

**ORDINANCE
NO. 06-15**

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, GRANTING AN EXCLUSIVE FRANCHISE FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION TO HARRIS SANITATION, INC. DOING BUSINESS AS WASTE MANAGEMENT OF BREVARD; PROVIDING FOR SUNSET OF EXISTING CONTRACTUAL RIGHTS OF COMMERCIAL SOLID WASTE PROVIDERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, due to the growth of the City and the anticipated future growth, it is necessary to provide for residential and commercial solid waste collection services; and

WHEREAS, the City Council has determined that it is in the best interest of the public that a single provider have an exclusive franchise for both residential and commercial solid waste collection services; and

WHEREAS, pursuant to a competitive proposal process it has been determined that the public will best be served by granting a franchise to Harris Sanitation, Inc., doing business as Waste Management of Brevard.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fellsmere, Indian River County, Florida, as follows:

SECTION 1. GRANT OF FRANCHISE. Harris Sanitation, Inc., doing business as Waste Management of Brevard is hereby granted an exclusive franchise to provide residential Solid Waste Collection Service and Commercial Collection Service within the City of Fellsmere, in accordance with the provisions of the Franchise Agreement between the City of Fellsmere and Harris Sanitation, Inc. d/b/a Waste Management of Brevard, hereinafter referred to as "Franchise", attached hereto as Exhibit "A" and by this reference made a part hereof.

SECTION 2. PENALTIES FOR VIOLATIONS. It shall be a violation of the Code of Ordinances of the City of Fellsmere, Florida (hereinafter referred to as the "Code") punishable as provided in Code Sections 1-5 and 2-179 for any person or entity that 1) fails to comply with the terms and provisions of the Franchise granted hereunder, or 2) that attempts to provide Residential Solid Waste Collection Service or Commercial Collection Service within the City, except in accordance with the terms and conditions of the Franchise granted hereunder.

SECTION 3. SUNSET OF EXISTING CONTRACTUAL RIGHTS. The City manager or his designee is directed to invoke the procedures provided under Florida Statutes to sunset the existing contractual rights of any person or entity otherwise providing Residential Solid Waste Collection Service or Commercial Collection Service as of the effective date of this ordinance. Any person or other entity providing such service must submit copies of all such contracts to the City

Manager within thirty (30) days of the effective date of this ordinance. Upon a showing of notice of the requirements of this section, the failure to submit any such contract shall create an irrebuttable presumption that no such agreement for service existed.

SECTION 4. SEVERABILITY. If any section, part of a sentence, phrase or word of this ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this ordinance without such unconstitutional, invalid or inoperative part.

SECTION 5. CONFLICT. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective upon adoption.

The foregoing ordinance was moved for adoption by Council Member Tyson. The motion was seconded by Council Member Savage and, upon being put to a vote, the vote was as follows:

John A. McCants, Mayor	<u>yea</u>
Council Member Michael E. Barone	<u>yea</u>
Council Member Joel Tyson	<u>yea</u>
Council Member Sara J. Savage	<u>yea</u>
Council Member Fernando Herrera	<u>yea</u>

The Mayor thereupon declared this Ordinance fully passed and adopted this 16th day of March, 2006.

CITY OF FELLSMERE, FLORIDA

John A. McCants
John A. McCants, Mayor

ATTEST:

Deborah C. Krages
Deborah C. Krages, City Clerk

I HEREBY CERTIFY that Notice of the public hearing on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the 16th day of March, 2006, and the first reading was held on the 2nd day of March, 2006, and that public hearing was held on the 16th day of March, 2006, and that the second and final reading was held on the 16th day of March, 2006.

Deborah C. Krages
Deborah C. Krages, City Clerk

Franchise Agreement

Between

City of Fellsmere

and

Harris Sanitation Inc. d/b/a Waste Management of Brevard

15th This Franchise Agreement ("Agreement") is hereby made and entered into this day of April, 2006, between CITY OF FELLSMERE, FLORIDA, ("City") and Harris Sanitation Inc. d/b/a Waste Management of Brevard, a Florida corporation, whose address is 7382 Talona Drive, W. Melbourne, FL 32904 ("Franchisee").

WITNESSETH

WHEREAS, the City desires to engage Franchisee to perform certain solid waste and recycling services with the boundaries of the City; and

WHEREAS, Franchisee desires to perform such services pursuant to the terms and conditions set forth herein;

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

Article 1. Background Recitals

1.0. The recitals set forth above are true and correct and form a material part of this Agreement.

Article 2. Term of the Agreement

2.0. The term of this Agreement shall be for a period of five (5) years, which shall begin 4/1/06. This Agreement shall automatically renew for an additional term ending 3/31/2011, unless either party shall notify the other to the contrary in writing pursuant to Sec. 16.11 not later than 3/31/2011.

Article 3. Definitions and Interpretations

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

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

3.2. Applicable Law means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relate in any manner to the performance of the City or Franchisee under this Agreement.

3.3. Biological Waste shall mean solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under chapter 470, Florida Statutes.

3.4. Biomedical Waste shall mean any Solid Waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the Florida Department of Health represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under Chapter 470, Florida Statutes.

3.5. Board shall mean the City's governing body.

3.6. Bulk Trash shall mean any non-vegetative item that cannot be containerized, bagged or bundled, or whose large size or weight precludes its handling by normal, Collection, processing or disposal methods. Bulk Trash includes but is not limited to discarded White Goods that are not Freon-Containing Devices, toilets, pool heaters, water softeners, pianos, bath tubs, sinks, bicycles, and similar household goods, appliances, fixtures and furniture.

3.7. Collect and Collection shall mean the process whereby Solid Waste is picked-up and removed from the location where it is generated, and then transported to the County Landfill.

3.8. Commercial Collection Franchise Area shall mean the City limits of Fellsmere.

3.9. Commercial Collection Service shall mean the Collection of (a) Commercial Solid Waste; and (b) Recyclable Materials generated on Commercial Property and from Mobile Home Parks.

3.10. Commercial Container shall mean any container which: (a) consists of four permanently attached sides and a bottom; (b) is made of metal, durable plastic or other non-absorbent material; (c) is free-standing; (d) is emptied or transported by mechanical means; and (e) is used to Collect or store Solid Waste. Commercial

Containers include, but are not limited to roll-on/roll-off boxes, dumpsters, Compactors, and similar receptacles used to Collect Solid Waste

3.11. Commercial Property shall mean all of the improved property in the City that is used for: (a) Multiple Dwelling Units; or (b) commercial, institutional, church, not-for-profit, governmental, nonresidential or industrial purposes.

3.12. Commercial Solid Waste shall mean Garbage, Bulk Trash, Trash, and Yard Trash that is not Residential Solid Waste. Commercial Solid Waste includes the Garbage, Bulk Trash, Trash, Yard Trash, and Industrial Solid Waste generated by or at: (a) commercial business, including, without limitation, retail stores, offices, restaurants, and warehouses; (b) governmental and institutional offices and buildings, including, without limitation, schools and hospitals; (c) churches and not-for-profit organizations; (d) hotels and motels; (e) Multiple Dwelling Units that use Commercial Containers; (f) Mobile Home Parks that use Commercial Containers; and (g) agricultural and industrial facilities.

3.13. Compactor shall mean any Solid Waste container that has a stationary or mobile compaction mechanism.

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

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

3.15. Construction and Demolition Debris Commercial Container shall mean a Commercial Container that is used to hold Construction and Demolition Debris.

3.16. Construction and Demolition Debris Service shall mean the Collection and transport of Construction and Demolition Debris in a Commercial Container or a Construction and Demolition Debris Commercial Container in the City by Franchisee.

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

3.18. County shall mean Indian River County, Florida. It shall also include the Indian River County Solid Waste Disposal District, a dependent special district of Indian River County, Florida.

3.19. Curbside Collection Point shall mean the location where the Franchisee shall pick up the Residential Solid Waste and Recyclable Materials discarded by a Customer.

3.20. Customer shall mean a Person having a contractual relationship with the Franchisee for Residential Solid Waste Collection Service or Commercial Collection Service pursuant to the terms of this Agreement and the City Code.

3.21. De Minimis Amount shall mean the amount of Solid Waste that lawfully may be included in a container of Recovered Materials or Construction and Demolition Debris. A De Minimis Amount of Solid Waste is three (3) percent, by volume or weight, whichever is more restrictive, as determined by a measurement or visual inspection by the Contract Manager

3.22. County Landfill shall mean the Solid Waste Disposal Facility or Facilities owned or operated by the County.

3.23. Freon-Containing Devices shall mean White Goods, appliances or other devices that contain or may release Freon, such as refrigerators, freezers, air conditioners, and dehumidifiers.

3.24. Garbage shall mean all kitchen and table food waste, and any animal, vegetative, food or other organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.

3.25. Garbage Receptacle shall mean 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), and includes a heavy duty, securely tied, plastic bag designed for use as a garbage receptacle.

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

3.27. Industrial Solid Waste shall mean Solid Waste generated by manufacturing or industrial processes that is not a Hazardous Waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather or leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastic products and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

3.28. Materials Recycling Facility (MRF) shall mean any facility operated or managed by, for, or on behalf of the County for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

3.29. Mobile Home Park shall mean any improved real property divided into spaces for the placement of mobile or modular homes or trailers.

3.30. Multiple Dwelling Units shall mean any building containing five (5) or more permanent living units. Multiple Dwelling Units include condominiums, but do not include hotels or motels.

3.31. [Left intentionally blank]

3.32. [Left intentionally blank]

3.33. Person shall mean any and all persons, natural or artificial, including, without limitation, any individual, firm, partnership, corporation, company, association, social club, fraternal organization, church, religious sect, religious denomination, society, organization or league, estate, trust, receiver, executor, administrator, trustee, or syndicate, municipal corporation, municipality, district or county of Florida and any other state; any governmental agency or political subdivision of any state or the federal government; or any other legal entity, and any group or combination of the above acting as a unit.

3.34. [Left Intentionally Blank]

3.35. Recovered Materials shall mean metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials are not Solid Waste.

3.36. [Left Intentionally Blank]

3.37. [Left Intentionally Blank]

3.38. [Left Intentionally Blank].

3.39. [Left Intentionally Blank]

3.40. [Left Intentionally Blank]

3.41. **Residential Solid Waste** shall mean Garbage, Trash, Yard Trash, and Bulk Trash resulting from the normal housekeeping activities of a Residential Unit or Mobile Home Park that has elected to receive Residential Solid Waste Collection Service.

3.42. **Residential Solid Waste Collection Service** shall mean the Collection and disposal of Residential Solid Waste generated within the Residential Franchise Area.

3.43. **Residential Solid Waste Franchise Area** shall mean the geographical area comprising the City.

3.44. **Residential Unit** shall mean each and every lot or parcel of land that is improved for occupancy as a single-family residence, duplex, triplex, or quadraplex, and any other residence, except a Multiple Dwelling Unit. The term also includes individually-owned mobile or modular homes or trailers that: have residential permanent license tags; are erected on a separate parcel of property; are within the Residential Franchise Area or the Residential Recyclables Franchise Area; and do not receive Commercial Collection Service.

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

3.46. **Solid Waste** shall mean Sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, Special Waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered Materials are not Solid Waste.

3.47. **Solid Waste Disposal Facility** means 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.

3.48. **Special Waste** shall mean Solid Wastes that can require special handling and management, including, but not limited to, White Goods, waste tires, used oil, lead-acid

batteries, Construction and Demolition Debris, ash residue, Yard Trash, and Biological Wastes.

3.49. Trash shall mean all accumulations of refuse, rags, paper, paper boxes and containers, sweepings, other accumulations of a similar nature, and broken toys, tools, equipment and utensils. Trash does not include Garbage or Yard Trash.

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

3.51. White Goods includes inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances. White Goods do not include Freon-Containing Devices.

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

Section 4. Grant of Franchise

4.0. Exclusive Franchise. Subject to the conditions and limitations contained in this Agreement, the Franchisee is hereby granted an exclusive franchise and sole authority to provide (a) Residential Solid Waste Collection Service in the Residential Solid Waste Franchise Area and (b) Commercial Collection Service and (b) Construction and Demolition Debris Service.

4.1. Recyclables. The collection residential recyclables is not a part of this Agreement.

4.2. Limited Grant of Rights. This Agreement does not grant any rights or remedies to the Franchisee except those that are expressly identified and conveyed by the specific terms of this Agreement.

4.3. Minimum Requirements for Franchisee's Services. This Agreement establishes minimum requirements and performance standards for the Franchisee. Any services provided by the Franchisee pursuant to Section 4.0 shall fully and strictly comply with the requirements in this Agreement and any Applicable Law.

4.4. Recovered Materials. This Agreement does not prohibit any Person from gathering, conveying, or processing Recovered Materials, provided such Person otherwise complies with applicable Florida law. No franchise or permit shall be required with respect to Recovered Materials. Containers of Recovered Materials may include a De Minimis Amount of Solid Waste. Containers holding more than a De Minimis Amount of Solid Waste shall be handled and regulated as Solid Waste.

Article 5. Title to Solid Waste and Recyclable Materials

5.0. Title. After Residential Solid Waste, Commercial Solid Waste, Recovered Materials, and Recyclable Materials are placed at a Curbside Collection Point or any other approved location for Collection by the Franchisee within the City, the City shall hold title and ownership to all such materials. The Franchisee shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials, except as set forth herein. However, the Franchisee shall have the sole responsibility and liability for the lawful disposal of any Biological Waste, Biomedical Waste, or Hazardous Waste that the Franchisee Collects.

Article 6. Processing and Disposal

6.0. Processing. Recovered Materials collection, processing and marketing are outside the scope of this Agreement.

6.1. Solid Waste Disposal. The Franchisee shall dispose of Residential Solid Waste and Commercial Solid Waste Collected from within the City at the County Landfill.

Article 7. Franchise Fee

7.0. Franchise Fee. A Franchise Fee in the amount of 6% of gross revenues collected pursuant to the Franchise granted herein shall be paid to the City, by check, by the Franchisee on or before the fifteenth (15th) day of each month for all services collected by the Franchisee during the immediately preceding month.

Article 8. Residential Services

8.0. Hours of Residential Service- General. Residential Solid Waste Collection Service, shall be provided Monday through Friday, beginning no earlier than 7:00 a.m. and ending no later than 6:00 p.m, and Saturday, beginning no earlier than 7:00 a.m. and ending no later than 6:00 p.m., unless previously authorized in writing by the Contract Manager in response to an Uncontrollable Force.

8.1. Days of Residential Service. Residential Solid Waste shall not be Collected by the Franchisee on Sundays or the holidays of July 4th, Labor Day, Thanksgiving, Christmas, or New Year's Day, unless necessary to respond to an Uncontrollable Force. Residential Solid Waste does not need to be Collected by the Franchisee on any holiday when the County Landfill is closed. If Residential Solid_Waste Collection Service is scheduled to be provided on a holiday, the Franchisee shall collect the Residential Solid Waste on the next regularly scheduled Collection day.

8.2 Frequency of Residential Solid Waste Collection Service—Garbage and Trash. At least two (2) times each week, the Franchisee shall Collect Garbage and Trash from

those Customers that requested Residential Solid Waste Collection Service. The Collections of Garbage and Trash shall be at least three (3) days apart.

8.3. Frequency of Service--Yard Trash. Yard Trash shall be collected from Residential Units receiving Residential Solid Waste Collection Service at least one (1) time per week. Yard Trash shall not be commingled with Garbage.

8.4. Frequency of Service--Bulk Trash. The Franchisee shall collect all Bulk Trash and Freon-Containing Devices placed at the Curbside Collection Point within four (4) calendar days after receiving a Customer's request to Collect such materials. There shall be no additional charge to the Customer or the City for Collecting Bulk Trash.

8.5. Obligations Of Franchisee To Residential Customers - General. For Residential Units, the Curbside Collection Point shall be located within five (5) feet of the curb, the paved surface of a public roadway, the closest accessible public right-of-way, or other location agreed to by the Franchisee and Customer that provides safe and efficient access for the Collection crew and vehicle. If a Customer is physically unable to deliver their Residential Solid Waste or Recyclable Materials to the Curbside Collection Point, or the Residential Unit is not readily accessible to the Collection crew or vehicle, an alternative location shall be designated by the Customer and Franchisee, at no extra cost to the Customer.

8.5.1. Yard Trash Obligations. All Yard Trash, except palm fronds, must be bundled, bagged in a biodegradable bag, or containerized by Customer. All Yard Trash must be: separated from Garbage, Trash, and Bulk Trash; no more than four (4) feet in length and no more than three (3) inches in diameter; less than fifty (50) pounds; shall not exceed four (4) cubic yards per collection and shall be placed neatly at the Curbside Collection Point by Customer. Natural Christmas trees will be collected as Yard Trash, provided that the sections of the tree are not more than eight (8) feet in length or more than fifty (50) pounds. The Franchisee shall not co-mingle Yard Trash and other types of Solid Waste in the Franchisee's Collection vehicles.

8.5.2. Bulk Trash Obligations. Bulk trash shall not be commingled with Yard Trash. A Customer's Bulk Trash may not be collected if determined by the Contract Manager and the Franchisee, in writing, to be incompatible either with the Franchisee's collection equipment or the County's Solid Waste management system, or of such weight or quantity as would significantly hinder the effectiveness of the Collection or Solid Waste disposal system.

8.6. Manner of Collection. The Franchisee shall Collect Garbage, Trash, Yard Trash, and Bulk Trash and with a minimum of noise and disturbance to the Customer and the public. The Franchisee shall empty the Customer's Garbage Receptacles and then the Franchisee shall return them to the same location where they were placed by the Customer or the Curbside Collection Point. Throwing or damaging Garbage Receptacles is prohibited. The Franchisee shall Collect all of the Residential Solid Waste placed at a Curbside Collection Point by a Customer. There shall be no limit on the number of

Garbage Receptacles placed at the Curbside Collection Point by a Customer. A Garbage Receptacle and the Solid Waste placed therein shall not exceed thirty-two (32) gallons in capacity or fifty (50) pounds in weight.

8.7. Routes and Schedules. On or before March 31 of each year, the Franchisee shall, in a format acceptable to the Contract Manager, provide the Contract Manager with a map of each route and the scheduled days for Collection of Garbage, Trash, Bulk Trash, and Yard Trash in the Residential Solid Waste Franchise Area. The Franchisee shall keep route maps, schedules, and Customer counts current at all times and shall strictly follow the schedules and routes filed with the Contract Manger. The Franchisee shall provide updated maps and schedules to the Contract Manager no later than three (3) calendar days after any change.

8.7.1. Changes to Schedules. The Franchisee shall not change the scheduled days for its Collection services until the Franchisee receives the Contract Manager's prior written authorization. The Contract Manager's approval of such changes shall not be unreasonably withheld. In the event that the Contract Manager authorizes a change in schedules that alters the Collection day for any Customer, the Franchisee shall, at its expense, notify each affected Customer by mail or other manner approved by the Contract Manager not less than one (1) week prior to the change.

Article 9. Residential Rates and Billing

9.0. Residential Solid Waste Collection Service Rates. The total rate per Residential Unit for Residential Solid Waste Collection Service charged by Franchisee shall be as set forth in Exhibit "A". The foregoing is the total rate that may be charged by the Franchisee for Residential Solid Waste Collection Service and it includes all franchise fees, collection costs, disposal costs and other fees and expenses. Notwithstanding the foregoing, the Franchisee and the City acknowledge and agree that the total rate for Residential Solid Waste Collection Service is subject to adjustment as set forth in this Agreement. The Franchisee shall not separately state the amount of the franchise fee on any bill to any residential Customer.

9.1. Residential Solid Waste Collection Service Billing. Billing and collection for Residential Solid Waste Collection Service shall be the sole responsibility of the Franchisee. Franchisee may bill for its services in advance but not more than 90 days in advance. Payment shall be made by the customer within 30 days of receipt. At such time as any bill becomes delinquent under the terms of the contract as provided herein, the Contractor shall notify the customer and owner of the property by mail together with a copy to the City of the Contractor's intent to stop service if payment is not received within 7 days from date of notice. If Contractor stops service pursuant to this Subparagraph (b), it shall notify City by regular mail of each such stoppage. The prevailing party may recover costs and reasonable attorneys' fees in any litigation required in securing payment of said bills from the customer.

Article 10. Commercial Collection Service

10.0. General. The Franchisee shall provide all Commercial Collection Service within the City.

10.1. Frequency of Collection. Commercial Collection Service shall be provided at least once per week, except that the Collection of Recyclable Materials may be provided as agreed by the Customer and Franchisee. In any event, Commercial Collection Service shall be provided frequently enough to prevent the creation of a public nuisance or a threat to the public health, safety, or welfare. The Contract Manager shall assist the Franchisee and Customer in confirming that the size of the Commercial Container and the frequency of the Collection service are sufficient to ensure that Commercial Solid Waste is not routinely placed or stored outside the Commercial Container.

10.2. Location of Collection of Commercial Containers. Commercial Containers for Commercial Solid Waste or Recyclable Materials shall be placed at locations that are mutually acceptable to the Franchisee and the Customer, and in compliance with the City's land use ordinances. If a dispute should arise between a Customer and the Franchisee regarding the location of the Commercial Container, the Contract Manager shall designate the location.

10.3. Commercial Containers Required. Construction and Demolition Debris generated or accumulated at the site of a construction, demolition or renovation project shall be stored in a Commercial Container until removed from the site. All other Solid Waste generated or accumulated at the site of a construction, demolition or renovation project shall be stored in a separate Commercial Container or Garbage Receptacle.

10.4. Non-Conforming Containers Prohibited. The use of any container or receptacle other than a Commercial Container or a Construction and Demolition Debris Commercial Container to store Construction and Demolition Debris at a construction, demolition or renovation site is prohibited. The City may prohibit the use of any Commercial Container or Construction and Demolition Debris Commercial Container that is found to be unsuitable or undersized.

10.5. Adjacent Areas. Construction and Demolition Debris or other Solid Waste which is cast, blown, or scattered upon any adjacent property as a result of construction, demolition, or renovation activities shall be removed by the Person responsible for the construction, demolition or renovation activities no later than the end of the day on which the activities occur or earlier if the waste material causes littering.

Article 11. Commercial Collection Service and Construction and Demolition Debris Service Rates and Billing

11.0. Rates – General. The Commercial Collection Service rates set forth in Exhibit "A" to this Agreement are maximums, and volume discounts may be negotiated between

the Franchisee and the Customer. Notwithstanding the foregoing, the Franchisee and the City acknowledge and agree that the Commercial Collection Service rates are subject to adjustment as set forth in this Agreement.

11.1. Rates. All Customers receiving Commercial Collection Service and Construction and Demolition Debris Service will be charged on a per cubic yard basis. Charges will be billed monthly in advance by the Franchisee as follows:

11.1.1. Commercial Container Rate per cubic yard per pick up – See Exhibit “A”. Commercial Container Rate applies to Commercial Collection Service wherein the Franchisee provides a Commercial Container of 2-8 yard capacity.

11.1.2. Loose Pick-up Rate per cubic yard per pick up – See Exhibit “A”. Loose Pick-up service applies to Commercial Collection Service where the Commercial Customer provides its own Commercial Container or Garbage Receptacle. There will be a minimum monthly service charge of – See Exhibit “A”.

11.1.3. Roll-Off Charges Per Pull - Open Top Type: See Exhibit “A”

- a) 15 cubic yards
- b) 20 cubic yards
- c) 30 cubic yards
- d) 40 cubic yards

11.1.4. Roll-Off Charges Per Pull - Enclosed Compactor Type: See Exhibit “A”

- a) 20 cubic yards.....
- b) 21-40 cubic yards

11.2. Other Charges. The rates for Commercial Collection Service and Construction and Demolition Debris Collection Service do not include disposal fees, maintenance fees, franchise fees, and other extra charges. Such fees shall not be added to a Customer’s invoice unless they are individually listed and itemized.

11.3. Billing. Billing for Commercial Collection Service and Construction and Demolition Debris Service shall be the responsibility of the Franchisee. Franchisee may stop service for those commercial customers who are delinquent in making payment.

Article 12. Adjustments to Rates

12.0. Combined Consumer Price Index and Fuel Adjustment. Commencing on January 1, 2007 and each year thereafter, the rates shall be adjusted utilizing the indexing procedures provided for herein. The rates shall be adjusted on the basis of one hundred (100%) percent of any increase or decrease in the cost of living as reported in the Consumer Price Index for all urban consumers (U. S. City average- 1967 = 100, all items, Bureau of Labor Statistics of the United States Department of Labor), (the " CPI Index") as adjusted for changes in diesel fuel.

The new rates shall be calculated as follows:

The percentage change in the CPI Index shall be calculated by utilizing the month of October to determine same. The formula for determining the percentage change is : $\frac{CPI2 - CPI1}{CPI1}$

CPI1

where CPI 1 is the CPI Index for October in the previous year; CPI2 is the CPI Index for October prior to the adjustment.

For example, if the CPI Index for October 2005 is 150.5 and the CPI Index for October 2006 is 153.5, then the percentage change would be 1.99%. (153.5 – 150.5 divided by 150.5).

The percentage change in CPI Index is then adjusted for changes in diesel fuel cost based upon the Energy Information Administration of the US Department of Energy ("EIA/DOE") website that reports average prices of diesel fuel for the "Lower Atlantic" United States. The link is as follows: <http://tonto.eia.doe.gov/ooc/info/wohdp/diesel.asp> . The month of October is used to determine the percentage change in fuel. Again the formula for determining the percentage change is as follows:

$$\frac{\text{Fuel 2} - \text{Fuel 1}}{\text{Fuel 1}}$$

For example, if fuel cost for October 2005 was \$2.75 and in October 2006 the cost was \$2.85, the percentage change would be 3.6%. To the extent the percentage change in the Fuel Index exceeds the percentage change in the CPI Index, this difference is then reduced by multiplying it by .07. Accordingly, the calculation would be 3.6% minus 1.99% = 1.61%. 1.61% X .07 = 0.1127. This is added to the CPI Index percentage change, making the combined adjustment factor 2.10%.

The combined factor is the percentage adjustment for each of the service rates in Schedule A.

If the CPI Index or fuel index becomes unavailable, a reasonable substitute, as prepared by the United States Department of Labor , Department of Energy or comparable federal agency shall be used. Contractor shall provide the City with prior written notice of any rate adjustment due to the change in the Indexes with a detailed calculation of how the new rates were determined together with documentation evidencing the adjustment. The Contractor shall also identify the amount and the reason for the rate adjustment on the next invoice sent to the customers after the rate adjustment.

The Franchisee shall notify the City in writing of increases that are based on the CPI, as provided in this section, no less than thirty (30) days prior to their implementation.

12.1. Change of Law. The parties understand and agree that the Florida Legislature from time to time has made comprehensive changes in Solid Waste management legislation and that these and other changes in law in the future, whether federal, state or local, which mandate certain actions or programs that may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. To the extent that any law effective after the effective date of this Agreement is in conflict with, or requires changes in, the provisions of services to be provided under this Agreement, the parties agree to enter into good-faith negotiations to determine whether the Franchisee's rates should be adjusted as a result of a change in law.

12.2. Limitation on Rate Changes. The Franchisee shall not be allowed a rate increase for any reason other than those expressly specified in this Agreement. Notwithstanding the foregoing, in the event that a federal, state or local entity imposes a fee, charge or tax after the date of this Agreement that applies to Franchisee's operations per se, such fee, charge or tax shall be treated as a change in law and shall be passed through as a separate billed item after notice and confirmation by the City.

12.3. Rate Adjustment Procedure. Should the Franchisee seek an adjustment of any charges established and approved by the Board, other than the Combined CPI and Fuel Adjustment set forth in section 12.0 of this Agreement, then Franchisee shall notify the City in writing, setting forth the schedule of rates and charges which it proposes and a written justification for the request. A public hearing shall be held on the request. The request for a public hearing shall be submitted to the City with supporting data for review and presentation to the Board. The hearing may thereafter be continued from time to time as determined by the Board. The Board in its sole discretion shall make a determination whether the adjustment in charges is necessary and justified under the circumstances provided herein and set forth in Franchisee's justification for rate adjustment.

Article 13. General Obligations Of Franchisee

13.0. Prohibitions on Biological, Biomedical, and Hazardous Waste. The Franchisee shall not Collect Biological Waste, Biomedical Waste, or Hazardous Waste and the Franchisee shall not deliver or dispose of any of the foregoing wastes at the County Landfill. Franchisee shall not Collect any Solid Waste that the Franchisee reasonably believes is Biological Waste, Biomedical Waste, or Hazardous Waste. The Franchisee shall immediately notify the Contract Manager if any Customer attempts to deliver such material to the Franchisee or the City. The City shall have the right to inspect the Solid Waste and Recyclable Materials Collected by the Franchisee at any time to determine whether the Solid Waste or Recyclable Materials contain Biological Waste, Biomedical Waste, or Hazardous Waste, and to require the Franchisee take appropriate action to ensure that the Franchisee's Customers do not deliver such materials to the Franchisee. The Franchisee shall promptly arrange and pay for the

lawful removal and disposal of any Biological Waste, Biomedical Waste or Hazardous Waste that the Franchisee delivers to the County Landfill.

13.1. Spillage. The Franchisee shall not litter, and shall not spill Solid Waste or Recyclable Materials, anywhere in the City. Whenever the Franchisee is hauling Solid Waste or Recovered Materials, in the City, the Franchisee shall take all necessary steps to ensure that the material is contained, tied, or enclosed so that leaking, spilling and blowing of such material is prevented. In the event that any material or liquid spills, blows or leaks from the Franchisee's vehicle, the Franchisee shall immediately clean up the spillage, leakage and litter at no cost to the City or the Customer. If a Customer or the Contract Manager notifies the Franchisee that its actions have caused litter, spillage, or leakage within the City, the Franchisee shall remedy such problem within 24 hours after being notified. In all such cases, the cost of any cleanup, remediation or damages shall be the sole responsibility of the Franchisee.

13.2. Financial Reports. Franchisee shall provide to the City annually a financial statement and report that includes an income statement showing the gross revenue received by the Franchisee from the Collection of Solid Waste and other services provided by the Franchisee under this Agreement. The report must include the opinion of a Certified Public Accountant, who has conducted an audit of the Franchisee's books and records in accordance with generally accepted accounting standards which include tests and other necessary procedures, that the financial statements are fairly presented in all material aspects and in conformity with generally accepted accounting procedures. The report also must include the Certified Public Accountant's opinion that the Franchisee has properly calculated and fully paid the franchise fees that are due and owing to the City pursuant to the provisions of this Agreement. The annual audit shall be delivered to the City within one hundred and twenty days after the end of the Franchisee's fiscal year. The City may waive the requirement of an audited financial statement upon good cause.

13.3. Customer Complaints. If the City receives a complaint regarding the Franchisee's service under this Agreement, the complaint shall be immediately forwarded to the Franchisee by telephone or facsimile. The Franchisee shall respond to the complaint within twenty-four hours after the Franchisee receives the complaint. When the complaint is received after twelve o'clock noon on a Saturday or on a day preceding an approved holiday the Franchisee shall respond to the complaint no later than the next day that is not a holiday or a Sunday. Upon resolution of the complaint, the Franchisee shall notify the City within twenty-four hours, by telephone or facsimile, of the action taken to resolve the complaint.

13.3.1 Record. The Franchisee shall keep a written record of all complaints it receives regarding the Franchisee's service under this Agreement. The Franchisee shall use a standard form to record the pertinent facts regarding each complaint and how it was resolved. The form shall identify the time and date when a complaint was received, when the Franchisee responded to the complaint, and when the complaint was resolved. The Franchisee's records and forms shall be kept up to date and shall be maintained throughout the term of this Agreement. Copies of the complaints and forms

shall be kept at the Franchisee's office and shall be available for inspection by the Contract Manager during normal business hours.

13.3.2. Notice of Certain Types of Complaints. The Franchisee shall immediately notify the Contract Manager if the Franchisee receives a complaint involving a claim of personal injury, death, or property damage resulting from the Franchisee's actions in the City. The Franchisee shall provide the Contract Manager with a written report about any such matters within three calendar (3) days after the Franchisee receives the complaint.

13.4. Customer Noncompliance. If the Franchisee refuses to Collect Solid Waste from a Customer because the Customer failed properly to prepare or place the Solid Waste for Collection, the Franchisee shall provide written notification to the Customer explaining why the Solid Waste was not Collected and what the Customer must do to properly prepare or place the Solid Waste for Collection. The Franchisee's initial notice may consist of the Franchisee's Collection crew leaving a written notice or tag on the Garbage Receptacle or Solid Waste in question.

13.5. Community Cleanups. The Franchisee shall perform at least two community cleanups within the Residential Solid Waste Franchise Area each calendar year. The times and locations of the community cleanup shall be selected by the Contract Manager after coordinating with the Franchisee. The Franchisee shall provide appropriate containers during each community cleanup at no cost to the City or to the sponsor. During the community cleanup, the Franchisee shall Collect only Garbage, Trash, Yard Trash, and Bulk Trash. The Franchisee shall transport these materials to the County Landfill for disposal at no cost to the Franchisee.

13.6. [Left Intentionally Blank]

13.7. Uncontrollable Forces. Neither the City nor Franchisee shall be in default of this Agreement, nor shall the Franchisee be subject to the administrative charges set forth in Section 14 of this Agreement, if delays in or failure of performance are due to Uncontrollable Forces, the effect of which the non-performing party could not avoid by the exercise of reasonable diligence. Neither party shall, however, be excused from performance if nonperformance is due to forces or events that are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement, and the expected time when performance in compliance with this Agreement will resume.

Uncontrollable Forces shall include:

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

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

(c) The failure to issue, suspension, termination, interruption, denial, or failure of renewal of any permit or approval essential to the operation of the Contractor;

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

13.8. Contract Changes for Public Welfare. The City shall have the authority to make changes in this Agreement when such changes are deemed necessary and desirable for the public welfare. The City shall give the Franchisee reasonable notice of any proposed change and an opportunity to be heard concerning the proposed change. The Franchisee shall be reasonably and appropriately compensated for any additional services required of the Franchisee due to any modification in this Agreement under this paragraph.

13.9. Office. The Franchisee shall maintain two or more toll free telephone number(s) as well as maintaining an office in Indian River County where service inquiries and complaints can be received by the Franchisee. The Franchisee's office shall be staffed with trained, responsible persons on duty during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. The Franchisee shall use either a telephone

answering service or answering machine to receive service inquiries and complaints during those times when the office is closed. The Franchisee also shall develop a system, subject to the Contract Manager's approval, for receiving emergency calls from the public at anytime, and for communicating with the City regarding emergency matters.

13.10. Vehicles and Equipment. At all times the Franchisee shall have a sufficient number of trucks, Commercial Containers, and other equipment available and in good working condition so that the Franchisee can efficiently perform its contractual duties under this Agreement. The Franchisee shall also have available reserve vehicles and equipment that can be put into service within twelve (12) hours of any breakdown or malfunction that can provide similar service to the Franchise Area. Vehicles used by the Franchisee in the performance of this Agreement shall be clearly identified with the Franchisee's name, local phone number, truck number, and tare weight. Letters and number shall be at least four (4) inches high.

13.10.1 List. On or before March 31 of each year, the Franchisee shall provide the Contract Manager with a list of the trucks and other Collection equipment that will be used by the Franchisee to provide services under this Agreement. The list shall include the license tag number for each truck and the identification number (if any) for each Commercial Container. The Franchisee shall revise and resubmit the list to the Contract Manager during the term of this Agreement if there are any changes to the list of the trucks, other Collection equipment, or Commercial Containers. The requirements of this paragraph do not apply to: (a) trucks and other Collection equipment used in the City for 30 days or less; or (b) bona fide demonstration trucks and other Collection equipment.

13.10.2. Condition of Equipment. All of the Franchisee's vehicles shall be kept in a clean, sanitary condition and in good repair. Any vehicle emitting excessive odor shall be taken out of service and washed prior to being placed back in service. All vehicles and auxiliary equipment shall be regularly maintained in a manner necessary to prevent the release or discharge of Solid Waste, Recyclable Materials, oil, hydraulic fluids, or other fluids into the environment. The Franchisee's vehicles shall not emit visible air emissions during normal operation. The Franchisee's vehicles shall be in compliance with all Applicable Laws, including, without limitation, laws concerning noise, air pollution, and traffic safety.

13.10.3. Equipment Required on Vehicles. All collection vehicles shall carry a broom, a shovel, a fire extinguisher, absorbent materials and other equipment necessary to clean up any spilled materials.

13.10.4. Inspection of Vehicles and Equipment. The Contract Manager may inspect the operations, vehicles, and equipment of Franchisee at any reasonable time upon giving of reasonable notice and the Franchisee shall allow the Contract Manager to make such inspections.

13.11. Franchisee's Operations Manager. The Franchisee shall assign a qualified person or persons to be in charge of the Franchisee's operations within the County. Within three (3) days after the City signs this Agreement, the Franchisee shall provide the Contract Manager with a written list containing the names and telephone numbers of the Franchisee's operations manager and other key personnel, and the telephone numbers that are to be used to contact the Franchisee in the event of an emergency.

13.12. Personnel. All of the Franchisee's employees shall be properly trained and qualified to perform the tasks assigned to them. The Franchisee shall provide routine training in operating and safety procedures for all of the Franchisee's employees that are directly involved in the Collection or processing of Solid Waste or Recyclable Materials in the County. Each driver of the Franchisee's vehicles shall at all times carry a valid Florida driver's license for the type of vehicle that is being driven. The Franchisee's employees shall wear a uniform, shirt, or vest bearing the Contractor's name whenever they are Collecting or transporting Solid Waste or Recyclable Materials in the City. The Franchisee's personnel shall not scavenge for Solid Waste or Recyclable Materials.

13.12.1. Polite and Courteous Behavior. The Franchisee's employees shall treat all Customers in a polite and courteous manner. All personnel of Franchisee shall refrain from belligerent behavior and profanity. Franchisee's personnel shall not request tips or payment of any kind from Customers. The Franchisee shall promptly take appropriate action to correct any such behavior or language.

13.13. Employee Wages and Benefits. The Franchisee shall comply with all Applicable Laws relating to wages, hours, overtime, disability, and all other matters relating to the employment and protection of employees, now or hereafter in effect.

13.14. Permits and Licenses. The Franchisee shall obtain, at its sole expense, any and all permits and licenses required by Applicable Law in connection with this Agreement and Franchisee shall maintain the same in full force and effect throughout the term of this Agreement. Any revocation of the Franchisee's licenses or permits shall be reported to the City within three (3) calendar days.

13.15. Public Entity Crimes. No Franchisee may be a person or affiliate identified on the Florida Department of General Services "convicted vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from the public contracting and purchasing process because they have been found guilty of a public entity crime. The Franchisee is required to comply with Florida Statutes Section 287.133, as amended, or its successor. The Franchisee shall notify the Contract Manager within three (3) days if the Franchisee is found guilty of public entity crime or placed on the convicted vendor list.

13.16. Non-Discrimination. The Franchisee, in performing under this Agreement, shall not discriminate against any worker, employee, or applicant or any member of the public because of race, creed, religion, color, sex, age, marital status, disability, or national origin, or otherwise commit an unfair unemployment practice on such basis.

13.17. Natural Disasters and Other Emergency Conditions - Variances from Normal Services. In the event of a natural disaster or other emergency, the Contract Manager may grant a variance from the normal requirements of this Agreement. Among other things, the Contract Manager may allow the Franchisee to use other routes, schedules, and disposal sites during the time period in which an Uncontrollable Force prevents the Franchisee from complying with the normal requirements in this Agreement. In such circumstances, the City shall ask the local media to inform the public about the changes in the Franchisee's services as soon as practicable after such natural disaster or Uncontrollable Force, the Franchisee shall resume normal operations.

13.17.1. Franchisee Unable to Provide Contracted Services. In the event that the Franchisee is unable to provide adequate services during an emergency or other event involving an Uncontrollable Force for more than 30 days, the City may hire other Contractors to provide those services. In such case, the City reserves the right to charge the Franchisee for all costs and expenses that the City incurs while providing the services that the Franchisee is obligated to provide pursuant to the requirements of this Agreement, subject to setoff for the amounts that would have been paid to Franchisee for the services.

13.17.2. Rapid Recovery from Disaster. The clean-up from some natural disasters may require that the Franchisee hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster. The Contractor shall not be responsible for nor have an obligation to collect, transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster unless the City enters into a written agreement with Contractor specifying the terms and compensation for such services.

All such costs may be audited by the City prior to payment.

13.18. Disaster Response Plan. The Franchisee shall develop and provide to the City a disaster preparedness and response plan by March 31 of each year. This plan shall include provisions for additional personnel and equipment and shall establish a reasonable, verifiable basis for any charges. In the event that excess work resulting from a natural disaster is compensable by the Federal Emergency Management Agency, or any other local, state, or federal agency, any compensation to the Franchisee shall be subject to such agency's prior approval. The Franchisee shall be familiar with Federal Emergency Management Agency documentation requirements and shall provide the necessary documentation for submission of cost reimbursement requests. The Franchisee shall be required to submit its Federal Emergency Management Agency documentation of costs as a condition of payment for additional personnel and equipment pursuant to this section.

13.19. Insurance.

13.19.1. Workers' Compensation Insurance. Workers' Compensation coverage must be maintained in accordance with statutory requirements as well as Employer's Liability Coverage in an amount not less than \$100,000.00 per each accident, \$100,000.00 by disease and \$500,000.00 aggregate by disease.

13.19.2. Liability Insurance. The Franchisee shall, during the term of this Agreement, maintain in full force and effect commercial general liability insurance and automobile liability insurance, which specifically covers all exposures incident to the Franchisee's operations under this Agreement. Such insurance shall be with a company authorized to do business in the State of Florida and which possesses a minimum, current rating of B+ Class VIII in "Best's Key Rating Guide." Each policy shall be in an amount of not less than \$1,000,000.00 Combined Single Limit for personal bodily injury, including, without limitation, death, and property damage liability and the general liability shall include but not be limited to coverage for Premises/Operations, Products/Completed Operations, Contractual, to support the Franchisee's Agreement or indemnity and Fire Legal Liability. In addition to the above liability limits, the Franchisee shall maintain a \$5,000,000.00 umbrella and/or excess liability coverage. Liability policy(ies) shall be endorsed to show the City as an additional named insured as its interests may appear, and shall also provide that insurance shall not be canceled, limited, or non-renewed until after thirty (30) days written notice has been given to the City. Franchisee shall provide the City with copies of current certificates of all required insurance concurrently with execution of this Agreement by Franchisee. Franchisee expressly understands and agrees that any insurance protection furnished by Franchisee shall in no way limit its liability to the City or its responsibility to indemnify and save harmless City and the officials, officers, and employees of the City under the provisions of this Agreement.

13.20. Indemnification. The Franchisee agrees to hold the City and the officials, officers, and employees of the City harmless from any and all liabilities, losses, penalties, costs or damages the City, its officials, officers, and employees may suffer as a result of any claims, demands, suits, demands, or judgments against the City, its officials, officers, and employees arising out of or in any way related to the acts or omissions of the Franchisee or its employees under this Agreement. The Franchisee shall not be required to indemnify or hold the City harmless for any act or omission caused by the negligence or willful misconduct of the City or its officials, officers, or employees. This indemnification and hold harmless agreement shall survive the termination or expiration of this Agreement.

13.21. Damage. The Franchisee including, without limitation, its agents, employees and subcontractors, shall perform all services under this Agreement in such a manner so as to avoid damage to public and private property and shall promptly repair or pay for any such damage in conjunction with its insurance adjustment procedures.

14.5. Failure to Clean Up Spillage. Failure to clean up spillage of any substance required to be cleaned up by and in accordance with the City of Fellsmere ordinances will result in a \$200.00 administrative charge per day, per incident.

14.6. Failure to Complete Route. Failure to complete, either partially or totally, a route on the regular scheduled collection day shall result in an administrative charge of \$1,000 for each route per day not completed, provided that no such fine will be charged due to an Uncontrollable Force or if the route is more than ninety percent (90%) complete and is thereafter completed within five (5) hours.

14.7. Other Performance Standards and Administrative Charges. The Contract Manager may also levy administrative charges for all other infractions of this Agreement at \$100.00 per day per incident, beginning with the fifth reported incident, without regard to the percentage of customer complaints including, without limitation:

- .1. Failure to provide clean, safe, sanitary Collection equipment
- .2. Failure to maintain office hours as required
- .3. Operator not licensed
- .4. Collection Vehicle not licensed
- .5. Failure to provide documents and reports in a timely and accurate manner
- .6. Failure to cover materials on Collection vehicle
- .7. Collection vehicles left standing on street unnecessarily
- .8. Collection employees out of uniform
- .9. Not providing schedule and route maps
- .10. Speeding, upon conviction
- .11. Failure to Collect Solid Waste or Commercial Solid Waste for any Customer who has been missed more than three times per calendar year
- .12. Failure to respond to Customer calls in a timely and appropriate manner

14.9. City Repair of Damage. In the event the Franchisee fails to repair damages caused by Franchisee pursuant to this Agreement, the Contract Manager may arrange for the repairs and impose an administrative charge to the Franchisee for the cost of the repairs and any applicable administrative expenses.

14.10. Payment of Administrative Charges by Franchisee. The Contract Manager shall notify the Franchisee in writing of the City's intent to deduct any administrative charges from payments due or to become due to the Contractor for services provided under this Agreement. The Contract Manager shall provide to Franchisee an itemized written list of each instance in which Franchisee failed to meet the performance standards specified in this Agreement, including the nature of the failure, date, time, location, and any other available and applicable information. Such itemized list will be provided to the Franchisee monthly, on or before the tenth (10th) calendar day of each month. The Franchisee shall have two (2) weeks following receipt of such list to pay the entire amount of the Administrative Charges or to contest same as set forth herein. In the event the Franchisee wishes to contest such assessment it shall, within ten (10)

Article 14. Administrative Charges to Franchisee for Failure to Perform

14.0. Failure to Pay Franchise Fee. Franchise fee payments received after the fifteenth (15) day of the month shall bear interest at 18% per year. Except for an Uncontrollable Force, franchise fee payments received more than thirty (30) days after the due date shall be subject to an administrative fee of \$500 for the first nonpayment; \$1,500 for the second nonpayment; and \$5,000 for the third nonpayment. Three late payments in any one calendar year that are not due to an Uncontrollable Force shall result in termination of this Agreement.

14.1. Customer Service Complaints. All Customer service complaints received by the Franchisee or Contract Manager and reported to the Franchisee shall be promptly resolved pursuant to applicable terms of this Agreement. Customer service Complaints shall not include Customer informational requests or Recycling Container requests. Customer service complaints may include, but are not limited to, the following:

- .1 Commingling Solid Waste with Yard Trash
- .2 Throwing of Garbage Receptacles
- .3. Failure to collect Solid Waste on schedule
- .4 Failure to replace Garbage Receptacles or Commercial Containers to the point of collection.

14.1.1. A Customer service complaint not resolved in accordance with the terms of this Agreement shall count as two complaints, provided, however, if the Franchisee shall resolve a legitimate complaint within five (5) working hours after notice of same, such complaint shall be deemed to constitute one-half (1/2) of a legitimate complaint for purposes of determining administrative charges pursuant to this Section. In the event Customer service complaints received from Residential Solid Waste Collection Service customers exceed any of the following percentage(s):

<u>Complaint Type</u>	<u>Annual %</u>	<u>Monthly %</u>
Garbage, Trash and Damage	4%	0.5%
Yard Trash	2.5%	0.35%

of the Customers in either the Residential Solid Waste Franchise Area served by the Franchisee during any calendar year, the Contract Manager shall levy \$100.00 administrative charges for each incident exceeding these percentages, for a given year.

14.2. [Left Intentionally Blank]

14.3. [Left Intentionally Blank]

14.4. Changing Scheduled Collection Days without Approval. Changing scheduled Collection days without approval will result in a \$2000.00 administrative charge per incident.

calendar days after receiving such notice, request in writing an opportunity to be heard by the Contract Manager and present its explanation and any basis on which the Franchisee believes any recorded failure to perform within the standards of this Agreement is inaccurate. The Contract Manager shall notify the Franchisee in writing of any action taken with respect to the Franchisee's claim. Franchisee may further appeal, in writing, the decision of the Contract Manager to the Board, who shall conduct a review of all of the facts and circumstances, and make a determination in writing. The decision of the Board will be final.

Article 15. Default

15.0. Causes of Default . The City may terminate this Agreement, except as otherwise provided below in this section, by giving Franchisee thirty (30) days advance written notice, to be served as hereafter provided, upon the happening of any one of the following events:

.1. Filing of Insolvency or Bankruptcy. Franchisee shall take the benefit 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 re-adjustment of its indebtedness under the federal bankruptcy laws or under any other law or state 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;

.2. Declaration of Bankruptcy. By order or decree of a Court, Franchisee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Franchisee, seeking its reorganization or the readjustment of its indebtedness under the 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; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate;

.3. Control by Receiver, Trustee, or Liquidator. By or pursuant to or under authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Franchisee, and such possession or control shall continue in effect for a period of sixty days; or

.4. Failure to Perform Services under Agreement. The Franchisee has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or has wrongfully failed or refused to comply with the instructions of the Contract Manager relative thereto, whether such default is considered minor or major, and such default is not cured within thirty (30) days of receipt of written notice by City to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by Franchisee of written demand from City to do so, Franchisee fails

to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with Franchisee having the burden of proof to demonstrate that the default cannot be cured within thirty (30) days, and that it is proceeding with diligence to cure such default, and such default will be cured within a reasonable period of time).

.5. Repeated Unauthorized Collection. Franchisee has on four (4) occasions during the term of this Agreement been found to have Collected Residential Solid Waste generated from outside the Residential Solid Waste Franchise Area from non-Customers without the prior written approval of the Contract Manager.

15.1. Interim Collection Services. Notwithstanding anything contained herein to the contrary, if Franchisee fails to provide Residential Solid Waste Collection Service for a period of five (5) consecutive scheduled Collection days, the City may obtain the Franchisee's Collection records on the sixth Collection day to provide applicable interim Collection services until such time as the Franchisee is again able to perform pursuant to this Agreement; provided, however, if the Franchisee is unable for any reason or cause to resume performance at the end of thirty (30) working days, all liability of the City under this Agreement to the Franchisee shall cease and this Agreement may be deemed immediately terminated by the City.

15.2. Habitual Violator. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this section, in the event that Franchisee's record of performance shows that Franchisee has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by Franchisee, in the reasonable opinion of the City and regardless of whether Franchisee has corrected each individual default, Franchisee shall be deemed a "habitual violator," shall forfeit the right to any further notice or grace period to correct or cure future defaults, and all of such defaults shall be considered cumulative and, collectively, shall constitute a condition of irredeemable default. The City shall thereupon issue a final warning letter to Franchisee, setting forth in detail all of the facts and circumstances constituting the determination of "habitual violator." Thereafter, any single default by Franchisee of whatever nature shall be grounds for immediate termination of this Agreement. In the event of any such subsequent default, the City may terminate this Agreement upon the giving of written final notice to Franchisee, such termination to be effective on the date set forth in the final notice, and all contractual fees due under this Agreement plus any and all charges and interest shall be payable to such date, and Franchisee shall have no further rights under this Agreement. Immediately upon receipt of such final notice, Franchisee shall proceed to cease any further performance under this Agreement.

15.3. Date of Agreement Termination for Default. Except as otherwise provided in this section, termination shall be effective upon the date specified in City's written notice to Franchisee and upon such date this Agreement shall be deemed immediately terminated and upon such termination all liability of the City under this Agreement to the Franchisee shall cease, and the City shall be free to negotiate with any Person for Collection services.

The Franchisee shall reimburse the City for all direct and indirect costs of providing interim Collection service.

Article 16. General Provisions

16.0. Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by Franchisee shall survive the termination or expiration of this Agreement.

16.1. Waiver. The failure of the City at any time to require performance by the Franchisee of any provision hereof shall in no way affect the right of the City thereafter to enforce the same. No waiver by the City of any breach of any provision hereof shall be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

16.2. Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every such remedy given under this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy under this Agreement shall preclude any other or further exercise thereof. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

16.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to interpret or enforce the Agreement will be held in Indian River County and the Agreement will be interpreted according to the laws of Florida.

16.4. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement, at the option of the City, be determined to be void.

16.5. Assignment and Subcontracting.

16.5.1 Assignment of Entire Agreement. No assignment of this Agreement or any right occurring under this Agreement shall be made in whole by the Franchisee without the

express prior written consent of the City. The City shall have full discretion to approve or deny, with or without cause, any proposed assignment by the Franchisee. Any assignment of this Agreement made by the Franchisee without the express prior written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Franchisee. Upon the date of such notice, this Agreement shall be deemed immediately terminated, and upon such termination all liability of the City under this Agreement to the Franchisee shall cease, and the City shall be free to negotiate with any Person for the services that are the subject of this Agreement. In the event of any permitted assignment, assignee shall fully assume all the liabilities of the Franchisee under this Agreement.

16.5.2. [Left Intentionally Blank]

16.6. Modification of the Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, matters, whether oral or written, relating to such matters and this Agreement shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto. Such modification shall be in the form of an Amendment executed by both parties.

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

16.8. Resolution of Disputes. Any and all disputes or disagreements arising out of this Agreement shall be subject to the decision of the Contract Manager, with right of the Franchisee to appeal to the Board, whose decision shall be final and binding. During any dispute, the Franchisee shall continue to render full compliance with this Agreement regardless of the nature of the dispute, unless the City specifically notifies the Franchisee otherwise.

16.9. Representations of the Franchisee. The Franchisee represents that: (a) it is a corporation duly organized under the laws of the State of Florida; (b) this Agreement has been duly authorized, executed, and delivered in the State of Florida; and (c) it has the required power and authority to perform this Agreement.

16.10. Informed Consent. The Franchisee agrees that the terms of this Agreement have been completely read, are fully understood, and are voluntarily accepted; that Franchisee affirmatively states that it has had the benefit of advice from counsel of its own choosing before executing this Agreement; that Franchisee has voluntarily and with full understanding executed this Agreement and accepted its terms and conditions.

16.11. Notices. All dealings, contacts, notices, and payments between the Franchisee and the City shall be directed by the Franchisee to the Contract Manager and by the City to the Franchisee's Project Manager, each of whom shall be designated and identified to the other party, in writing, upon execution of this Agreement. Any notice, demand, communication, or request required or permitted under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to the City:

City of Fellsmere
21 S. Cypress Street
Fellsmere, FL 32948-6714
Attention: City Manager

Copy to:

Warren W. Dill
City Attorney
1565 U.S. Highway #1,
Sebastian, FL 32958

As to the Franchisee:

Harris Sanitation Inc.
7382 Talona Drive
West Melbourne, FL 32904
Attention: District Manager
copy to:
Waste Management Inc. of Florida
2700 NW 48th Street
Pompano Beach, FL 33073
Attention: Florida Counsel

Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made from time to time by written notice. Facsimile transmission is acceptable notice effective when received, provided, however, that facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next day that is not a weekend day or a holiday. The original of the notice must additionally be mailed.

16.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

16.13. **Headings.** Captions and headings in this Agreement are for ease of reference only and shall not constitute a part of this Agreement nor affect its meaning, construction, or effect.

16.14. **Time of the Essence.** Time is of the essence with respect to the performance of every provision of this Agreement, in which time of performance is a factor.

16.15. **Public Access to Records.** Public Access to Records shall be pursuant to Florida Statutes, Chapter 119.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year above written.

CITY OF FELLSMERE

By: *Sara Savage*
Sara J. Savage, Mayor

ATTEST:

By: *Deborah C. Krages*
Deborah C. Krages, City Clerk Date: 7/5/06

FRANCHISEE:
HARRIS SANITATION INC. d/b/a WASTE
MANAGEMENT OF BREVARD

By: *Alan Sittman*
Name and Title: MAVP

Witness Signature: *George R. Gofatko*

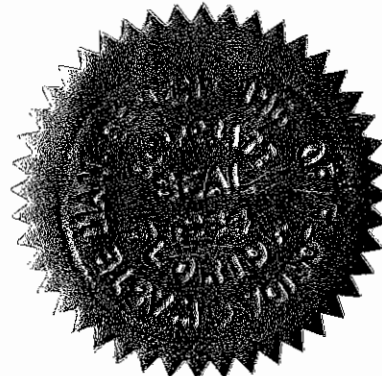
Print Name: George R Gofatko

(AFFIX CORPORATE SEAL)

Witness Signature: *Bryant Thornton*

Print Name: Bryant Thornton

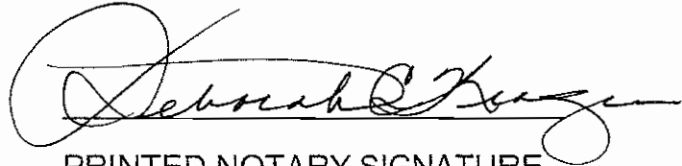
STATE OF FLORIDA
COUNTY OF _____



The foregoing instrument was acknowledged before me this 14th day of July, 2006 by A. Pittman as MAVP of HARRIS SANITATION INC. a Florida corporation, on behalf of same. He/she is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

NOTARY SIGNATURE:



PRINTED NOTARY SIGNATURE

Notary Public, State of

Commission Number:

My Commission Expires:



City of Fellsmere

Price List

F R E Q U E N C Y

		1	2	3	4	5	6
S I Z E	2	\$ 48.39	\$ 72.77	\$ 97.19	\$ 121.61	\$ 145.98	\$ 170.40
	3	\$ 63.99	\$ 100.60	\$ 137.20	\$ 173.81	\$ 210.42	\$ 242.03
	4	\$ 76.18	\$ 125.02	\$ 173.81	\$ 222.61	\$ 271.45	\$ 320.24
	6	\$ 107.37	\$ 180.59	\$ 253.80	\$ 327.02	\$ 400.24	\$ 473.45
	8	\$ 135.20	\$ 232.79	\$ 330.43	\$ 428.07	\$ 525.66	\$ 623.29

Extra Pick-ups	2 Yd	3 Yd	4 Yd	6 Yd	8 Yd
	\$ 29.03	\$ 38.39	\$ 45.71	\$ 64.42	\$ 81.12

Loose/Can Commercial (2 can minimum charge)

1	2	3	4
CAN	CANS	CANS	CANS
\$ 31.32	\$ 31.32	\$ 46.98	\$ 52.50

RESIDENTIAL RATES TO CUSTOMER- WASTE MANAGEMENT - BILLED:

	Garbage	Yard Trash	Total
Single home	\$11.36	\$2.73	\$14.09

Note: Handicap "backdoor" service at above rates. No additional cost.

	Pull Rate
15 Yard Open Top Per Pull	\$195.00
20 Yard Open Top Per Pull	\$195.00
30 Yard Open Top Per Pull	\$195.00
40 Yard Open Top Per Pull	\$195.00
20 Yard or less COMPACTION Containers Per Pull	\$220.00
21 to 40 yard COMPACTION containers Per Pull	\$220.00

ABOVE RATES ARE SUBJECT TO ADDITIONAL LANDFILL FEES