

ITB 14-009 ADDENDA 2 ATTACHMENT C

RESOLUTION NO. 13-051

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AMENDMENT TO AGREEMENT" BETWEEN THE CITY AND WASTE MANAGEMENT, INC. OF FLORIDA ("WASTE MANAGEMENT"); 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 "Amendment to Agreement" between the City and Waste Management, Inc. of Florida is hereby approved.

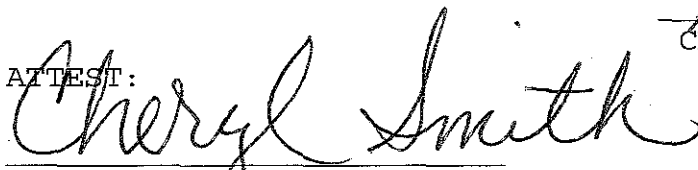
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 20 day of February, 2013.

Authenticated by the presiding officer and Clerk of the Commission on February 20, 2013.

Filed with the Clerk February 21, 2013.

ATTEST:


CHERYL SMITH CITY CLERK


CRAIG CATES, MAYOR

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT is made this 20 day of February, 2013, by and between the City of Key West ("City") and Waste Management, Inc. of Florida ("Waste Management").

WHEREAS, In May of 2000, the City and Waste Management entered into an Agreement regarding the collection, transfer and disposal of the City's solid waste and recyclable materials pursuant to City Commission resolution 00-177; and

WHEREAS, the Agreement was extended pursuant to its first option period pursuant to City Commission resolution 05-128; and

WHEREAS, in accordance with negotiations between the City and Waste Management, the Agreement was conditionally extended an additional five years pursuant to its final option period as expressed in City Commission resolution 09-322; and

WHEREAS, the City Commission retained Kessler Consulting pursuant to resolution 10-276 to create a solid waste master plan for the City; and

WHEREAS, The City and Waste Management have reviewed the Phase I report completed by Kessler and desire to make certain amendments to their current Agreement for the benefit of both the City and Waste Management.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Board agree as follows:

Section 1: That the Agreement between the parties last extended pursuant to resolution 09-322 is hereby amended as follows:

1. The recitals contained in the foregoing "Whereas" clauses are true and correct and fully incorporated herein.
2. Ferrous metals and "White Goods" as defined by Section 3 item "GGG" will be collected and transported to the transfer station. All Freon shall be removed at the transfer station. The funds collected from the sale of White Goods shall be split between the City (80%) and Waste Management (20%), after deducting for the documented cost of transportation. Waste Management shall provide documentation to the City illustrating the gross proceeds of sale. Such documentation shall be provided to the City with each payment. Payments shall be made to the city of Key West on a monthly basis.
3. The City intends to purchase additional recycling carts for the benefit of its residents. Waste Management shall provide space to store inventory of the City's carts. Such carts shall be stored locally or within a reasonable distance to ensure timely delivery. Waste Management will deliver new or replacement carts after the City's initial distribution. Waste Management shall provide no-cost cart maintenance to all the carts under City program.
4. Pursuant to the recommendations made by Kessler Consulting, Waste Management shall provide 1-1-1 collection at no additional cost. 1-1-1 collection shall mean the collection of garbage, yard waste and recyclables separate from each other. One current garbage collection shall be replaced with one separate yard waste collection. Residents shall use their own

containers for yard waste. Waste Management shall ensure that the yard waste is either used as landfill cover material or composted. The implementation of this provision shall commence on June 1, 2013.

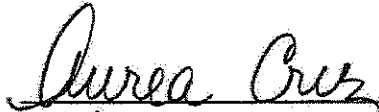
5. Waste Management shall add residential Electronic Waste to its HHW collection at no charge. The collection shall occur at a minimum of once per month at a location within the boundaries of the City of Key West. Electronic Waste (or e-waste) consists of discarded electronic equipment such as cellular, home, and office phones, computers (including desktop, laptop, notebooks and tablets), computer equipment (keyboards, printers, scanners, mice), video games, CD, DVD ,and VCR players, speakers, LCD and plasma flat screens, analog TV's and CRT's, digital cameras and navigation devices, power cords and cables, and other similar electronic equipment.
6. All types of containers, service, and frequency of collection made available for the collection of commercial solid waste shall also be available for the collection of commercial single-stream recycling. Waste Management shall market this service and notify City businesses of its availability. The collection rate charged to businesses for identical sized solid waste and recycling containers shall be the same.
7. Waste Management is currently required to provide reports to the City as specified in such paragraphs 5(k), 13(A), and 6(A) & (B). These reports shall be provided to the City in such format as directed by the City's utilities manager or his designee.

8. Pursuant to Section 5, paragraph A (1) Waste Management is required to promote an educational program designed for the City of Key West. Waste Management shall work with and receive approval from the City's Utilities Manager for the content of such advertising and information.
9. Waste Management and the City will work collaboratively in the implementation of Phase II of the study conducted by Kessler.

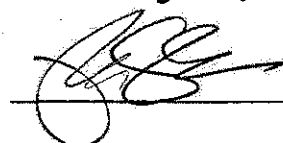
Section 2: That, except as modified herein, all other provisions of the previously adopted Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made their agreement on the date first written above and, except as otherwise provided herein, is effective immediately.

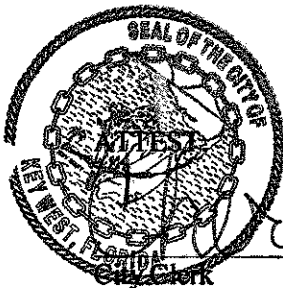
ATTEST:


Aurea Cruz

Waste Management, Inc. of Florida


RONALD KAPLAN
Printed name

Title: Asst Sec & Florida Counsel



THE CITY OF KEY WEST


City Manager Bodgan Vitas

RESOLUTION NO. 12-360

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, DIRECTING MODIFICATIONS TO THE CITY'S SOLID WASTE AND RECYCLING COLLECTION CONTRACT; DIRECTING THE CITY ATTORNEY TO PREPARE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY AND WASTE MANAGEMENT, INC. OF FLORIDA FOR COMMISSION CONSIDERATION; DIRECTING STAFF TO BEGIN PREPARATION OF BID DOCUMENTS FOR SOLID WASTE AND RECYCLING COLLECTION SERVICES TO COMMENCE AT THE CONCLUSION OF THE CURRENT CONTACT; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 04-082 the City Commission approved a contract between the City and Waste Management; and

WHEREAS, in Resolution 12-253, the City Commission directed staff to negotiate certain amendments to the two-year term remaining under the current contract with Waste Management, Inc., and if an acceptable agreement cannot be reached by October 29, 2012, to prepare a Request for Proposals, pertaining to the collection of solid waste and recycling; and

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

Section 1: That City staff recommends modifications to the City's Solid Waste and Recycling Collection contract, which are detailed in the executive summary from Bob Vitas, City Manager, dated October 26, 2012.

Section 2: That the City Attorney is directed to prepare an amendment to the contract in substantial conformance with the modifications for presentation to the City Commission.

Section 3: That City Manager is directed to begin preparations of bid documents for solid waste and recycling collection services to commence upon the expiration of the current contract.

Section 4: 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 4th day of December, 2012.

Authenticated by the presiding officer and Clerk of the Commission on December 5, 2012.

Filed with the Clerk December 5, 2012.


CRAIG BATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

RESOLUTION NO. 12-253

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, ADOPTING THE ATTACHED SOLID WASTE POLICY STATEMENT FROM THE CITY'S SOLID WASTE MASTER PLAN; DIRECTING CITY STAFF TO IMPLEMENT THE PHASE I RECOMMENDATIONS CONTAINED IN THE SOLID WASTE MASTER PLAN; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 10-276 the City Commission issued a task order for Kessler Consulting, Inc., to construct a Solid Waste Master Plan for the City of Key West; and

WHEREAS, after public meetings and a detailed analysis, Kessler Consulting has completed the Solid Waste Master Plan, offering numerous recommendations in order to improve the City's recycling rate, provide better service, and decrease costs; and

WHEREAS, the City Commission desires to move forward with Phase I of the Solid Waste Master Plan.

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

Section 1: That the City Commission hereby adopts the attached Solid Waste Policy Statement from the Solid Waste Master Plan.

Section 2: That City staff is directed to implement the Phase I Recommendations contained in the Solid Waste Master Plan, which are attached hereto.

Section 3: That City staff, with the assistance of Kessler Consulting, Inc., at no additional cost to the City, is directed to negotiate with Waste Management, Inc., regarding proposed revisions for the remainder of the term of the City's existing contract with Waste Management, Inc., which are necessary to implement the Phase I Recommendations contained in the Solid Waste Master Plan.

Section 4: No later than October 29, 2012, City staff is directed to recommend to the City Commission whether to accept or reject the proposed negotiated revisions to the City's existing contract with Waste Management necessary to implement the Phase I Recommendations contained in the Solid Waste Master Plan.

Section 5: In the event that the City Commission and Waste Management have not reached an agreement regarding revisions to their existing contract necessary to implement the Phase I Recommendations contained in the Solid Waste Master Plan by October 29, 2012, City staff is directed to generate a Request for Proposals pertaining to the collection of residential solid waste, commercial solid waste and recycling.

Section 6: 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 29th day of August, 2012.

Authenticated by the Presiding Officer and Clerk of the Commission on 5th day of September, 2012.

Filed with the Clerk on September 5, 2012.



CRAIG CATES, MAYOR

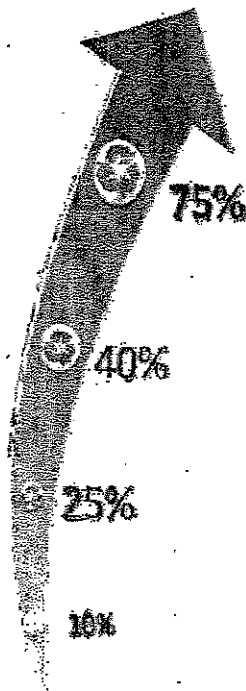
ATTEST:



CHERYL SMITH, CITY CLERK

Recommended Solid Waste Policy Statement

To develop an environmentally and economically sustainable solid waste management system that maximizes waste diversion and minimizes waste disposal, the City Commission of Key West hereby adopts the following policies and directs staff to implement these policies:



1. Hire a full-time Recycling Program Manager to provide the technical, educational, and oversight support necessary to implement effective recycling programs.
2. Adopt a tiered recycling goal starting at 25%, followed by 40%, and then 75%.
3. Establish a program to collect and process yard waste separate from other solid waste.
4. Receive compensation for City recyclables that are resources having value.
5. Become a Green City through programs that lead by example, including waste reduction, reuse, recycling, and environmentally preferable procurement (EPP) programs.
6. Establish public-private partnerships with companies that will help carry out these policies.
7. Provide periodic updates to City Commissioners and the public regarding the status of activities and accomplishments toward meeting these policies.

PROGRAMS		
	RESIDENTIAL	COMMERCIAL
PHASE 1	<ol style="list-style-type: none"> 1. Curbed collection of recyclables – convert to curbed curbside collection of recyclables; add materials to the program, such as rigid mixed plastics. 2. Separate yard waste collection; weekly collection of garbage (1-1-1) – implement separate yard waste collection in place of one of the garbage collection days each week (i.e., 1-1-1 collection in which garbage, yard waste, and recyclables are each collected once per week separate from each other). 3. Multi-family recycling – implement a comprehensive multi-family recycling program; residents pay for this service, which they should be receiving. 4. Comprehensive public outreach – implement a strategic, comprehensive public outreach program. 	<ol style="list-style-type: none"> 1. Lower cost recycling service – set commercial recycling collection fees that are equal to or less than waste fees (collection only, not including disposal). 2. Expanded recycling service – require collection of full range of recyclables, commingled fibers and containers (i.e., single stream). 3. Monitor commercial recycling – require contractor to provide monthly reports. 4. Green City Program – lead by example by ensuring all City facilities and public schools have effective waste reduction, reuse, recycling and EPP programs. 5. Business outreach – implement an outreach program to businesses. 6. City Ordinance – amend to require new developments to provide for recycling as required by State law. 7. Local use of glass – continue to investigate opportunities to utilize source-separated commercial glass in the Lower Keys.

RESOLUTION NO. 09-322

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, EXERCISING THE OPTION PROVIDED FOR IN SECTION 7 OF THE AGREEMENT BETWEEN THE CITY AND WASTE MANAGEMENT TO EXTEND THE CONTRACT FOR A FIVE YEAR PERIOD FOR THE EXPRESS PURPOSE OF CONTINUED NEGOTIATIONS; WAIVING THE TIME PERIODS CALLED FOR IN SECTION 7 REGARDING RENEWAL; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City entered into a five year agreement with Waste Management on January 1, 2000, which agreement contained two five year options to extend; and

WHEREAS, the City previously exercised the first five year option, extending the contract until December 30, 2009; and

WHEREAS, the City and Waste Management have engaged in negotiations to alter certain terms of the agreement; and

WHEREAS, both parties have expressed a willingness to reach a satisfactory amended agreement and work together in good faith in their efforts to do so during any extension of the current term.

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

Section 1: That the City exercises its option to renew the agreement for an additional five years, subject always to the termination for convenience clause should the parties be unable to reach a satisfactory amended agreement.

Section 2: That the time periods regarding renewal specified in Section 7 are waived.

Section 3 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 3rd day of December, 2009.

Authenticated by the presiding officer and Clerk of the Commission on March 23, 2010.

Filed with the Clerk March 23, 2010.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

RESOLUTION NO. 05-128

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AUTHORIZING A RENEWAL FOR A PERIOD OF FIVE YEARS OF THE CURBSIDE SOLID WASTE CONTRACT BETWEEN THE CITY AND WASTE MANAGEMENT OF FLORIDA, INC.; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the term of the contract between the parties provides for two five-year renewal terms; and

WHEREAS, the parties have agreed to renew the contract for the first renewal term upon the same terms and conditions;

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

Section 1: That the Curbside Solid Waste Contract is hereby renewed; and the contract shall reflect a \$1.05 per month per residential unit increase and a \$.30 per yard per month for commercial customers for additional operating costs that were unforeseeable at the commencement of the contract.

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 5 day of April 6, 2005.

Authenticated by the presiding officer and Clerk of the Commission on April 6, 2005.

Filed with the Clerk April 6, 2005.

ATTEST:


CHERYL SMITH, CITY CLERK


JIMMY WEEKLEY MAYOR

RESOLUTION NO. 00-177

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AGREEMENT FOR SOLID WASTE CURBSIDE COLLECTION AND RECYCLING SERVICES BETWEEN THE CITY AND WASTE MANAGEMENT INC.; 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 Agreement between the City and Waste Management Inc. 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 16TH day of MAY, 2000.

Authenticated by the presiding officer and Clerk of the Commission on MAY 18, 2000.

Filed with the Clerk MAY 18, 2000.


HARRY BETHEL, MAYOR PRO TEM

ATTEST:


CHERYL SMITH, CITY CLERK

00.177

AGREEMENT

THIS AGREEMENT made and entered into this 18TH day of MAY 2000 by and between the City of Key West, a Florida municipal corporation (the "City") and Waste Management Inc. of Florida, a Florida corporation (the "Contractor").

WITNESSETH:

WHEREAS, it is in the best interest of the City to have all of the Solid Waste and Recyclable Materials present in its corporate limits regularly collected and disposed of at appropriate locations;

WHEREAS, the State of Florida requires those Recyclable Materials be collected and recycled;

WHEREAS, the City desires to receive, and the Contractor desires to provide, services for the Collection, Transfer and Disposal of the City's Solid Waste and Recyclable Materials.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Premises. The foregoing recitals are hereby made a part of this Agreement.

Section 2. General and Technical Specifications. The General and Technical Specifications established in the Collection of Municipal Solid Waste and Recyclable Services Request for Qualifications (RFQ) are hereby made a part of this Agreement as Exhibit A.

Section 3. Definitions. In addition to all the words and terms defined herein, the following initially capitalized words and terms (or pronouns used in their stead) shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context. The masculine gender shall be deemed and construed to include correlative words of feminine and neuter genders. Unless the context shall otherwise indicate, all words shall include the plural as well as the singular number. The word "person" shall include corporations and associations, including public bodies, as well as natural persons.

A. Agreement. The Agreement executed by the City and the Contractor for the performance of the work described herein, and the attached addenda.

B. City's Representative. The person designated in writing, by the City Manager, to act on behalf of the City as its authorized representative in dealing with the Contractor under this Agreement.

C. Bio-Hazardous Waste. Solid Waste that may present a threat of infection to humans. The term includes, but is not limited to, human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; used disposable sharps, human blood, and human blood products and body fluids; and other materials which in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility.

D. Biological Waste. Solid Waste that causes, or has the capability of causing disease or infection and include, but is not limited to, Biohazardous Waste diseased animals, and other wastes capable of transmitting pathogens to humans or animals.

E. Bulky Waste. Solid Waste that consists of household refuse such as appliances, other white goods, furniture and large crates.

F. City. City of Key West, Florida, a Florida municipal corporation, acting through the City Commission, City Manager or City's Authorized Representative as the case may be.

G. Clean Sweep. Shall herein refer to the sweeping and cleaning of City streets and sidewalks including the removal of all trash, dirt, debris and other deleterious materials.

H. Collection. Process whereby Solid Waste, Garbage, Trash, Bulky Waste and Recyclable Materials are removed from Refuse and Recycling Containers and transported to a Designated Facility.

I. Collection Rates. The portion of the Customer Rate attributable to the Collection and Transfer of Solid Waste and Recyclable Materials, other than Special Wastes.

J. Commercial Solid Waste Collection Service. Shall herein refer to service provided to business establishments, churches, schools, office buildings and other establishments using wither Mechanical Containers or other approved containers. Commercial service includes businesses which elect to use Roll-off Container Collection Services. Commercial service includes service to mixed use (residential and non-residential) sites and hotels/motels. Residential units may be identified as commercial when units are owned by a business and are not purchasable, or are rented for less than 180 days.

K. Commercial Trash. Any and all accumulations of paper, rags, packing materials, wood, paper, cardboard boxes or containers, sweepings and any other accumulation not included under the definition of Garbage, generated by the operation of stores, offices and other business places. Commercial Trash shall include furniture and all other accumulations not included within the definition of Garbage and shall be included in the uniform level of service, if properly containerized. Commercial Trash shall not include Special Waste.

L. Commercial Units. All buildings or structures or portions thereof not constituting dwelling units, office buildings, stores, filling stations, service establishments, light industry, schools, churches, clubs, lodges, motels, laundries, hotels, public buildings, food service and lodging establishments.

M. Container. Garbage or Refuse Receptacle, Compactor, or Roll-Off Container.

N. Compactor. Any container that has a compaction mechanism(s) whether stationary or mobile, all inclusive.

O. Construction and Demolition Debris. Materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, or asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction demolition 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.

P. Contractor Agreement. The Agreement between the City of Key West and the Selected Contractor for providing collection of Solid Waste and Recyclable Materials.

Q. Contractor or Vendor. The person, firm, corporation, organization or agency with whom the City has executed a Contract or Agreement for performance of the work or supply of equipment or materials or his/her/its duly Authorized Representative.

R. Customer. Any and all persons, businesses, or entities from whom the Contractor collects Solid Waste pursuant to the Agreement.

S. Customer Rates. The rates charged for the Collection, Transfer, and Disposal of Recyclable Materials and Solid Waste, other than Special Waste.

T. Department. Shall mean the Florida Department of Environmental Protection.

U. Designated Facility. Facility designated by the City to receive Solid Waste or Recyclable Materials per this Agreement.

V. Disposal. The unloading from collection vehicles of and delivery of such materials to the permitted site or sites, facility or facilities designated by the City.

W. Disposal Rates. The portion of the Customer Rate attributable to the Disposal of Solid Waste collected by the Contractor.

X. Disposal Costs. Shall mean the "tipping fees" or landfill costs or processing fees charged to the Contractor by others for disposal of the wastes or Recyclable Materials collected by the Contractor.

Y. Dwelling Unit. One (1) room, or rooms connected together, constituting a separate, independent housekeeping establishment for occupancy, rental or lease on a weekly, monthly or longer basis, and physically separated from any other dwelling units, which may be in the same structure, and containing independent cooking and sleeping facilities.

Z. Fiscal Year. Shall herein refer to the period between October 1 and September 30 of the following year.

AA. Garbage. Any and all accumulations of household, charter boat and commercial trash, animal, fruit or vegetable matter that attends the preparation, use, cooking, canning, food processing, manufacturing or dealing in, storage of, meats, fish, fowl, fruits, vegetables, and any

other matter, whatsoever which is subject to decay, putrefaction and the generation of noxious and offensive gases or odors, or which, during and after decay may serve as breeding or feeding for flies and/or other germ carrying insects; bottles, cans or other food containers, which mosquitoes or other water breeding insects.

BB. Garbage Receptacle. Any commonly available light gauge steel, plastic, or galvanized receptacle of a non-absorbent material, closed at one end and open at the other, furnished with a closely fitted top or lid, and handle(s). A receptacle also includes a heavy duty, securely tied, plastic bag designed for use as a garbage receptacle. Any receptacle including waste materials serving a single dwelling unit shall not exceed forty (40) gallons in capacity and/or fifty (50) pounds in weight, unless the container has wheels, in which case the container shall not exceed sixty (60) gallons in capacity and/or eighty (80) pounds in weight unless container is designed to be used with a mechanical device.

CC. Hazardous Waste. Shall mean any Solid Waste, (even though it may be part of a delivered load of waste) which:

Is required to be accompanied by a written manifest or shipping document describing the waste as "Hazardous Waste/" pursuant to any state or federal law, including, but not limited to, the Resource Conservation and Recovery Act, 42 USC 7901, et seq. as amended and the regulations promulgated thereunder; or

Contains polychlorinated biphenyl or any other substance the storage, treatment or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder; or

Contains a "reportable quantity" of one or more "Hazardous Substances," as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder or as defined under Florida Administrative Code Section 17- 7.020(24) and regulations promulgated thereunder; or

Contains a radioactive material the storage or disposal of which is subject to state and/or federal regulation.

DD. Hotel or Motel (and Guest House upon change of City Ordinance). Structure or building unit(s) capable of being utilized for residential living where such a unit or group of such units is regularly rented to transients or held out or advertised to the public as a place regularly rented to transients for periods of twenty-eight (28) days or less. To meet this definition, the Hotel or Motel must be licensed to operate as such. For the purposes of this Agreement, such properties shall receive Commercial Solid Waste Collection Service.

EE. Industrial Waste. Any and all debris and waste products generated by building construction or alteration (except Residential Projects) and public works type construction projects, whether performed by a governmental unit or by contract.

FF. Infectious Waste. Wastes that may cause disease or may reasonably be suspected of harboring pathogenic organisms. Included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes, which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

GG. Landfill. Any solid waste land disposal area facility for which a permit, other than a general permit, is required by 403.707, Florida Statutes, that receives Solid Waste for disposal in or upon land other than a land spreading site, injection well or surface impoundment.

HH. Loose Refuse. Any Refuse, either Garbage or Trash, stored in and collected from any type of Container other than a Mechanical Container or garbage can as described herein. Refuse that is collected from the ground is considered Loose Refuse.

II. Materials Recycling Facility (MRF). Any facilities operated for the purpose of receiving, sorting, processing, storing, and/or preparing Recyclable Materials for sale.

JJ. Mechanical Container. A durable container so designed as to be mechanically lifted and emptied into the receiving area of a refuse truck or lifted and transported to the site for disposal.

KK. Mixed Use. Any site that includes both residential and nonresidential use. Mixed Use Customers will require special billing arrangements to be defined in the Agreement.

LL. Multiple Dwelling Units. Any building containing three (3) or more permanent living units, excluding Motels and Hotels.

MM. Recyclable Materials. Materials that are capable of being collected, separated, or processed and reused or returned to use in the form of raw materials or products and that would otherwise be processed or disposed of as Solid Waste.

NN. Recycling Container. The container in which Recyclable Materials are placed for Collection under this Agreement.

OO. Refuse. Rubbish and Garbage, or a combination or mixture thereof.

PP. Refuse Container. Plastic bags and reusable containers, including Mechanical Containers, used by Customers for the temporary storage and accumulation of Solid Waste.

QQ. Refrigerant Containing White Goods. Shall mean refrigerators, freezers, air conditioning units and any other unit with a compressor which may contain refrigerants.

RR. Refuse Regulations. Shall herein refer to applicable local, state and federal rules, regulations and ordinances together with such administrative rules, regulations and procedures as may be established for the purpose of carrying out or making effective which can be used for Solid Waste or Construction and Demolition Debris. A Roll-Off Container may be an open top container or an enclosed container with a compaction unit.

SS. Roll-Off Container Collection Services. The service provided to customers for the collection of solid wastes, using a Roll-Off Container that is transported to a licensed solid waste management facility for processing and/or dumping.

TT. Rubbish. Waste material other than Garbage, which is usually attendant to domestic households or housekeeping, and to the operation of stores, offices and other business places. This shall include, but is not limited to, paper, magazines, packaging, containers, rags, packing material, bottles and cans.

UU. Bio-Hazardous Wastes, which as a result of their physical characteristics are capable of puncturing, lacerating or otherwise breaking the skin when handled.

VV. Sludge. Includes the accumulated solids, residues and precipitates generated as a result of wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies or similar waste disposal appurtenances.

WW. Solid Waste. Includes Refuse, Rubbish, Yard Trash, Garbage, White Goods, Special Waste, ashes, Sludge, or other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations, including any matter classified as Solid Waste under any federal or state statute or regulation, except Hazardous Waste.

XX. Solid Waste Disposal Facility. Any solid waste management facility which is the final resting place for Solid Waste, including Landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.

YY. Special Service. Any collection or disposal service, which exceeds the uniform level of service provided under residential or commercial service systems, and for which a special charge is applied.

ZZ. Special Waste. Solid Wastes that can require special handling and management; are not accepted at a Landfill or other disposal facility; are accepted at a Landfill or other disposal facility, but at a higher rate than is normally charged for Refuse; or, are accepted at a Landfill or other disposal facility, but with special delivery requirements. Special Waste includes but is not limited to, asbestos, refrigerant containing white goods, whole tire, used oil, lead-acid batteries, mercury containing devices, contaminated soils and Bio-Hazardous Wastes.

AAA. Specifications. Direction, provisions and requirements contained in the Advertisement for Statements of Qualifications, Information for Proposers, Schedule, General and Technical Specifications, Bonds, together with any written Agreement made or to be made setting out or relating to the methods and manner for the work to be carried out.

BBB. Subcontractor. Any person, firm or corporation other than the Contractor supplying labor or materials for work being performed under this Agreement.

CCC. Trash. Any and all accumulations of paper, rags, packing materials, wood, paper, cardboard boxes or containers, sweepings, and any other accumulation not included under the definition of Garbage. Trash shall include furniture and all other accumulations not included within the definition of Garbage, and shall be included in the uniform level of service, if properly containerized. Trash shall not include Special Waste.

DDD. Transfer. The transportation of Solid Waste, Recyclable Materials, or Special Waste in collection vehicles from Residential Units, Multiple Dwelling Units, or Commercial Units to the site(s), or facility (ies) designated by the City.

EEE. Uniform Level of Service. Any and all Refuse, Special Waste and Trash, which conforms to the preparing and storage requirements of this Agreement.

FFF. Vegetative Matter. Any plant material.

GGG. White Goods. Discarded washers, dryers, refrigerators, ranges, water heaters, freezers, small air conditioning units, and other similar domestic residential and commercial large appliances.

HHH. Any activities, services, materials, parts or equipment furnished under and made part of the Agreement.

III. Yard Trash. Any and all Vegetative Matter resulting from landscaping maintenance operations.

Section 4. Scope of Services

A. Grant. The City hereby contracts exclusively with the Contractor for Collection, Transfer and Disposal of all Solid Waste and all residential Recyclable Materials as provided herein, during the term of this Agreement. The City covenants that during the term of this Agreement it will not engage or allow others or itself to become involved in the Collection, Transfer and Disposal of Solid Waste, or Residential Recyclable Materials. Nothing in this Agreement shall preclude the Collection, Transfer and Disposal of Solid Waste by the United States Department of the Navy from its facilities in the City. Nor shall this Agreement prohibit competition for the hauling of Yard Waste, Biohazardous Waste, Biological Waste, Hazardous Waste and/or Construction & Demolition Debris.

B. Residential Solid Waste Collection.

1. Collection. The Contractor shall collect Solid Waste at least twice per calendar week on regular schedules and routes, as set forth in this Agreement, from Refuse Containers (or other containers acceptable to the City) of Residential Units and Multiple Dwelling Units (collectively "Section 3.B Customers") placed for Collection in locations accessible from the pavement or traveled way of the street or on the premises immediately adjacent to the sidewalk. Residents who, by reason of disability certified by a doctor and approved by the Contractor, are unable to place Refuse Containers on the street shall receive rear door Collection of Solid Waste at no additional charge. Unless stated herein to the contrary, the amount or quantity of Residential Solid Waste that Contractor agrees to collect shall be unlimited.

2. Multiple Dwelling Units. Multiple Dwelling Units shall normally be required to use Mechanical Containers, except as otherwise approved by the City's Representative because of lack of suitable space for a mechanical container or other good reason determined in the sole discretion of the City's Representative.

3. Items Collected. (i) All Household Waste in Refuse Containers shall be collected as part of the residential Solid Waste Collection except that Contractor may decline to collect any containers not defined herein or any containers that contain sharp objects or any residential Solid

Waste not properly contained. (ii) In order to be collected, Garden and Yard Trash shall be placed adjacent to the pavement or traveled way of the street and in containers or bundles of no more than 50 pounds in weight each and with no length over four feet each. Discarded Christmas trees shall be placed adjacent to the pavement or traveled way of the street for pickup following the Christmas holidays. In the event City begins a composting program, Contractor agrees that it will develop a procedure for the separation of Yard Trash for that purpose. (iii) Bulky Waste and White Goods generated by residential Customers will be collected once per week on regularly scheduled routes that correspond with the residential Customer's solid waste collection days. Records of Bulky Waste Collection shall be kept by the Contractor. Refrigerant containing White Goods shall be collected separately from other Bulky Waste and White Goods. The refrigerant shall be removed from the White Goods curbside. Contractor shall market and dispose of the ferrous metal and other material recovered from the White Goods pursuant to the Metal marketing and Management Plan in the Interim Letter (Attachment A).

4. Collection Limitation. Notwithstanding anything in this Agreement to the contrary, the City reserves the right to require the Contractor to limit the amount of Solid Waste collected from each Section 3.B Customer.

5. Collection Standards. The Contractor shall make Collections with as little disturbance to Section 3.B Customers as possible. Collection shall be done in a sanitary manner. Any Solid Waste spilled during Collection shall be handled in accordance with the following: spills will be picked up immediately by the Contractor's employees at its own expense, the area affected will be sanitized and cleaned up. The Contractor shall use reasonable care in handling Refuse Containers to avoid damage and shall replace Refuse Containers at the location from which the same are removed for Collection, placing any lids on or under said Refuse Containers.

6. Containers. (i) If directed to do so by the City, Contractor shall provide to each Resident one ninety-six (96) gallon wheeled Refuse Container or (1) sixty-four (64) gallon or (2) thirty-five (35) gallon (at the Resident's choice); said Container shall be provided at no charge. Contractor shall provide additional containers, if requested by the Customer at the fee set forth in Attachment B. (ii) If directed to do so by the City, Contractor shall provide Mechanical Container(s) to Multifamily Units approximately equal in capacity to the number of Dwelling Units to be served by the container multiplied by 60 gallons or in such other sizes or combinations of sizes as deemed appropriate by the Customer and Contractor. The Contractor shall maintain and replace containers as needed.

C. Commercial Solid Waste Collection.

1. Frequency of Collection. Solid Waste, excluding Hazardous Waste and Special Waste, shall be collected from Commercial Units ("Section 3.c Customers") not less than once per calendar week on regular schedules and routes, as set forth in this Agreement, or at a greater frequency as is required to protect the public health, safety and welfare as determined by the City. Collection service for Commercial Units will be made available for up to seven days per week. The frequency of service will be mutually agreed upon between the Customer and the Contractor. Notwithstanding anything contained in this Section 3.C or the agreement between the Contractor and the Customer, the Contractor shall assure that the size and number of Refuse Containers provided to a Section 3.C Customer and the frequency of Collection of Solid Waste from that Customer is sufficient to prevent overloading of the Refuse Containers. If the Contractor reasonably determines that the size or number of Refuse Containers, or the frequency of Collection, is insufficient to prevent overloading said Refuse Containers then, in such event the Contractor may increase the frequency of Collection or increase the size of said Refuse Container,

as the case may be, to prevent such overloading. Disputes between the Commercial Customers and Contractor may be appealed to the City Manager or his designee, and his determination shall be final.

2. Containers. Commercial Units may use either of the following containers for accumulation and Disposal of Solid Waste:

a. Containers with a capacity of not more than 32 gallons, provided that the Contractor shall require any Commercial Units producing enough Solid Waste to require Collection of at least six such containers per week to use Mechanical Containers, if feasible.

b. Mechanical Containers

If directed to do so by the City, Contractor shall provide one (1) 60 gallon Refuse Container to each Commercial Customer at no charge. Contractor shall supply additional or larger sized Refused Containers to Commercial Customers at the fees set forth in Attachment B.

3. Collection Standards. The Contractor shall make Collections with as little disturbance to Commercial and Residential Units as possible. Collection shall be done in a sanitary manner. Any Solid Waste spilled during Collection shall be handled in accordance with the following: spills will be picked up immediately by the Contractor's employees at its own expense, the area affected will be sanitized and cleaned up. The Contractor shall use reasonable care in handling Refuse Containers to avoid damage and shall replace Refuse Containers at the location from which the same is removed for Collection, placing any lids on or under the Refuse Containers.

D. Public Property. The Contractor shall collect, transfer and dispose of Solid Waste in the same manner as for other Customers anywhere on City-owned or controlled public property, including, but not limited to, City Hall, fire station, police station, sewage treatment plant and public works complex; provided, however, the Contractor shall not be required to collect sludge from the City's sewage treatment plant. The Contractor shall empty the Refuse Containers located on public streets, rights-of-way, City-owned or controlled parks and public parking lots for public use no less than daily and more frequently when necessary as determined by the City's Representative upon 48 hours prior notice to the Contractor. The Refuse Containers located anywhere on any municipal beach shall be emptied by the Contractor once per day or otherwise as specifically approved by the City's Representative. Notwithstanding the above provisions, the City may at its option and utilizing its own employees, collect, transfer and dispose of Solid Waste from buildings owned or controlled by the City. The Contractor agrees to provide, at the City's option, containers for Recyclable Materials at public parks and beaches.

E. Exclusions from Collection and Optional Services.

(i) The Contractor shall not be required to collect and dispose of Special Waste (except White Goods and Household Furniture), Infectious Waste, Hazardous Waste (except for conditionally exempt small quantities of household hazardous waste), Bio-Hazardous Waste, Biological Waste, PCB contaminated waste, empty chemical containers, asbestos containing waste, residue and debris from chemical spills, animal waste, septic tank wastes, wash water from commercial car washes and laundries, grease trap wastes, chemical containing equipment, chemical process equipment, closed cartridge filters from dry cleaning establishments, liquid waste, waste from pollution control devices, or Sludge, but may offer such service in the City. Compensation to Contractor shall be paid by the customer. The Contractor shall not have the exclusive right to provide these services. All such services shall be done in compliance with all

applicable federal, state and local laws and by a written agreement between the generator of such Special Waste and the Contractor. The terms of such Special Waste Agreement shall be as agreed between the Contractor and the Customers. However, Contractor shall provide drop-off services for household hazardous waste four times per year at no additional charge to Residential Customers.

(ii) No Customer shall be classified a generator of Industrial Waste and denied Solid Waste Collection without prior written approval of the City's Representative.

(iii) Contractor shall provide Collection, Transfer and Disposal service for Construction and Demolition Debris to customers at a fee to be negotiated by Contractor and Customer. Disposal of such negotiated items shall be at private facilities.

(iv) The Contractor must have free and full access to containers in order to perform the services contemplated by this Agreement. In the absence of same, the Contractor shall have no obligation to perform such services.

(v) As an optional service, the City may request the Contractor to perform a Clean Sweep of City streets and sidewalks including the removal of all trash, dirt, debris and other materials. These services may be requested on a daily or less frequent basis and may entail the entire service area or a portion thereof. The exact terms and conditions of this service, if requested, shall be subject to negotiation.

F. Recyclable Materials and Recyclable Materials Facility; Disposal Site. Contractor shall operate the City's recycling area at the Southernmost Waste-to-Energy Facility. The City agrees to provide the Contractor with the use of this site free of charge. The location of the site is shown on the map appended hereto as Exhibit C. Contractor shall market Recyclable Materials that are collected by it. Such Recyclable Materials are set forth in Exhibit D and shall include aluminum and steel cans, glass bottles and jars, Types 1, 2 and 3 plastic containers, newspaper, mixed paper, milk and juice containers, household batteries, fluorescent tubes, and corrugated cardboard; the items listed in the Exhibit may be changed from time to time by agreement between City and Contractor. If directed by the City to do so, Contractor shall market ferrous metal recovered from the Southernmost Waste-to-Energy Facility. The compensation for same shall be negotiated by the parties. The Contractor is to maintain and repair all the equipment and facilities shown or located on Exhibit C.

The Contractor shall utilize the Southernmost Waste-to-Energy Facility or another permitted site or facility approved in writing by the City's Authorized Representative for Solid Waste disposal. The location of the site is shown on the map attached hereto as Exhibit E for Solid Waste, which originates in the City. In the event of a change in the disposal site, the Contractor agrees to dispose of the Solid Waste at any such site designated by the City. The City will compensate the Contractor for all unanticipated costs attendant to a change in the disposal site.

G. Title to Solid Waste. The Contractor shall have vested title to all conforming Solid Waste and Recyclable Materials collected pursuant to this Agreement from and after Collection until Disposal; provided, however, that the Contractor may only dispose of such Solid Waste and Recyclable Material pursuant to Subsection F above. The Contractor shall not have vested title to non-conforming Solid Waste and may return or refuse to collect such non-conforming Solid Waste to or from the Customer who generated such non-conforming Solid Waste.

H. Routes and Schedules.

1. **Schedule.** Except for unusual circumstances, and with the express permission of the City's Representative, the Contractor shall not collect Solid Waste between the hours of 8:00 AM and 7:00 PM between Simonton Street and Whitehead Street, or on Truman Avenue, Southard Street, Fleming Street or Eaton Street. Other commercial pickup will be between 2:00 AM and 6:00 PM. Residential pickups will be between 4:00 AM and 6:00 PM, except as noted above. Residential Customers will be informed of set-out time requirements. Adjustments to the hours of Collection may be made by mutual agreement of the City and the Contractor. At all times, Collection shall be made with as little disturbance to residents as possible. The Contractor shall provide residential Collection service on every regularly scheduled Collection day, except for Christmas and Independence Day. If the regular residential Collection day falls on Christmas, or Independence Day, the Contractor shall collect such Solid Waste on the following business day.

2. **City Approval.** Prior to commencement of Collection pursuant to this Agreement, the City shall provide the Contractor with an accurate address list of Dwelling Units to receive services and the Contractor shall provide a copy of all schedules and routes to the City's Representative; provided, however, that such schedules must be approved by the City, such approval not to be unreasonably-withheld. In addition, the Contractor shall submit any proposed significant changes in schedules to the City's Representative at least twenty eight (28) days prior to any change in a schedule. The City's Representative must approve all such significant changes in schedules within fourteen (14) days. If the City's Representative does not approve such changes in schedules within said fourteen (14) day period, the City will be deemed to have approved such changes. In the event changes in residential routes or schedules will alter the day of Solid Waste Collection, the Contractor shall so notify residential Customers affected by such change by mail or door hangers or newspaper advertisement as determined by the City and Contractor. The City reserves the right to deny Contractor's vehicles access to certain streets, alleys and public ways inside the City or enroute to the disposal site where it is in the interest of the general public to do so because the condition of the streets or bridges. The Contractor shall not interrupt the regular schedule or quality of service because of street closures of less than eight (8) hours in duration. The City shall notify the Contractor of street closures of longer duration and arrangements for service will be made in a manner satisfactory to Contractor and Village. Customers under this contract shall receive reasonable notification of the schedules provided by the Contractor prior to commencement of service. Only local truck routes shall be used in transit, unless specifically for the purpose of collection.

3. **Holidays.** The Contractor shall provide regularly scheduled residential and commercial collection services everyday except for Christmas and Independence Day. If regular collection day falls on a holiday and that service is not rendered, the Contractor shall collect the refuse on the next regularly scheduled collection day.

I. **Transitional Period.** The Contractor shall provide to the City an operational Plan detailing the steps it shall take to ensure a smooth transition on January 1st, 2000, when it assumes responsibility for Solid Waste Collection pursuant to this Agreement.

J. **Natural Disasters.** In case of a storm or other natural disaster, the City's Representative or his/her designee may grant the Contractor reasonable variance from regular schedules and routes. As soon as practicable after such storm, the Contractor shall advise the City of the estimated time required before regular schedules and routes can be resumed. In the case of a storm where it is necessary for the Contractor and the City to acquire additional equipment and to hire extra crews to clean the City of debris resulting from the storm, the

Contractor shall be required to work with the City in all possible ways for the efficient and rapid cleanup of the City. In such event, the Contractor shall receive extra compensation above the Contract price for additional employees, overtime, and cost of rental equipment, provided Contractor has first secured prior written authorization from the City Representative or his/her designee. The total cost for such service shall be based on rates jointly agreed to in advance by the City's Authorized Representative or his/her designee and the Contractor. In the event of a storm or hurricane emergency, the City reserves the right to assign route or pick-up priorities as deemed necessary by the City or Federal Emergency Management Agency (FEMA).

K. Load Separation. Class I solid waste collected from commercial customers under this Agreement shall be separated from Yard Waste, and from waste collected under any other agreement, contract, franchise or other arrangement. Residential solid waste collected in "commercial style" may not be commingled with commercial waste collected under this Agreement. This condition shall remain in effect as long as there are different charges due for the different classes of material or as long as separation is required by regulation. If the Contractor provides Special Waste service to customers in the City, material collected pursuant to such service shall be separated from all other waste types.

Section 5. Recycling

A. Residential Program.

1. Educational Information. Contractor shall provide educational information relating to recycling and shall sponsor Public Service Announcements to disseminate this information to the customers. The number and type of announcements shall be determined by negotiation between the City and Contractor and set forth in a future Exhibit which may be changed by agreement from time to time. Educational information should communicate with the public, increase recycled tons and ensure accurate record keeping. A minimum of \$6,000 will be earmarked for this educational program.

2. Collection. Contractor shall provide collection and truckside sorting of residential Recyclable Materials as listed on Exhibit D one (1) time per week on a day to coincide with the scheduled Solid Waste Collection. The Contractor will supply each Residential Unit with a Recycling Container with an approximate capacity of 14 gallons. It is the responsibility of the residents to see that the Recycling Containers are placed curbside or as close as practicable to the collection vehicle routes on the designated route collection day. Contractor may decline to collect any material which is not a Recyclable Material. The Contractor agrees to inform the resident by written notice, mailing, or telephone as to why the material was not collected, i.e. that it was not a Recyclable Material. Where residential Solid Waste service is provided to Multifamily Dwelling Units using Mechanical Containers, the use of appropriate size Recycling Containers will be provided, up to a maximum capacity of fourteen (14) gallons multiplied by the number of Residential Units in the Multifamily Dwelling Unit.

3. Recycling Containers. In the event that a Recycling Container used for residential purposes, is lost, damaged or stolen, the Contractor will replace, at Contractor's expense, up to a maximum of 5% of the number of said Recycling Containers annually.

B. Commercial Program. The Contractor shall offer a program for Commercial Customers for Recyclable Materials as listed on Exhibit D. Contractor shall provide a Recycling Container to the Commercial Customers requesting to participate in the program. These

containers will be serviced once a week on a regular collection interval. The size of the container shall be determined by negotiation between the Contractor and Customer. The Contractor must offer a basic service equal to Residential service. The fee structure shall be the same as per Exhibit B.

C. Data Gathering. The Contractor shall keep records of the number of Residential Units participating in the recycling program based on the number of Recycling Containers set out each week. The Contractor will develop and maintain all data required by the State of Florida Department of Environmental Protection and other state or local governmental agencies to ensure compliance with all record keeping requirements of the 1988 Solid Waste Act, as amended. The Contractor shall submit a monthly report to the City containing all of the information required to be compiled by the Contractor under this Section. On a weekly basis, the Contractor will report to the City details on rejected recycle materials. The Contractor shall provide a notice to the property owner explaining why material was rejected for recycling.

D. Program Expansion. The Contractor shall submit a four step action plan to expand the recycling program and increase tonnage.

E. Program Evaluation. The Contractor shall, upon the City's request, participate in periodic reviews of the progress of the recycling program.

Section 6. Charges, Rates and Modifications

A. Compensation.

i) Residential Collection Service.

- a) The City shall pay the Contractor for residential collection services completed during the previous month. Monthly payment shall be on the basis of the price per residential unit, as set forth in Exhibit B, multiplied by the number of residential units. The number of residential units shall be the actual number of residential units served during the month in question.
- b) The Contractor shall receive a monthly computer list of accounts billed from the City. It shall be the Contractor's responsibility to verify this list to insure accurate payment for services under this Agreement. The Contractor shall have until the first day of the month following payment to report any errors in billing. City shall promptly correct such errors. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the City collects from Customers for such service. Charges for extra service shall be in the form of a schedule showing the address, date and account number of each Customer receiving such service. The Contractor will bill for said additional services in accordance with the prices specified in Exhibit B and remit to the City 100% of the disposal portion of the bill upon billing.

ii) Commercial Collection Service.

- a) The Contractor shall bill commercial customers for commercial collection and disposal services. The Contractor shall pay the City for commercial disposal services completed during the previous month. Monthly payments will be on the basis of the price per ton as set forth in Exhibit B. Monthly tonnage shall be calculated as follows:

Container Size (in cubic yards) x Number of Pick-ups during Previous Month
x 163 pounds per cubic yard

b) The Contractor shall provide the City a monthly computer list of commercial accounts billed. The list shall include the address and account number of each Customer receiving service, the size and number of containers, and the number of pickups. The Contractor shall have until the first day of the month following payment to report any errors or discrepancies. The Contractor shall promptly correct such errors or discrepancies.

iii) Invoice Requirements. The Contractor shall submit complete monthly invoices to the City no later than 15 days after the end of the month during which the invoiced services were provided (the "invoice period"). A complete monthly invoice shall include:

- a) A statement of the actual number of residential accounts served during the invoice period.
- b) A statement of the number of yards of commercial waste collected for normal service, referencing the Contractor's list of accounts and collection information. Yards collected for each commercial account refers to the level of service provided and is calculated by multiplying the container size in cubic yards times the number of collections during the month. For commercial accounts with multiple containers, "yards" refers to the aggregate of the individual "yards" for each container.
- c) A statement, by account number, of additional services provided during the invoice period. For commercial services, the number of yards of waste collected for the additional service shall be itemized and explained.

iv) Adjustments.

a) Changes in Price.

i) The Contractor may petition the City for a rate adjustment at reasonable times, not to exceed once per year on January 1st, on the basis of the Contractor's cost of doing business. Contractor's cost of doing business shall be documented by audited financial statements or other mechanisms by agreement of the parties. Fluctuations in the U.S. Consumer Price Index (CPI) published by the Department of Labor, Bureau of Labor Statistics for all Urban Consumers—National, Unadjusted for the most recently published twelve month period shall be prima facie evidence of such change in the cost of doing business. The increase shall not exceed 5% per year, provided however, that changes made pursuant to subparagraph (ii) below may exceed such limit.

ii) The Contractor may petition the City for additional rate adjustments on the basis of unusual changes in the cost of operations, brought about by new or unusual changes in the cost of operations, brought about by new or revised laws, ordinances, or regulations, changes in the location of disposal sites or other similar factors. The City shall not unreasonably refuse such request.

iii) Any of the aforesaid changes or any other conditions that occur which reduce the Contractor's cost shall entitle the City to receive a rate decrease equal to the Contractor's decrease in costs.

B. Key West Housing Authority. Waste generated at the Key West Housing Authority shall be collected, transferred and disposed at existing rates throughout the term of the Agreement. A copy of the existing rates and number of customers served at the Key West Housing Authority is attached as Exhibit B (page 4).

C. Modifications to Level of Services. The City in its sole discretion may modify the level of collection or recycling services provided under this Agreement if it is determined to be in the best interest of the City or to comply with changes in laws and regulations. The City and Contractor shall negotiate in good faith any modifications to the Agreement resulting from such changes.

D. Modifications to Scope of Service. The City in its sole discretion may modify the scope of this Agreement to include collection or recycling services not originally included in the scope of services as determined to be in the best interests of the City. The City and Contractor shall negotiate in good faith any modifications to the Agreement resulting from such changes.

Section 7. Term; Termination

The term of this Agreement shall be for five (5) year period commencing January 1, 2000 and terminating December 31, 2004. This Agreement may be renewed for two additional five year periods at the discretion of the City and upon acceptance by the Contractor. A request for renewal shall be submitted to the City at least nine (9) months and accepted by the City at least six (6) months prior to the expiration of the initial term. Each renewal must be approved by Resolution of the City Commission. Termination of the contract is subject to the following:

- A. The City or THE CONTRACTOR shall have the right to terminate this Agreement, for convenience, upon one hundred eighty (180) days written notice to either party. In the event of a termination under this subsection, the Contractor shall continue to operate in accordance with the provisions of this Agreement during the wind-down period. Upon mutual written Agreement, the wind-down period may be extended. However, the City shall not terminate said contract under this clause for 2 years from the signing of this contract.
- B. Either party hereto may terminate this Agreement upon a material breach of the terms hereof by the other party, provided that the non-breaching party gives written notice of the breach to the breaching party and allows said breaching party thirty (30) days to cure, or to take all reasonable steps to commence to cure, said breach as provided for in Section 11 (DEFAULT) of the Contract.

Section 8. Equipment

The Contractor shall have on hand at all times and in good working order such equipment as shall permit the Contractor to adequately and efficiently perform its contractual duties. All equipment, including replacement and additional vehicles, shall be new equipment when placed in service under this Agreement unless otherwise agreed by the City's Authorized Representative. Equipment shall be obtained from nationally known and recognized manufacturers of collection and disposal equipment. For commercial solid waste collection, except service in cans, collection vehicles shall be of the enclosed loader packer. The equipment shall be kept in good repair,

appearance, and in a sanitary and clean condition at all times. The Contractor shall have available reserve equipment which can be put into service within four (4) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. Equipment is to be painted uniformly with the name of the Contractor, business telephone number and the vehicle number in letters not less than five inches high on each side of the vehicle. All vehicles shall be numbered and a record kept of the vehicle to which each number is assigned. No advertising shall be permitted on vehicles unless expressly approved by the City. Such equipment will not be permitted to remain parked anywhere on the streets when not in use. Contractor shall utilize smaller equipment (lane trucks, minipackers, etc.) in areas where conventional collection trucks cannot operate. The City will determine where lane trucks are required; Exhibit G shows the current locations for use of lane trucks. The equipment shall be washed at least two times each week and sprayed with pine oil or similar disinfectant and fly repellent. Maintenance and/or service charges for Contractor-supplied Mechanical Containers are included in the Collection Rates as set forth on Exhibit B.

Section 9. General Financial and Insurance Requirements

A. Permits And Licenses. The Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinances and maintain the same in full force and effect.

B. Title To Waste. The City reserves the right at all times to hold title and ownership to all Solid Waste collected by the Contractor, except refrigerant extracted from White Goods under this Agreement.

C. Subcontractors, Assignment And Change Of Control. Subcontractors will not be permitted under the terms of this Agreement without the written permission of City. Contractor shall make no assignment of its rights or obligations under the Contract without first obtaining the written consent of the City, which may be granted or withheld in its sole discretion. In the event that Contractor is a corporation, partnership or equivalent entity, and it seeks to change the direct legal control of the entity, the Contractor must obtain the consent of the City Commission by resolution for the new entity to assume the contract with the City. A change in legal control includes, but is not limited to, a transfer of ownership in excess of 20%.

D. Bonds and Sureties.

i) Performance Bond. The Contractor shall furnish a performance bond as security for the performance of the Contract with the City. Said performance bond will be in the greatest of 100% of the annual cost of the executed Agreement. The premium for the performance bond described above shall be paid by the Contractor. The performance bond shall be written in a surety company licensed to do business in the State of Florida with an A.M. Best Financial rating of a VII or higher for the most current calendar year available.

ii) Requirements as to Surety. The Surety or Sureties shall be a company or companies satisfactory to the City. Any Surety shall be required to have a resident agent in the State of Florida and shall be duly licensed to conduct business therein. The requirement of a Florida resident agent may be waived by the City if evidence satisfactory to the City is if applicable requirements have been met to permit service of process on a State official under State law.

E. Insurance Requirements.

During the life of the Contract, the Contractor shall procure, maintain and provide the City with certificates of insurance as evidence of the insurance required below. The City shall be an additional insured (except on Worker's Compensation) on this insurance with respect to all claims arising out of the operations or work to be performed. Cancellation or modification of said insurance shall not be effected without sixty (60) days prior written notice to City.

Except as otherwise stated, the amounts and types of insurance provided by the Contractor shall conform to the following minimum requirements:

i) Worker's Compensation. The Contractor shall provide and maintain during the life of the Contract, at his own expense, Workers Compensation Insurance coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include employers' liability insurance in an amount not less than \$500,000 each accident.

ii) Comprehensive General Liability. The Contractor shall provide and maintain during the life of the Contract, at his own expense Comprehensive General Liability Insurance. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy filed by the Insurance Services Office and must include:

Minimum limits of \$1, 000,000 per occurrence combined single limit for bodily injury liability and property damage liability and an annual aggregate of \$10,000,000.

The policy must include the contractual liability endorsement:

Premises and/or operations.

Independent contractors.

Products and/or completed operations.

The contractual coverage must specify that it covers the Hold Harmless Agreement which is part of this contract.

iii) Business Automobile Policy. The Contractor shall provide and maintain during the life of the Contract, at his own expense, Comprehensive Automobile Liability Insurance. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:

Minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability.

Owned vehicles.

Hired and non-owned vehicles.

Employer's non-ownership. The contractual coverage must specify that it covers the Hold Harmless Agreement which is part of this Contract.

Certificates of all insurance required from the Contractor shall be subject to the City's approval of adequacy and protection. Certificates from the insurance carrier stating the types of coverage provided, limits of liability, and expiration dates, shall be filed with the Village before operations are commenced. The required certificates of insurance shall not only name the types of policies provided, but shall also refer specifically to this agreement and section and the above paragraphs, in accordance with which such insurance is being furnished, and shall state that such insurance is as required by such paragraphs of the Contract. If the initial insurance expires prior to the completion of the work, renewal certificates shall be furnished, in ten (10) day prior to expiration, and shall state that such insurance is as required by such paragraphs of this agreement.

F. Compliance With Laws And Regulations

The Contractor hereby agrees to abide with all applicable Federal, State and local laws and regulations. It is understood that the City has ordinances for affecting a solid waste control program. It is the responsibility of the Contractor to become familiar with such ordinances, and it is understood that, if any provisions of said ordinances are in conflict with the conditions of the Contract, the ordinances shall be the governing factor for performances of the Contract.

Section 10. Indemnification and Penalties.

A. Indemnification. The Contractor shall indemnify and hold harmless the City, its elected and appointed boards, officers, agents, attorneys, legal representatives and employees, from and against all liabilities, claims, damages, losses, expenses, including attorneys' fees, arising out of, resulting from, or relating to, the Contractor's performance, or its failure to perform, its duties and obligations under this Agreement, including, but not limited to, acts and omissions of the Contractor's employees, agents, officers, subcontractors, and independent contractors, except to the extent that such liabilities, claims, damages, losses and expense arise out of, result from, or relate to, the acts and omissions of the City's employees, agents, officers, subcontractors and independent contractors. This indemnification shall survive the expiration or termination of this Agreement.

B. Penalties. The Contractor shall be liable for any fines or civil penalties which are imposed by any governmental or quasi-governmental agency or body arising out of, resulting from, or relating to, the Contractor's performance or failure to perform, its duties and obligations under this Agreement, including, without limitation, acts and omissions of the Contractor's employees, agents, officers, subcontractors and independent contractors. The Contractor may contest any such fines or penalties in administrative and/or court proceedings provided, however, that the Contractor shall pay such fines or civil penalties prior to such protest if payment is required prior to making such protest. The Contractor shall be solely responsible for all costs, including attorneys' and accountants' fees, of protesting any such fines or civil penalties.

Section 11. Employment.

A. Independent Contractor. The relationship of the Contractor is that of an Independent Contractor. The City and the Contractor hereby agree and covenant that at no time during the term of this Agreement shall any member of the governing body of the City be employed by, or be a member of the governing body of, the Contractor, or any subsidiary of the Contractor, nor shall any member of the governing body of the Contractor be employed by, or be a member of the governing body of, the City. The Contractor or any subsidiary of the Contractor

may not employ any administrative official of the City who has the responsibility of administering, enforcing, interpreting, or acting under this Agreement within one, 1 year of the termination of such person's employment with the City without the prior written consent of the governing body of the City.

B. Working Conditions. The contractor shall comply with all applicable state and federal laws relating to wages and hours, and all other applicable laws relating to the employment or protection of employees, now or hereafter in effect.

C. Equal Opportunity. The Contractor is an equal opportunity employer with an affirmative action program. The Contractor represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry. The Contractor shall comply with applicable Florida statutes pertaining to the selection of labor.

D. Responsibility for Safety. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the services to be performed pursuant to this Agreement. The Contractor shall be responsible for complying with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

E. Employees. The Contractor shall assign a qualified person or persons to be in charge of its operation in the City and shall give the name or names and the respective background of such person or persons to the City. All of the Contractor's Collection employees shall wear clean uniforms bearing the company's name and shall carry, at all times, a valid operator's license for the type of vehicle each such employee drives. The City may require a disciplinary action to be taken against any employees of the Contractor who violates any provision hereof, or who is wanton, negligent or discourteous in the performance of his duties. The Contractor shall provide operating safety training for all personnel and shall have an active corporate safety program in effect at all times. Each Route Supervisor shall be trained in first aid and CPR, and each vehicle shall be equipped with a first aid kit.

Section 12. Default and Dispute of the Agreement.

A. Force Majeure. Unless otherwise stated herein, the Contractor shall be excused from performance in cases of war, insurrection, riot, acts of God, or other causes beyond the reasonable control of Contractor. For the purpose herein, a strike shall be considered within the Contractor's reasonable control.

B. It shall be the duty of the City's Authorized Representative to observe closely the Contractor's services pursuant to the Contract. Any of the following events shall be deemed a material breach of contract.

1) The Contractor takes the benefits of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws or under any other law or statute of the United States, or any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or,

ii) By order or decree of a court, the Contractor shall be adjudged bankrupt, or an order shall be made approving a petition filed by any of its creditors or by any of the Stockholders of the Contractor seeking its reorganization or the readjustment of its indebtedness under Federal Bankruptcy laws or under any law or statute of the United States or of any state thereof; provided that, if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of cancellation shall be and become null, void, and of no effect; or,

iii) By or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court of governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor, and such possession of control shall continue in effect for a period of sixty (60) days; or,

iv) The Contractor shall voluntarily abandon, desert, or discontinue its operations hereunder; or,

v) Any lien is filed against any premises in the City because of any act or omission of the Contractor and is not removed or the City and landowner adequately secured, by bond or otherwise, within ninety (90) days after the Contractor has received written notice thereof; or,

vi) The Contractor has abandoned, failed, or refused to perform or observe each and every promise in the Contract, or has failed or refused to comply with the instructions of the City's Authorized Representative.

C. If within a period of seven (7) days after receipt of written notice from the City the Contractor fails to cure the default, the City's Authorized Representative shall notify the City Manager and a public hearing shall be set for a date within fifteen (15) days of such notice. The City's Authorized Representative shall, not less than five (5) days prior to the date of such hearing, notify the Contractor and the surety of the date and place of the public hearing at which the Contractor shall be required to show cause why the Contractor has not breached the terms of the Contract. Should the Contractor fail to appear at the hearing or fail to show cause why it has not breached the terms of the Contract to the reasonable satisfaction of the City, the City shall declare a breach on the Contract and notify the Contractor and the surety on the performance bond of such a declaration of breach, or authorize the City Manager to take such other action.

D. If the Contractor or his surety fails to cure such breach within a reasonable time thereafter, then the City may thereupon declare the Contract canceled. Also, upon such a declaration of breach, all payments due the Contractor shall be retained by the City and applied to the completion of the Contract and to damages suffered and expenses incurred by the City by reason of such breach, unless the surety on the performance bond shall assume the Contract, in which event all payments remaining due to the Contractor at the time of breach, less amount due the City from the Contractor and less all sums due the City for damages suffered and expenses incurred by reason of such default, shall be due and payable to such surety. Thereafter, such surety shall receive monthly payments equal to those that would have been paid to the Contractor had said Contractor continued to perform the agreement. If such surety fails to exercise such option to cure, the City may

complete the Contract or any part thereof, either by day labor or by reletting the Contract, and the City shall have the right to take possession of and use any or all of the vehicles, materials, equipment, facilities, and property of every kind provided by the Contractor for the performance of the Contract and to procure other vehicles of the same and to charge the cost of the same to the Contractor, together with the costs incident thereto. During such period, the liability of the City to the Contractor for loss or damage to such equipment so used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability. In the event the City completes the Contract at a lesser cost than would have been payable to the Contractor under the Contract if the same had been fulfilled by said Contractor, then the City shall retain such difference. Should such cost to the City be greater, the Contractor shall be liable for and pay the amount of such excess cost to the City.

E. Any transfer or assignment of the responsibilities of the Contractor by the surety must be approved by the City. The Contractor shall be excused from performance in cases of war, insurrection, riot, acts of God, or other causes beyond the Contractor's control. For the purpose of this section, a strike shall be considered within the control of the Contractor.

F. Except as otherwise provided in the Contract, any dispute concerning a question of fact or of interpretation of a requirement of the Contract which is not disposed of by mutual consent between the parties shall be decided by the City Manager, who shall reduce the decision to writing and furnish a copy thereof to the parties. In connection with any dispute proceeding under this clause the party shall be afforded an opportunity to be heard and to offer evidence in support of its version of the facts and interpretation of the Contract. The City Manager shall make such explanation as may be necessary to complete, explain or make definite the provisions of the Contract and the findings and conclusions shall be final and binding on both parties. Pending the final decision of a dispute, the Contractor shall proceed diligently with the performance of the Contract in accordance with the preliminary directions of the City Manager.

G. The Contractor expressly recognized the paramount right and duty of the City to provide adequate waste collection as a necessary government function, and further agrees, in consideration for the execution of the contract, that in the event the City shall invoke the provisions of this section, Contractor will either negotiate with the City for an adjustment of the matter or matters in dispute, or present the matter to a court of competent jurisdiction with venue in Palm Beach County in an appropriate suit therefore instituted by the Contractor or by the City.

Section 13. Reporting.

A. General. The Contractor shall provide any reports to the City or any other governmental agency or body that are reasonably requested by the City or required by any law, ordinance or regulation in the time period and in the manner reasonably requested by the City or as required by such law, ordinance or regulation. The City may independently verify the information provided in any of the reports provided to the City by the contractor. The City shall reimburse the Contractor for the Contractor's reasonable costs in preparing any report not specified in this Agreement; provided, that if such report is required by any governmental agency or body, except the City, then the preparation of such report shall be at the Contractor's sole expense.

B. Reports and Records. Contractor shall maintain and provide information, reports or records to City in the manner and of the type and frequency set forth in Exhibit F in addition to those reports and/or records which are specifically provided for herein.

Section 14. Complaints.

A. Standards. The Standards of performance for this Agreement will be as follows:

- i) In order to avoid penalties, the Contractor shall perform its obligations hereunder so that 99% of collections are correct, as measured by legitimate customer complaints registered with the City each month and resolution of such legitimate complaints in a timely manner. Questions or informational requests shall not be counted as complaints. The City will provide the Contractor with a list of complaints received by City employees from customers each business day. Contractor will provide the City with a list of complaints received. This information shall be in a format mutually agreed by the parties.
- ii) During periods of declared emergency, the Contractor shall request and the City's Authorized Representative shall allow a waiver of performance standards. During the first 90 days of the term of this Agreement, no monetary penalties will be assessed; however, the reporting requirements herein shall be enforced.
- iii) Each dumping of each container constitutes one collection event. A customer with one container, emptied twice per week represents 2 collections per week (8.7 collections per month). Complaints include, but are not limited to, incorrect service charges, late service charges, missed service (not on day scheduled), spilled material, material not collected, property damage, employee conduct.
- iv) All legitimate complaints related to missed service or spilled material must be resolved in a manner acceptable to the City within 24 hours of receipt thereof, and all other non-property damage complaints shall be addressed within 24 hours of receipt thereof by the Contractor and must be resolved within five business days. A complaint unresolved within these time frames will accumulate as additional complaint counts for each day unresolved. The Contractor shall make available to the City copies of all complaints on a monthly basis. Such records shall be available for City inspection at all times during business hours. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be serviced on the next working day.
- v) If the Contractor desires to challenge the legitimacy of any complaint, it may so inform the City's Authorized Representative. If the Contractor and the City's Authorized Representative cannot agree on a resolution, the dispute will be referred to the City Manager, whose decision will be final.

B. Penalties. If during any one-month, legitimate complaints are received in excess of 1% of collections, the Contractor shall provide a written explanation of the cause of the non-compliance and the proposed remedy. The City will notify the Contractor within one business day

that the 1% threshold has been reached. The written explanation shall be submitted to the City's Authorized Representative no later than 2 business days after the notice has been received.

A penalty of \$10 for each legitimate complaint received and unresolved during the month will be assessed during any month in which the threshold of 1% is exceeded. In the event that legitimate unresolved complaints exceed 3% of collection events in any one month, in addition to the written explanation and penalty payment, Contractor shall make a presentation to the City Commission at a public hearing regarding same. In the event legitimate complaints received and unresolved during any one month exceed 5% of collection events in addition to the above actions, the Contractor shall attend a public hearing to determine if the Contractor shall be declared in default.

Section 15. Arbitration.

A. Procedure. In the event that the City and the Contractor are unable to reach an agreement as to any disputes arising under this Agreement within thirty (30) days after receipt of notice by one party from the other party stating that the parties cannot agree on any issue arising hereunder (the "Arbitration Notice"), then those issues remaining unresolved shall be submitted to binding arbitration under the following terms, conditions, and procedures:

1. Unless specifically provided for herein to the contrary, the rules and procedures of the American Arbitration Association, as shall from time to time be amended, shall apply.

2. There shall be a three member Arbitration Board composed of one member selected by the City and one member selected by the Contractor. Each party shall notify the other of its selection on or before ten (10) days after receipt of the Arbitration Notice. The final member of the three member Arbitration Board shall be selected by the initial two members within a reasonable time after their appointment.

3. On or before twenty-five (25) days after receipt of the Arbitration Notice, each party shall submit to the Arbitration Board its written position on each unresolved issue. Such submission shall include, not only the party's proposed resolution, but also, all supporting data and argument. All exhibits intended for introduction at the hearing and a list of witnesses each party intends to call shall be submitted as exhibits to the submission.

4. The Arbitration Board may schedule such preheating conferences, as it shall deem advisable.

5. The arbitration hearing shall commence no earlier than twenty-six (26) days after receipt of the Arbitration Notice, and no later than forty (40) days after receipt of the Arbitration Notice, and the evidentiary phase of such hearing shall be concluded no later than ten (10) working days after its commencement.

6. Within ten days of the conclusion of the evidentiary phase of the arbitration hearing, the Arbitration Board shall announce its Decision and Order. The Decision and order shall be limited on each individual issue to either the position of the City or the position of the Contractor as set forth in the position described in Section 14.A.3.

7. Findings of fact and conclusions of law shall not be required of the Arbitration Board unless specifically requested by either party within five (5) working days of the announcement of the Decision and Order.

8. Unless specifically requested by either party, the proceedings shall not be recorded by other than an audio tape recording device. In the event that either party requests the services of a court reporter or other means of transcription of the proceeding, the requesting party shall bear the cost of such recording and transcription.

9. The costs of arbitration services shall be borne equally by the parties; provided, however, that in the event that the Arbitration Board makes a specific written finding of fact that one party has prosecuted its case frivolously or in bad faith, then the Arbitration Board shall assess the costs of arbitration services to the offending party.

10. The Decision and Order shall be binding on both parties and shall not be subject to appeal.

11. If the day for performance of any obligation under this Section 14 occurs on a Saturday, Sunday or Federal Holiday, than such obligation shall be performed on the next business day thereafter.

B. Customer Disputes. The City Manager or his designee shall arbitrate all disputes between the Contractor and a Customer. The City Manager's, or his designee's, decision concerning such disputes will be binding upon all parties concerned.

Section 16. Quality of Service and Compliance.

A. Completion of Work. The Contractor shall complete the Collection required under this Agreement in accordance with the regular schedule provided to the City even it is necessary to use additional forces and equipment so as not to delay Collection in any other area of the City.

B. Protection of Property. The Contractor shall take all commercially responsible precautions for the protection of public or private property. The Contractor responsible for the damage or destruction of property of any Contractor is responsible for the damage or destruction of property of any character resulting from neglect, misconduct, or omission in its manner or method of performance of the services to be provided under this Agreement, or caused by defective performance of the services to be provided under this Agreement, or the use of unsatisfactory equipment or materials. Whenever public or private property is so damaged or destroyed, the Contractor shall, at its own expense, restore such property to a condition equal to that existing before such damage or injury was done by repairing, rebuilding or replacing such property as may be required, or the Contractor shall otherwise make good such damage or destruction in an acceptable manner to the party whose property was damaged or destroyed. If the Contractor fails to respond to the notice of such damage, the City may, within two business days after delivery of notice to the Contractor, proceed to repair or rebuild or otherwise restore such property as the City may deem necessary, at the Contractor's expense and deduct such amounts from any subsequently accruing amounts owed by the City to the Contractor. If the City deems such damage to create a dangerous situation to the public and if the Contractor fails to so repair such damage within 48 hours after delivery, of notice to the Contractor, the City may proceed as provided in the previous sentence of this Section.

C. Permits. The Contractor shall obtain all permits and licenses required by law or ordinance and shall maintain such permits and licenses in full force and effect during the term of this Agreement.

D. Missed Collection. In the event that a regularly scheduled collection is missed and the complaint is received by either the City or the Contractor and where no fault can be found on the Customer's part, a special collection of the refuse will be required of the Contractor prior to the end of that business day.

E. Contractor's Office. The Contractor shall provide at his expense, a handicap accessible office located within the City. A representative of the Contractor shall be available from 8:00 am to 5:00 pm Monday through Friday to service inquiries, requests and complaints in connection with the services to be provided under this Agreement. The Contractor shall provide for the prompt handling of emergency complaints and all other special or emergency calls. The Contractor shall provide a local toll free emergency phone number to be available on a 24-hour basis and shall have local personnel available at all times for the purpose of emergency response. The Contractor shall become, maintain and remain a member of the Key West Chamber of Commerce for the duration of the Agreement.

F. Shop. Contractor shall maintain a shop for collection vehicle maintenance that meets OSHA requirements and includes a water reclamation system for truck wash-down that is located within 10 miles of the City.

G. Contractor's Officer(s). The Contractor shall assign a qualified person and designate alternate personnel to be in charge of the operations within the City. These personnel shall be responsible to the City's Authorized Representative and be accessible at reasonable times. The Contractor shall give the names and day and night telephone numbers of these persons to the City's Authorized Representative. Information regarding the person's experience and qualifications shall be furnished. Supervisory personnel must be present on the routes to direct operations in a satisfactory manner. Said supervisor(s) must be available for consultation with the City's Authorized Representative and/or customers within a reasonable, practicable time after notification of a request for such consultation.

H. Dangerous Animals and Refuse Collection. Employees of the Contractor shall not be required to expose themselves to the danger of being bitten by vicious dogs in order to accomplish refuse collection. In any case where the owner or tenants have such animals at large, the Contractor shall immediately notify the City Manager of such condition and of his inability to make collection because of such conditions.

I. Conduct of Employees. The Contractor shall ensure that his/her employees serve the public in a courteous, helpful and impartial manner. Contractor's collection employees will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be neither permitted, nor crossing property of neighboring premises unless residents or owners of both such properties shall have given permission. Care shall be taken to prevent damage to property, including cans, carts, racks, trees, shrubs, flowers and other plants. The Contractor shall also be responsible for complying with the following terms and conditions:

- i Each vehicle operator shall at all times carry a valid Florida Commercial Driver's License for the type of vehicle that is being driven.
- ii The Contractor shall provide operating and safety training for all personnel.
- iii No person shall be denied employment by the Contractor for reasons of race, sex, national origin, creed, age, physical handicap, or religion.

iv The Contractor's solid waste collection employees shall wear a uniform or shirt bearing the company's name. The Contractor shall furnish to each employee an identifying badge, which is legible to a person facing the individual from a distance of six feet. Lettering stitched on or identifying patches permanently attached to uniform shirts and jackets will be acceptable. The Contractor shall keep a record of employees names and numbers assigned.

J. Compliance with State, Federal and Municipal Law. The Contractor shall comply with all applicable City, State and Federal laws relating to wages, hours, and all other applicable laws relating to the employment or protection of employees, now or hereafter in effect.

K. Fair Labor Standards Act. The Contractor is required and hereby agrees by execution of the Contract to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standard Act as amended and changed from time to time.

L. Current Collection Employees. The Contractor shall offer employment to qualified employees of the current solid waste collection contractor below the position of Manager. Such employment shall be subject to the passing of drug tests and other similar qualifications. Contractor's employees are not employees of the City and shall accrue no rights or benefits that ordinarily accrue to City employees.

Section 17. Outside Waste. Contractor shall be responsible for paying all disposal costs resulting from the collection of waste outside of the scope of this Agreement. In the event that the Contractor does not comply with this provision, the Contractor shall make payment to the City of the sum of \$3,000 per event as liquidated damages plus any reasonable estimate of tonnage dumped, it being understood that the City's actual damages in such event are difficult to ascertain and that such proceeds represent the parties' best estimate of such damages. The Contractor shall not co-mingle waste from outside of the City of Key West. Delivery of waste from outside Key West to the City Transfer Center shall be a material breach of contract.

Section 18. Miscellaneous.

A. Notice. All notices and other communications received in connection with this Agreement shall be in writing unless otherwise specified in this Agreement, and any notice or other communication required under this Agreement shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after the deposit thereof in any main or branch office of the U.S. Post office, certified or registered mail, return receipt requested, postage pre-paid, properly addressed to the parties, respectively, as follows:

For notices and communications to the City:

City of Key West
525 Angela Street
Key West, Florida 33040
Attn: City Manager

with a copy (which need not be sent by registered or certified mail) to:

City of Key West
525 Angela Street
Key West, Florida 33040
Attn: City Attorney

For notices and communications to the Contractor:
Waste Management Inc. of Florida
2700 NW 48th Street
Pompano Beach, Florida 33073
Attention: Glenn R. Holcomb, Vice President

with a copy (which need not be sent by certified or return registered mail) to:

Waste Management Inc. of Florida
2700 NW 48th Street
Pompano Beach, Florida 33073
Attention: Ronald Kaplan, Regional Counsel

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such parties, though no notice of the change of address shall be effective until actually received.

B. Entire Agreement; Further Actions. This Agreement, including the exhibits hereto contains the entire Agreement between the parties relative to the services to be provided hereunder. Each of the parties hereto agrees, from time to time, to execute and deliver such further instruments, and to take such further action, as may be reasonably necessary in order to fully perform and carry out the terms and intent hereof.

C. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable to any extent, or shall be rendered invalid, unenforceable, or illegal, by virtue of enactment of statute or promulgation of administrative rule, the remaining provisions of this Agreement shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

D. Binding Effect. Each of the covenants, agreements and provisions contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective successors and assigns.

E. Waiver. Unless otherwise specifically provided in this Agreement, no delay or failure to exercise a right resulting from any breach of 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 may be deemed expedient. Any waiver shall be in writing and signed by the parties granting such waiver. In any representation, warranty or covenant by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

F. Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Florida.

G. Captions. The titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

H. Assignment. This Agreement shall not be assigned by the Contractor without the prior written consent of the City which consent shall not be unreasonably withheld. Any assignment by the Contractor shall not relieve it of its liability for any violations of environmental laws, regulations or ordinances due to its performance under this Agreement.

I. Amendment. This Agreement may not be amended or modified in any respect, except by written agreement expressly referring to this Agreement and duly authorized, executed and delivered by authorized-representatives of the parties hereto.

J. Compliance with Laws. The Contractor shall take any and all steps necessary to comply with any Federal, State and Local laws, regulations, codes and ordinances that apply to the Contractor, existing and as may be amended from time to time. The Contractor shall also reasonably cooperate with the City to assist the City in complying with any federal, State and local laws, regulations, codes and ordinances.

K. Representations of the Contractor. The Contractor represents that (1) it is a corporation duly organized under the laws of Florida, (2) this Agreement has been duly authorized, executed and delivered by it, and (3) it has the required power and authority to perform this Agreement.

L. Interpretation. The parties hereto hereby acknowledge and agree that this Agreement has been extensively negotiated by both the City and the Contractor. Any questions of interpretation of this Agreement shall be given a reasonable interpretation and shall not be construed against either party hereto. In no event shall prior drafts of this Agreement be used, considered or relied upon in construing or interpreting any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

CITY OF KEY WEST

BY: [Signature]

City Manager

ATTEST:

[Signature: Cheryl Smith]
Cheryl Smith, City Clerk

WASTE MANAGEMENT INC. OF FLORIDA.

By: [Signature]

Its: Vice President

ATTEST:

[Signature]