <u>N/A</u> per ton |
| 2. | Construction and Demolition Debris | \$ <u>N/A</u> per ton |
| 3. | Yard Trash | \$ <u>N/A</u> per ton |
| 4. | Waste Tires | \$ <u>N/A</u> per ton |
| 5. | White Goods | \$ <u>N/A</u> per ton |
| 6. | Host Fees, if any, for other types
of solid waste | \$ <u>N/A</u> per ton |

Future Increases in Host Fees

None