

Council Members

Roger Manning-Mayor
Katrina Long Robinson-Vice Mayor
John Stanavitch-Seat 1
Kara Crump-Seat 2
Phillip Everett-Seat 3



City of Westlake

4001 Seminole Pratt Whitney Rd.
Westlake, Florida 33470
Phone: 561-530-5880
Fax: 561-790-5466

Regular Meeting

Monday, December 11, 2017

Meeting Location

Westlake Council Chambers

4005 Seminole Pratt-Whitney Road

Westlake, FL 33470

7:00 PM

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing, such interested person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The meeting/hearing may be continued to another date and time as may be found necessary during the aforesaid meeting. In accordance with the provisions of the Americans with Disabilities Act (ADA), any person requiring special accommodations at these meetings because of disability or physical impairment should contact the Interim City Manager at (954)753-5841 at least two (2) calendar days prior to the meeting.

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City of Westlake

4001 Seminole Pratt Whitney Rd.
Westlake, Florida 33470
Phone: 561-530-5880
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December 6, 2017

City Council
City of Westlake

Dear Mayor and Council:

The City Council of the City of Westlake will hold a regular meeting on Monday, December 11, 2017 at 7:00 p.m. at the Westlake Council Chambers, 4005 Seminole Pratt Whitney Road, Westlake, Florida. Following is the advance agenda for the meeting.

1. Call to Order/ Roll Call
2. Pledge of Allegiance
3. Approval of Agenda
4. Audience Comments on Agenda Items (3) Minute Time Limit
5. Approval of the Minutes of the November 13, 2017 Meeting
6. Approval of Financial Statements for October 2017
7. Seminole Ridge High School Construction Academy Event

FIRST READING OF ORDINANCE

8. Ordinance 2017-7, Establishing Mandatory Solid Waste Collection
9. Ordinance 2017-8, Granting Franchise Agreement

SECOND READING OF ORDINANCE

10. Ordinance 2017-6, Affordable Housing Program
11. City Manager
12. City Attorney
13. Audience Comments on Other Items (3) Minute Time Limit
14. Adjournment

Any additional supporting material for the items listed above, not included in the agenda package, will be distributed at the meeting. Staff will present their reports at the meeting. I look forward to seeing you, but in the meantime if you have any questions, please contact me.

Sincerely,

Kenneth Cassel

Kenneth G. Cassel
City Manager

cc: Pam E. Booker, Esq.
John Carter
Terry Lewis
Kelley Burke

Fifth Order of Business

**MINUTES OF MEETING
CITY OF WESTLAKE**

A meeting of the City Council of the City of Westlake was held on Monday, November 13, 2017, at 7:00 p.m., at the Westlake Community Center, 4005 Seminole-Pratt Whitney Road, Westlake, Florida.

Present and constituting a quorum were:

Roger Manning	Mayor
Katrina Long Robinson	Vice Mayor
John Stanavitch	City Council Seat 1
Kara Crump	City Council Seat 2
Phillip Everett	City Council Seat 3

Also present were:

Kenneth Cassel	City Manager
Pam E. Booker, Esq.	City Attorney
John Carter	Minto PBLH, LLC
Alan Baldwin	Severn Trent Services
Nilsa Zacarias	NZ Consultants

The following is a summary of the minutes and actions taken during the November 13, 2017 City of Westlake Council Meeting.

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mayor Manning called the meeting to order and Mr. Cassel called the roll.

SECOND ORDER OF BUSINESS

Pledge of Allegiance

The Pledge of Allegiance was recited.

THIRD ORDER OF BUSINESS

Approval of Agenda

On MOTION by Councilman Everett seconded by Councilwoman Crump with all in favor the revised agenda was approved.

FOURTH ORDER OF BUSINESS

**Audience Comments on Agenda Items (3)
Minute Time Limit**

There being none, the next item followed.

FIFTH ORDER OF BUSINESS

Approval of the Minutes of the October 9, 2017 Meeting

On MOTION by Councilman Stanavitch seconded by Vice Mayor Long Robinson with all in favor the minutes of the October 9, 2017 meeting were approved.

SIXTH ORDER OF BUSINESS

Approval of Financial Statements for September 2017

On MOTION by Vice Mayor Long Robinson seconded by Councilman Everett with all in favor the financials for September 2017 were approved.

SEVENTH ORDER OF BUSINESS

Resolution 2017-20, Amending the General Fund Budget for Fiscal Year 2017

Mr. Baldwin stated the City is currently not over budget, but very close to being over budget on the expenditures. The budget is being amended to increase it in the case there are additional expenditures.

On MOTION by Councilman Stanavitch seconded by Councilwoman Crump with all in favor Resolution 2017-20, amending the general fund budget for Fiscal Year 2017, was adopted.

EIGHTH ORDER OF BUSINESS

Resolution 2017-21, Approving the Final Plat for Persimmon Boulevard East Phase 1

Mr. Cassel read Resolution 2017-21 by title only.

On MOTION by Councilman Everett seconded by Vice Mayor Long Robinson with all in favor Resolution 2017-21, approving the final plat for Persimmon Boulevard East Phase 1, was adopted.

NINTH ORDER OF BUSINESS

Consideration of Engagement Letter with Berger, Toombs, Elam, Gaines & Frank for Fiscal Year 2017 Financial Audit

On MOTION by Vice Mayor Long Robinson seconded by Councilwoman Crump with all in favor the engagement letter with Berger, Toombs, Elam, Gaines & Frank for the Fiscal Year 2017 financial audit was approved.

FIRST READING OF ORDINANCES

TENTH ORDER OF BUSINESS

Ordinance 2017-5, Adopting the Comprehensive Plan

Ms. Zacarias provided the Council with a presentation summarizing the proposed Comprehensive Plan.

Mr. Cassel read Ordinance 2017-5 by title only.

On MOTION by Councilwoman Crump seconded by Councilman Stanavitch with all in favor the first reading of Ordinance 2017-5, adopting the Comprehensive Plan, was approved.

ELEVENTH ORDER OF BUSINESS

Ordinance 2017-6, Affordable Housing Program

Ms. Booker provided an overview of the ordinance, which has guidelines allowing the City Manager and City Counsel to have flexibility in administering the program.

Mr. Cassel read Ordinance 2017-6 by title only.

On MOTION by Vice Mayor Long Robinson seconded by Councilman Everett with all in favor the first reading of Ordinance 2017-6, for the Affordable Housing Program, was approved.

TWELFTH ORDER OF BUSINESS

City Manager

Mr. Cassel discussed the following:

- They are working on the accounting to set up the affordable housing program.
- Bridge piling is being done on Seminole Pratt Whitney Road. AT&T is the last one coming off the poles.
- The last of the interconnects with the County’s water system is in process of being finalized.
- Persimmon Boulevard is being constructed well and driveway locations are being finalized for Fire Station 22.

THIRTEENTH ORDER OF BUSINESS

City Attorney

There being no report, the next item followed.

FOURTEENTH ORDER OF BUSINESS

Audience Comments on Other Items (3) Minute Time Limit

Mr. Carter provided an update on Minto’s development and housing sales.

FIFTEENTH ORDER OF BUSINESS

Adjournment

There being no further business, the meeting adjourned at 7:43 p.m.

Kenneth Cassel
City Manager

Roger Manning
Mayor

Sixth Order of Business

City of Westlake

Financial Report

October 31, 2017



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City of Westlake

Financial Statements

October 31, 2017

CITY OF WESTLAKE
Balance Sheet - General Fund
 October 31, 2017

ACCOUNT DESCRIPTION	TOTAL
<u>ASSETS</u>	
Cash - Checking Account	\$ 51,964
Accounts Receivable	12,831
Investments:	
Money Market Account	301,491
Prepaid Credit Card	2,452
TOTAL ASSETS	\$ 368,738
 <u>LIABILITIES</u>	
Accounts Payable	\$ 13,076
Accrued Expenses	58,235
Other Current Liabilities	891
TOTAL LIABILITIES	72,202
 <u>FUND BALANCES</u>	
Unassigned:	296,536
TOTAL FUND BALANCES	\$ 296,536
TOTAL LIABILITIES & FUND BALANCES	\$ 368,738

CITY OF WESTLAKE
Statement of Revenues, Expenditures and Changes in Fund Balances
General Fund
For the Period Ending October 31, 2017

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	VARIANCE (\$) FAV(UNFAV)
<u>REVENUES</u>				
Interest - Investments	\$ 2,000	\$ 167	\$ 198	\$ 31
Ad Valorem Taxes	138,030	-	-	-
Ad Valorem Taxes - Discounts	(5,521)	-	-	-
Occupational Licenses	5,000	417	702	285
Building Permits	160,000	13,333	43,720	30,387
Local Govt .05c Sales Tax	1,000	83	-	(83)
Other Impact Fees	1,500	-	-	-
Developer Contribution	1,580,967	526,989	-	(526,989)
Inspection Fees	1,000	83	-	(83)
TOTAL REVENUES	1,883,976	541,072	44,620	(496,452)
<u>EXPENDITURES</u>				
<u>Legislative</u>				
Mayor/Council Stipend	204,000	17,000	17,000	-
FICA Taxes	15,606	1,301	1,301	-
ProfServ-Legislative Expense	18,000	1,500	-	1,500
Council Expenses	10,000	833	-	833
Total Legislative	247,606	20,634	18,301	2,333
<u>Financial and Administrative</u>				
ProfServ-Consultants	40,000	3,333	2,550	783
Management Services	283,830	23,653	20,758	2,895
ProfServ-Web Site Maintenance	5,900	492	75	417
Auditing Services	7,000	-	-	-
Communication - Telephone	7,500	625	223	402
Postage and Freight	1,500	125	108	17
Lease - Building	500	500	500	-
Insurance - General Liability	15,000	15,000	6,000	9,000
Printing and Binding	1,000	83	-	83
Legal Advertising	10,000	833	1,808	(975)
General Government	33,360	2,780	-	2,780
Misc-Contingency	90,000	7,500	851	6,649
Office Supplies	2,500	208	542	(334)
Dues, Licenses, Subscriptions	9,000	750	824	(74)
Cap Outlay - Office Computers	20,000	1,667	-	1,667
Cap Outlay - Software	120,000	10,000	-	10,000
Total Financial and Administrative	647,090	67,549	34,239	33,310

CITY OF WESTLAKE
Statement of Revenues, Expenditures and Changes in Fund Balances
General Fund
For the Period Ending October 31, 2017

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	VARIANCE (\$) FAV(UNFAV)
<u>Legal Counsel</u>				
ProfServ-Legal Services	284,280	23,690	24,282	(592)
Total Legal Counsel	284,280	23,690	24,282	(592)
<u>Comprehensive Planning</u>				
ProfServ-Engineering	100,000	8,333	5,024	3,309
ProfServ-Planning/Zoning Board	170,000	14,167	23,400	(9,233)
ProfServ-Building Permits	160,000	13,333	31,585	(18,252)
Total Comprehensive Planning	430,000	35,833	60,009	(24,176)
<u>Other Public Safety</u>				
Contracts-Sheriff	275,000	22,917	2,513	20,404
Total Other Public Safety	275,000	22,917	2,513	20,404
TOTAL EXPENDITURES	1,883,976	170,623	139,344	31,279
Excess (deficiency) of revenues				
Over (under) expenditures	-	370,449	(94,724)	(465,173)
Net change in fund balance	\$ -	\$ 370,449	\$ (94,724)	\$ (465,173)
FUND BALANCE, BEGINNING (OCT 1, 2017)	391,260	391,260	391,260	
FUND BALANCE, ENDING	\$ 391,260	\$ 761,709	\$ 296,536	

City of Westlake

Supporting Schedules

October 31, 2017

CITY OF WESTLAKE
Cash and Investment Report
October 31, 2017

GENERAL FUND

<u>Account Name</u>	<u>Bank Name</u>	<u>Investment Type</u>	<u>Maturity</u>	<u>Yield</u>	<u>Balance</u>
Checking Account - Operating	BankUnited	Checking Account	n/a	n/a	\$51,964
Money Market Account	BankUnited	MMA	n/a	0.78%	\$301,491
				Total	<u><u>\$353,455</u></u>

City of Westlake

Bank Reconciliation

Bank Account No. 0300 Bank United - GF
 Statement No. 10-17
 Statement Date 10/31/2017

G/L Balance (LCY)	51,963.88	Statement Balance	88,593.53
G/L Balance	51,963.88	Outstanding Deposits	1,513.82
Positive Adjustments	0.00		
	<hr/>		
Subtotal	51,963.88	Subtotal	90,107.35
Negative Adjustments	0.00	Outstanding Checks	38,143.47
	<hr/>	Differences	0.00
Ending G/L Balance	51,963.88	Ending Balance	51,963.88
Difference	0.00		

Posting Date	Document Type	Document No.	Description	Amount	Cleared Amount	Difference
Outstanding Checks						
5/10/2017	Payment	7158	MINTO PBLH, LLC	500.00	0.00	500.00
10/25/2017	Payment	7309	NZ CONSULTANTS, INC.	16,160.00	0.00	16,160.00
10/25/2017	Payment	7312	FED EX	34.09	0.00	34.09
10/31/2017	Payment	7314	SEVERN TRENT ENVIRONMENTAL	20,819.38	0.00	20,819.38
10/31/2017	Payment	7315	CMG-PB REMITTANCE ADDRESS	630.00	0.00	630.00
Total Outstanding Checks.....				38,143.47		38,143.47

City of Westlake

Check register

October 1 - 31, 2017

CITY OF WESTLAKE

Payment Register by Bank Account

For the Period from 10/01/2017 to 10/31/2017

(Sorted by Check / ACH No.)

Pymt Type	Check / ACH No.	Date	Payee Type	Payee	Invoice No.	Payment Description	Invoice / GL Description	GL Account #	Amount Paid
BANK UNITED - GF - (ACCT# XXXX0300)									
Check	7282	10/05/17	Vendor	FLORIDA LEAGUE OF CITIES	33842F-C1718	FLC ANNUAL MEMBER-2017-2018	Subscriptions and Memberships	001-554001-51301	\$449.00
Check	7283	10/05/17	Vendor	SEMINOLE IMPROVEMENT DISTRICT	09062017	REIMB.-2nd/3rd quarter surchar	Building Permits - Surcharge	322100	\$28.74
Check	7284	10/05/17	Vendor	CMG-PB REMITTANCE ADDRESS	35857-092517	NOTICE-BUDGET SUMMARY	Legal Advertising	001-548002-51301	\$630.00
Check	7284	10/05/17	Vendor	CMG-PB REMITTANCE ADDRESS	35857-092217	NOTICE-TAX INCREASE	Legal Advertising	001-548002-51301	\$1,076.25
Check	7285	10/05/17	Vendor	OFFICE DEPOT	964153175001	FOLDER CLASS-3DIV,LTR	Office Supplies	001-551002-51301	\$54.99
Check	7285	10/05/17	Vendor	OFFICE DEPOT	964236584001	FOLDER,CLASS,LTR,2DIV-5PK	Office Supplies	001-551002-51301	\$119.96
Check	7285	10/05/17	Vendor	OFFICE DEPOT	963421571001	CATE5E 350MHZ-ETHERNET PAT	Office Supplies	001-551002-51301	\$8.36
Check	7285	10/05/17	Vendor	OFFICE DEPOT	963421570001	STAMP,INKED,MAILED,RED	Office Supplies	001-551002-51301	\$12.29
Check	7285	10/05/17	Vendor	OFFICE DEPOT	963421006001	STAMPS,WALL,MOUSE	Office Supplies	001-551002-51301	\$68.94
Check	7286	10/05/17	Vendor	PBC FINANCE DEPARTMENT	093017-IMPACT	IMPACT FEES-09/2017	Other Current Liabilities	229000	\$3,206.42
Check	7287	10/05/17	Vendor	MARK L. DUBOIS	17148	SERVICES-9/1/17-9/29/17	General Government	001-549109-51301	\$1,100.00
Check	7288	10/05/17	Vendor	MINTO PBLH, LLC	2017-PROPERTY LEASE	2017-PROPERTY LEASE	Lease - Building	001-544031-51301	\$500.00
Check	7289	10/05/17	Vendor	LYNN LOBRUTTO	092217-COSTCO	REIMBURSEMENT-OFFICE SUPPLY	Office Supplies	001-551002-51301	\$254.46
Check	7290	10/11/17	Vendor	T-MOBILE USA, INC.	955763851-9/2017	SERVICES THRU 9/21/17	Communication - Telephone	001-541003-51301	\$222.73
Check	7291	10/19/17	Employee	KARA S. CRUMP	PAYROLL	October 19, 2017 Payroll Posting			\$2,692.92
Check	7292	10/19/17	Employee	PHILLIP D EVERETT	PAYROLL	October 19, 2017 Payroll Posting			\$2,579.85
Check	7293	10/19/17	Employee	KATRINA L. LONG	PAYROLL	October 19, 2017 Payroll Posting			\$2,692.92
Check	7294	10/19/17	Employee	ROGER B MANNING	PAYROLL	October 19, 2017 Payroll Posting			\$2,747.50
Check	7295	10/19/17	Employee	JOHN A. STANAVITCH	PAYROLL	October 19, 2017 Payroll Posting			\$2,797.50
Check	7296	10/20/17	Vendor	PUBLIC RISK INSURANCE AGENCY	52273	POLICY-PK FL10502042 17-03	BUSINESS AUTO	001-545002-51301	\$500.00
Check	7296	10/20/17	Vendor	PUBLIC RISK INSURANCE AGENCY	52273	POLICY-PK FL10502042 17-03	GENERAL LIABILITY	001-545002-51301	\$2,500.00
Check	7296	10/20/17	Vendor	PUBLIC RISK INSURANCE AGENCY	52273	POLICY-PK FL10502042 17-03	PUBLIC OFFICIALS	001-545002-51301	\$3,000.00
Check	7297	10/20/17	Vendor	CHEN MOORE & ASSOCIATES, INC.	134492-BALANCE	BALANCE DUE-08/31/17	ProfServ-Planning/Zoning/Eng Services	001-531100-51501	\$5,733.75
Check	7298	10/20/17	Vendor	NOVA ENGINEERING AND	0150292	SERVICES 8/24/17-9/30/17	ProfServ-Planning/Zoning/Eng Services	001-531100-51501	\$32,217.50
Check	7299	10/20/17	Vendor	CMG-PB REMITTANCE ADDRESS	35857-093017	NOTICE-WORKSHOP 9/29-10/9/17	Legal Advertising	001-548002-51301	\$700.00
Check	7300	10/20/17	Vendor	OFFICE DEPOT	966313794001	MESH 3 TIER,TAPE,LAMINATE,ORG	Office Supplies	001-551002-51301	\$116.83
Check	7300	10/20/17	Vendor	OFFICE DEPOT	966314026001	TRIMMER,POCKET LEGAL	Office Supplies	001-551002-51301	\$136.28
Check	7301	10/20/17	Vendor	D. GARY HUTTON	1710-104	WEBSITE MAINT 10/1 THRU 12/31/	General Government	001-549109-51301	\$75.00
Check	7302	10/20/17	Vendor	PBC SHERIFF'S OFFICE	57661	OFF DUTY-9/4/17-9/18-29/17	Contracts-Sheriff	001-534100-52901	\$2,358.00
Check	7303	10/20/17	Vendor	MINTO COMMUNITIES, LLC	SURCHARGE REFUND	RFUND FOR SURCHARGES 9/30/17	Building Permits - Surcharge	322100	\$272.61
Check	7304	10/23/17	Vendor	FLORIDA STATE DISBURSEMENT UNIT		***Voided Voided***			\$0.00
Check	7305	10/23/17	Vendor	FLORIDA STATE DISBURSEMENT UNIT	101917-EVERETT	20011937CA50-1082479233	Accrued Taxes Payable	217000	\$267.65
Check	7306	10/24/17	Vendor	MARK L. DUBOIS	17150	SERVICES 10/2/17-10/12/17	General Government	001-549109-51301	\$1,300.00
Check	7307	10/24/17	Vendor	CARD SERVICES CENTER	0968-101017	LYNN LOBRUTTO-0968-10/10/17	SUBWAY-RELIEF-IRMA	001-549900-51301	\$600.00
Check	7307	10/24/17	Vendor	CARD SERVICES CENTER	0968-101017	LYNN LOBRUTTO-0968-10/10/17	AMAZON	001-551002-51301	\$14.90
Check	7307	10/24/17	Vendor	CARD SERVICES CENTER	0968-101017	LYNN LOBRUTTO-0968-10/10/17	AMAZON	001-551002-51301	\$74.94
Check	7307	10/24/17	Vendor	CARD SERVICES CENTER	0968-101017	LYNN LOBRUTTO-0968-10/10/17	PIZZA BARN-MEETING	001-549900-51301	\$91.43
Check	7307	10/24/17	Vendor	CARD SERVICES CENTER	0968-101017	LYNN LOBRUTTO-0968-10/10/17	AMAZON	001-551002-51301	\$30.59

CITY OF WESTLAKE

Payment Register by Bank Account

For the Period from 10/01/2017 to 10/31/2017

(Sorted by Check / ACH No.)

Pymt Type	Check / ACH No.	Date	Payee Type	Payee	Invoice No.	Payment Description	Invoice / GL Description	GL Account #	Amount Paid
Check	7307	10/24/17	Vendor	CARD SERVICES CENTER	0968-101017	LYNN LOBRUTTO-0968-10/10/17	PUBLIX PUMPKIN, SCARECROW	001-551002-51301	\$38.48
Check	7308	10/25/17	Vendor	LAW OFFICES OF PAM E. BOOKER, ESQ	115	LEGAL SERVICES-10/2017	ProfServ-Legal Services	001-531023-51401	\$24,282.25
Check	7309	10/25/17	Vendor	NZ CONSULTANTS, INC.	WES-12	SERVICES 09/11/17-09/30/17	ProfServ-Planning/Zoning/Eng Services	001-531100-51501	\$16,160.00
Check	7310	10/25/17	Vendor	NANCY BLACK STEWART, P.A.	07-2017-STEWART	LEGISLATIVE CONSULTANT 7/2017	ProfServ-Legal Services	001-531023-51401	\$2,000.00
Check	7310	10/25/17	Vendor	NANCY BLACK STEWART, P.A.	09/2017-STEWART	LEGISLATIVE CONSULTANT 9/2017	ProfServ-Legal Services	001-531023-51401	\$2,000.00
Check	7310	10/25/17	Vendor	NANCY BLACK STEWART, P.A.	08-2017-STEWART	LEGISLATIVE CONSULTANT 8/2017	ProfServ-Legal Services	001-531023-51401	\$2,000.00
Check	7311	10/25/17	Vendor	FCCMA	33979FCCMA1718	FCCMA MEMBERSHIP 2017-2018	Dues, Licenses, Subscriptions	001-554020-51301	\$375.00
Check	7312	10/25/17	Vendor	FED EX	5-956-54473	OVERNIGHT SHIPPING 10/04/17	Postage	001-541010-51301	\$34.09
Check	7313	10/27/17	Vendor	CMG-PB REMITTANCE ADDRESS	35857-100917	NOTICE-MEETING-10/06/17	Legal Advertising	001-548002-51301	\$216.72
Check	7313	10/27/17	Vendor	CMG-PB REMITTANCE ADDRESS	35857-100717	NOTICE-PROPOSED TAX-10/7/17	Legal Advertising	001-548002-51301	\$1,076.25
Check	7314	10/31/17	Vendor	SEVERN TRENT ENVIRONMENTAL SERVICES, INC.	24509	MANAGEMENT FEES-10/2017	Management Services	001-531093-51301	\$20,758.42
Check	7314	10/31/17	Vendor	SEVERN TRENT ENVIRONMENTAL SERVICES, INC.	24509	MANAGEMENT FEES-10/2017	Office Supplies	001-551002-51301	\$26.10
Check	7314	10/31/17	Vendor	SEVERN TRENT ENVIRONMENTAL SERVICES, INC.	24509	MANAGEMENT FEES-10/2017	Postage and Freight	001-541006-51301	\$34.86
Check	7315	10/31/17	Vendor	CMG-PB REMITTANCE ADDRESS	35857	BUDGET SUMMARY 2017-2018	Legal Advertising	001-548002-51301	\$630.00
ACH	DD106	10/13/17	Vendor	FBC'S BUILDING CODE	093017-ACH-SURCG	SURCHARGES THRU 09/30/17	Building Permits - Surcharge	322100	\$401.47
Account Total									\$141,265.95

Total Amount Paid	\$141,265.95
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Total Amount Paid - Breakdown by Fund	
Fund	Amount
General Fund Fund - 001	141,265.95
Total	141,265.95

Seventh Order of Business

----- Original Message -----

Subject: Seminole Ridge Construction Academy / Habitat For Humanity
From: John Carter <jfcarter@mintousa.com>
Date: Tue, December 05, 2017 1:59 pm
To: "Cassel, Kenneth" <Ken.Cassel@STServices.com>, "Pam Booker
(pbooker@westlakegov.com)" <pbooker@westlakegov.com>

Ken / Pam,

On December 14th at 10am I am presenting a \$75,000 check to the Habitat For Humanity to sponsor the next home being built by students at the Seminole Ridge High School Construction Academy. I am presenting the check to Habitat on behalf of the Minto Foundation which is the charitable foundation of the Minto shareholders, the Greenberg family.

I wanted to extend an invitation for you two to attend the check presentation at the High School and also to pass along the invitation for any of the Council that would like to attend. I will have our media advisors with us taking photos to include with a subsequent press release we will provide to south Florida media outlets.

Regards,



John Carter AICP

Vice President

Minto Communities - USA

4400 W Sample Rd, Ste 200, Coconut Creek, FL, 33073

T 954.973.4490 | C 954.551.8340 | F 954.984.7406

mintousa.com


Follow us on



Eighth Order of Business

MEMORANDUM

To: Mayor Roger Manning
City Council Members

From: Pam E. Booker, City Attorney 
Ken Cassel, City Manager

Date: December 6, 2017

Subject: Mandatory Solid Waste Collection

Attached please find an ordinance for the City of Westlake making collection of solid waste mandatory within the City of Westlake for residential collection. Commercial collection of solid waste is also mandatory. However, the roll-off collection services for site during construction are not mandatory and exclusive to the service provider. The current agreement provides for pick-up of residential solid waste two times per week. Yard vegetative waste shall be collected once per week. Residential recycling bins shall be provided and collected once per week.

The City of Westlake is currently under the Solid Waste Authority's agreement with Advanced Disposal Service Solid Waste Southeast, Inc., for providing solid waste services. A copy of the agreement is attached for your reference. The current agreement expires on September 30, 2018. The Solid Waste Authority has gone out for bids for the provision of services after the September 30, 2018, date. The next service provider contracts have not been awarded at this time. The City will have the option of entering into an interlocal agreement, a continuing services contract or to go out to bid for solid waste services after the September 30, 2018, date. At this time, management recommends continuing the service with the Solid Waste Authority.

The ordinance has been reviewed and approved by the City Manager and the City Attorney. We would recommend approval of the ordinance, which will come back for second reading on January 8, 2018. Should you have any questions, please do not hesitate to contact me at (772) 971-8676.

December 11, 2017 1st ReadingJanuary 8, 2018 2nd Reading**ORDINANCE NO. 2017-7**

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, ESTABLISHING MANDATORY SOLID WASTE COLLECTION WITHIN THE CITY OF WESTLAKE, WHICH SHALL BECOME PART OF THE CODE OF ORDINANCES, ENTITLED "SOLID WASTE COLLECTION", PROVIDING FOR CODIFICATION, PROVIDING FOR A CONFLICTS CLAUSE, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the purposes of this ordinance is to promote the health, safety, welfare and safety for the residents in the City of Westlake, by providing for a solid waste management program and a mandatory solid waste collection program through the levy of special assessments and other fees and by providing an adequate solid waste collection program through the regulated services of a contractor, through an interlocal agreement, or as otherwise determined by the city; and

WHEREAS, no person shall deposit, release, throw or dump into or on any public property, lakes, canals, water bodies or any adjacent, attendant or contiguous right of way thereto, or any other public property located within the city, any filth, dirt, garbage, trash, refuse or other deleterious materials; and

WHEREAS, all improved properties located within the city are designed for human occupancy, are capable of human occupancy or human activity, or are used for commercial use, shall be prima facie evidence that solid waste is being produced by or accumulated upon such property; and

WHEREAS, all improved properties located within the city receive a direct and substantial benefit by the provision of solid waste management and mandatory solid waste collection program, including but not limited to the services described herein, in an amount equal to or in excess of the cost of providing such solid waste management program and solid waste collection program; and

WHEREAS, the management of solid waste through regulation, penalties and enforcement is a proper and necessary function of local government; and

WHEREAS, the properties that are under construction or demolition shall be prima facie evidence that solid waste is being produced by or accumulate upon such property; and

WHEREAS, all solid waste generated or accumulated by assessed units and non-assessed units shall be collected, conveyed and transported by the designated contractor within the service area in which the assessed units and non-assessed units are located, and the owners of said assessed units and on the established route of the designated contractor for such service area in which the said units are located shall be subject to mandatory collection as provided for in this ordinance; and

WHEREAS, roll-off collection service for site under construction during the period prior to the issuance of a certificate of occupancy shall not be included within the requirements of the mandatory solid waste collection program but shall be regulated by the city's solid waste management program and regulations; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AS FOLLOWS:

Section 1. Incorporation: That the recitals above are true and correct and incorporated into the findings of this Resolution as if set forth in full herein.

Section 2. Solid Waste Collection: The City of Westlake hereby adopts a mandatory solid waste collection program to promote the health, safety, and of the residents within the City of Westlake by requiring garbage and trash removed of and disposed of pursuant to the provisions contained herein for residential and commercial locations. The city shall provide for the collection of solid waste, bulk waste, vegetative waste and recyclable materials for all residential dwelling units within the city. All property owners shall be responsible for the payment of all applicable fees and charges for said services.

Section 3. Authority:

- (1) The authority to regulate the collection, removal and disposition of all solid waste, bulk waste, vegetative waste and/or recyclable materials within the municipal limits of the City is exclusively vested in the municipal government of the City of Westlake.
- (2) The City Manager shall have the authority to make rules and regulations, provided they are not contrary to the provisions of this chapter: and shall be empowered to promulgate and distribute such rules by mail, publication, personal service or posting on the premises where solid waste bulk waste, vegetative waste and/or recyclable materials are generated or accumulated.
- (3) From time to time the city shall publish and distribute a bulletin which outlines collection procedures and schedules as well as other information deemed necessary by the City Manager.

Section 4. Definitions:

- (1) *Assessed Unit* means any collection unit which is subject to the solid waste collection special assessment.
- (2) *Authority* means the Solid Waste Authority of Palm Beach County.
- (3) *Biohazardous or biomedical waste* shall mean those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included, but not limited to waste resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist, but are not limited to, diseased human and animal; parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing and surgical gloves.
- (4) *Bulk Trash* shall mean any non-vegetative item which cannot be containerized, bagged or bundled; including, but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bath tubs, water heaters, sinks, bicycles, and other similar domestic appliances, household goods and furniture and

shall not be commingled with vegetative waste. There shall be no weight limit for any item of bulk trash.

- (5) *Collection unit* means any parcel of improved real property located within the city that generates or is capable of generating solid waste and that contains buildings, structures or other improvements designed or constructed for and capable of use by or used for human habitation, human activity or commercial enterprises.
- (6) *Collection* shall mean the process whereby solid waste, garbage, trash, bulk trash, vegetative waste, recyclable materials, construction and demolition debris is removed and transported to a designated facility.
- (7) *Commercial Recycling Collection Service* shall mean the collection of recyclable materials by a contractor for entities within the service area that are not serviced by residential recycling collection service.
- (8) *Commercial Solid Waste* shall include any garbage, bulk trash, trash or vegetative waste that is not residential solid waste. Substantial effort shall be made not to commingle garbage, trash or bulk trash with vegetative waste.
- (9) *Commercial Solid Waste Collection Service* includes any garbage, bulk trash, trash or vegetative waste that is not residential solid waste. Substantial effort shall be made not to commingle garbage, trash or bulk trash with vegetative waste.
- (10) *Commercial Solid Waste Collection Service* shall mean the collection of the commercial solid waste within the service area. Such service includes both containers and compactors, but does not include roll-off collection services.
- (11) *Compactor* shall mean a container which has compaction mechanisms(s) whether stationary or mobile, all inclusive.
- (12) *Construction and Demolition Debris (C&D)* shall mean materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project. Mixing of a de-Minimis amount of waste other than C&D from the construction site will not automatically cause it to be classified as other than C&D.
- (13) *Container* shall mean and include any container designed or intended to be mechanically dumped into a loader packer type truck or recycling vehicle. All containers must be of the specifications as designated by the City Manager, or designee, in writing.
- (14) *Containerized Residential Recycling Collection Services* shall mean the collection of recyclable materials by the contractor from dwelling units in the service area that requires the use of containers for the collection of recyclable materials and which also receive residential collection services for solid waste, and the delivery of those recyclable materials to a materials recycling facility.
- (15) *Containerized Residential Solid Waste Collection Service* shall mean solid waste collection service of all dwelling units whose garbage, trash bulk trash or vegetative waste is collected by means of a central or shared container and not by means of a garbage can. Vegetative waste shall not be commingled with garbage, trash, or bulk trash.

- (16) *Contract* shall mean an agreement, executed between the City and the contractor for the performance of the specified solid waste and recycling collection agreement, as amended from time to time.
- (17) *Contractor* means the person, firm, corporation or entity designated by the City to perform the specified services in accordance with the terms of the contract.
- (18) *Contract Administrator* shall mean the person(s) designated by the City Manager who shall act as the City's representative in the administration and supervision of the contract and any other contractual agreement(s) relating to solid waste management and solid waste collection program.
- (19) *Curbside Residential Recycling Collection Service* shall mean the collection of recyclable materials by a contractor from all dwelling units in the service area that also receive curbside residential solid waste collection for solid waste and other dwelling units as are designated by the city, and the delivery of those recyclable materials to the solid waste authority's materials recycling facility or designated solid waste authority transfer station.
- (20) *Curbside Residential Solid Waste Collection Service* shall mean residential solid waste and vegetative waste collection service for all dwelling units whose garbage is collected by means of a garbage can at curbside or roadway.
- (21) *Department* shall mean the Florida Department of Environmental Protection.
- (22) *Disposal Costs* shall mean the "tipping fees" or landfill costs charged by others for disposal of the waste collected.
- (23) *Designated Facility* shall mean a Solid Waste Authority or Palm Beach County owned disposal, processing, recovery, recycling or transfer facility, or a processing facility permitted by the Solid Waste Authority of Palm Beach County.
- (24) *Dwelling Unit* shall mean type of structure or building unit intended for a capable of being utilized for residential living other than a licensed hotel or motel unit.
- (25) *Fiscal Year* means the period between October 1 of a given year and September 30 of the following year.
- (26) *Garbage* shall mean all putrescible waste which generally includes, but is not limited to, kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Vegetative waste shall to be commingled with garbage in the same collection. Garbage shall not include any material that falls within the definition of special waste.
- (27) *Garbage Receptacle or Can* shall mean any commonly available rotationally molded, rubberized, 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 garbage can is also defined as a heavy duty, securely tied, plastic bag designated for use as a garbage receptacle. Such container, including materials, shall not exceed 50 gallons in capacity or 50 pounds in weight, unless a contractor implements an automated or semi-automated collection system requiring the use of some other standard receptacle compatible with the contractor's equipment supplied by the contractor and approved by the city.

- (28) *Governmental Agencies* means all state, federal, and local units of government, or any agency or department thereof, which is the owner of any collection unit within the city.
- (29) *Hazardous Waste* shall mean solid waste as defined by the State of Florida Department of Environmental Protection as a hazardous waste in the State of Florida Administrative Code, or by any future legislative action or by federal, state or local law.
- (30) *Hotel or Motel* shall mean a structure or building unit(s) capable of being utilized for residential living where such unit or a 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 seven days or less. To meet this definition the hotel or motel must be licensed to operate as such. Transient has the meaning as defined in F.S. ch. 509, or its successor law.
- (31) *Illegal Dumping* shall mean the act of depositing solid waste, bulk trash, vegetative waste or C&D on property which has not been permitted as a designated facility by the solid waste authority.
- (32) *Litter* shall mean solid waste or any other waste material which is thrown, cast, scattered, dropped, spilled or deposited on public or private property, including rights of way and parking lots, through intent or negligence which tends to create a danger to public, health, safety and welfare.
- (33) *Mixed Paper* shall be defined as a mixture of paper products including magazines, catalogues, phone books, cereal boxes, soda and beer can boxes, chipboard, file folders, envelopes, letter paper, junk mail, notebook paper and any other clean paper products.
- (34) *Non-assessed Unit* means any collection unit or portion thereof that is not an assessed unit.
- (35) *Owner* means the person or persons owning an interest in a collection unit, assessed unit or non-assessed unit.
- (36) *Person* means any natural person, or partnership, firm, corporation or other legal entity.
- (37) *Property Appraiser* means the Palm Beach County Property Appraiser.
- (38) *Public Awareness Program* shall mean that program developed by the City to inform and encourage residential and commercial solid waste collection customers to use all solid waste and recycling collection services offered by or through the City. It shall also mean information concerning level of service and changes in scope of service.
- (39) *Rate Resolution* means resolutions of the City described in this ordinance relating to rates and fees charged for the operation, maintenance and administration of the solid waste program and mandatory solid waste collection program.
- (40) *Recyclable Materials* shall mean newspapers (including inserts), aluminum, plastic containers, glass bottles and jars, milk and juice cartons, aseptic containers, corrugated cardboard, brown paper bags, mixed paper, tin and ferrous cans, household dry-cell batteries(no wet-cell batteries), and other solid waste materials added upon agreement between the city and its contractor, when such materials have been either diverted from the remaining solid waste stream or removed prior to their entry into the remaining solid waste stream.

- (41) *Recycling* means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
- (42) *Recycling Container* shall mean a rigid container made of plastic or other suitable substance that is used for the storage of recyclable materials.
- (43) *Residential Recycling Collection Service* shall mean curbside residential recycling collection services and containerized residential recycling collection service.
- (44) *Residential Solid Waste* shall mean garbage, trash and bulk trash resulting from the normal housekeeping activities of a dwelling unit, but shall not include vegetative waste. Residential solid waste shall also mean construction and demolition debris (C&D) resulting from minor home repair from the dwelling unit.
- (45) *Residential Solid Waste Collection* service shall mean curbside residential solid waste collection service and/or containerized residential solid waste collection service.
- (46) *Roll-off Collection Service* shall mean the collection of C&D only roll-off containers, or the collection of C&D by other mechanical means, within temporary locations in the service area, limited to new construction sites and remodeling or refurbishment sites. Roll-off collection service shall also mean the collection of horticultural or agricultural waste at horticultural or agricultural nurseries, but only when the customer chooses to use roll-off containers for horticultural or agricultural waste and horticultural and agricultural waste shall not include any other type of waste including, but not limited to, special waste, garbage or recyclable material.
- (47) *Roll-off Collection Service Provider* shall mean the person(s), firm(s), corporation(s), or other legal entity(ies) permitted by the City to provide temporary roll off or similar C&D collection services within the service area in accordance with terms and conditions established by the city. The city may determine that the contractor may provide this service as an exclusive part of the contract to provide mandatory solid waste collection service within the service area.
- (48) *Service Area* shall mean the area within the incorporated boundaries of the City of Westlake, Florida, for which the solid waste management and mandatory solid waste collection program is administered as provided in the contract as it may be amended from time to time.
- (49) *Sludge* shall mean a solid or semi-solid or liquid generated from any waste water treatment plant, water supply treatment plant, air pollution control facility, septic tank, grease trap, portable toilets and related operations, or any other such waste having similar characteristics or effects.
- (50) *Solid Waste* shall mean garbage, bulk trash, C&D debris, litter, trash, vegetative waste or other discarded material resulting from domestic, industrial, commercial, agriculture or governmental operations excluding special waste as defined herein.
- (51) *Solid Waste Authority Disposal Facility* shall mean place or places specifically managed or operated by the solid waste authority of Palm Beach County.

- (52) *Solid Waste Collection Program* means the services and means of collecting solid waste from a collection unit through the use of equipment, trucks, containers, personnel, contracted or permitted services, and all real or personal property owned, leased, operated or used by the City of Westlake for the purpose of providing the solid waste collection services generally described in this ordinance.
- (53) *Solid Waste Collection Special Assessment* means the special assessment imposed by the City of Westlake upon an assessed unit for the collection of solid waste for the applicable fiscal year based upon the classification of the use of such assessed unit as set forth in the rate resolution. The solid waste collection special assessment may not include the cost of disposal of such collected solid waste if the cost of disposal of such solid waste is separately imposed upon such assessed unit by the authority.
- (54) *Solid Waste Collection Special Assessment Roll* means the list prepared by and adopted by the City of Westlake each fiscal year containing a summary description of each assessed unit, the name and address of the owner of each such assessed unit as indicated on the records maintained by the property appraiser and the amount of the solid waste collection special assessment applicable to each assessed unit.
- (55) *Solid Waste Management Program* means the program of managing the generation, storage, collection, transporting, processing and disposal of solid waste within the City of Westlake. The program provides for the regulation, permitting, contracting and enforcement of all aspects of this program.
- (56) *Special Services* shall mean any services requested or required by the customer which are in addition to, or a change in, residential solid waste collection service, residential recycling collection service, commercial recycling collection service and commercial solid waste collection service as set out or similar to those provided for in the contract.
- (57) *Special Waste* shall include automobiles, boats, internal combustion engines, non-automobile tires, sludge, dead animals, septic tank waste biohazardous or biomedical waste liquid waste and hazardous waste. Special waste may also include items determined by the contract administrator to be reasonably unmanageable.
- (58) *Tax Collector* means the Palm Beach County Tax Collector.
- (59) *Trash* shall mean all refuse accumulation of paper, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than garbage which are usual to housekeeping and to the operation of stores, offices and other business places, but shall not include vegetative waste.
- (60) *Uncontrollable Forces* shall mean any event which results in the prevention or delay of performance by a party of its obligations under the contract and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fires, flood, hurricanes, earthquakes, storms, lightening, epidemic, war, riot, civil disturbances, sabotage, and governmental actions.
- (61) *Uniform Method* means the "Uniform Method for the Levy, Collection and Enforcement of Non-Ad Valorem Assessments" prescribed by F.S. ch. 197, as amended and supplemented.

- (62) *Vegetative Waste* shall mean any vegetative matter resulting from yard and landscaping maintenance by any party and shall include materials such as tree and shrub materials, grass clippings, palm fronds, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards. All grass clippings, leaves, pine needles, and similar loose items must be bagged or containerized. Vegetative waste, except palm fronds, must be no more than six feet in length and no single item shall weigh more than 50 pounds, and shall be placed neatly at the curb. Natural Christmas trees will be collected as vegetative waste and any section must not be more than eight feet in length and must be under 50 pounds.

Section 5. Collection and Remittance: Except on collection days or the day preceding collection days, garbage containers shall be kept at a point upon the premises of the owner or occupant behind the front elevation of the residence, in the garage, or out of view from the street. Garbage cans are required to be kept in a place easily accessible to the contractor for pickup. On collection days, all garbage cans are to be placed at the edge of the street in order for easy access to the container for pickup. All garbage cans and containers shall be removed on the same day as the container is emptied.

Section 6. Frequency of Collection: All solid waste and recyclable material shall be collected in accordance with the provisions of the contract except as may be changed by the city of Westlake as deemed necessary. Residential solid waste shall be picked up twice per week. Recyclable materials shall be collected once per week.

Section 7. Prohibited Activities:

- (A) Any unauthorized accumulation of solid waste, trash, bulk trash, vegetative waste and construction and demolition debris on any premises is prohibited and may be subject to penalties as established by the city.
- (B) Removal of solid waste and recyclable materials from collection receptacles is not permitted. No unauthorized person shall remove, overhaul, scavenge, pilfer nor interfere with the contents of any garbage container, bundle, or pile set out for disposal, recycling, or removal for any purposes.
- (C) It shall be unlawful for any resident or occupant to deposit any solid waste, trash, bulk trash, vegetative waste and construction and demolition debris upon any adjoining lot or premises, whether vacant or improved, occupied or unoccupied or upon any other lot or premises, street, plaza, public passageway, alley, park, any canal, waterway, storm drain, lake or pool within the city.
- (D) No person shall deposit waste materials within the city on public or private property except in a receptacle intended for said waste. Littering shall include but not be limited to, thrown, dropped, cast, spilled or blown waste.
- (E) No person shall burn solid waste in any manner other than in a duly authorized incinerator.
- (F) No person shall place any dead animal or parts thereof in any solid waste container for collection. This section shall not apply to animal parts from food preparation for human consumption.

Section 8. Equipment: Equipment used within the City for the storage and collection of solid waste, recyclables and construction and demolition debris shall, at all times, be in safe

operating condition, clean, in good repair, and display the company name and local telephone number in letters and numbers at least five inches high.

Section 9. Ownership of Solid Waste and Recyclable Materials: Ownership of solid waste and recyclable materials collected pursuant to the contract shall be vested in the city of Westlake.

Section 10. Collection During Declared Emergency: If a state of local emergency has been declared, by a person authorized to make such declaration, the city may make modifications in solid waste collection procedures in accordance with the emergency plans of the city, or as authorized by the city manager, including the collection and removal of storm debris. The city may provide the emergency removal and collection of storm debris in private developments if the removal and collection of the debris is in the public interest, which is defined as work necessary to meet the following:

- (a) Eliminate immediate threats to life, public health and safety, including blocking of emergency response vehicle access;
- (b) Eliminate immediate threats of significant damage to improved public or private property;
- (c) Ensure economic recovery of the affected community to the benefit of the community-at-large; or
- (d) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances.

Section 11. Codification and Conflicts: The City Council specifically authorizes codification and incorporation of this ordinance into the Code of Ordinance for the City of Westlake. Should any ordinance be in conflict with the provisions contained herein, the same is hereby repealed by adoption of this ordinance.

Section 12. Enforcement: It shall be unlawful for any person to fail, neglect, or refuse to comply with and abide by each provision of this ordinance. The performance on each day of any prohibited act or practice or the failure to perform on each day of any required act or practice shall constitute a separate offense and shall be punishable as such.

Section 13: Severability: Should the provisions of this ordinance be declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

Section 14. Effective Date: This ordinance shall be effective on January 22, 2018.

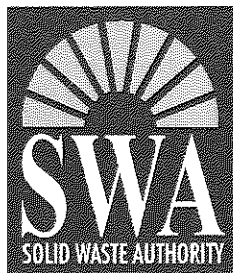
PASSED this 11th day of December 2017, on first reading.

PASSED AND ADOPTED this 8th day of January, 2018, on second reading.

City of Westlake
Roger Manning, Mayor

Sandra DeMarco, City Clerk

Pam E. Booker, City Attorney



Solid Waste Authority of Palm Beach County
7501 North Jog Rd, West Palm Beach, FL 33412

**SOLID WASTE AND RECYCLING
COLLECTION FRANCHISE AGREEMENT**

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

**ADVANCED DISPOSAL SERVICES
SOLID WASTE SOUTHEAST, INC.**

FOR

SERVICE AREA 2

AGREEMENT NO. 14-203

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Solid Waste and Recycling Collection Franchise Agreement Service Area 2

This Agreement is hereby made and entered into this 21st day of February, 2013, between **Solid Waste Authority of Palm Beach County**, a special district created pursuant to Chapter 2001-331, Laws of Florida, (hereinafter referred to as "Authority") and **Advanced Disposal Services Solid Waste Southeast, Inc.** (hereinafter referred to as "Contractor").

In consideration of the mutual benefits, the parties herein agree as follows:

1. TERM:

The term of this Agreement shall be for the period beginning **October 1, 2013**, and expiring **September 30, 2018**.

2. DEFINITIONS:

To the extent the definitions contained herein conflict with similar definitions contained in any federal, state or local law, the definition herein shall prevail. However, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

- A. Authority** shall mean the Solid Waste Authority of Palm Beach County.
- B. Biohazardous or Biomedical Wastes** shall mean those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; including, but not limited to, waste 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.
- C. Bulk Trash** shall mean any non-vegetative item which cannot be containerized, bagged, or bundled; including, but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bath tubs, water heaters, sinks, bicycles, and other similar domestic appliances, household goods and furniture. There shall be no weight limit for any item of Bulk Trash.
- D. Business Days** shall mean Monday through Saturday, except for Holidays.
- E. Collection** shall mean the process whereby Solid Waste, Garbage, Trash, Bulk Trash, Vegetative Waste or Recovered Material is gathered and transported to a Designated Facility.
- F. Commercial Recycling Collection Service** shall mean the Dual Stream Recycling Collection of Recovered Materials by the Contractor for entities within the Service Area that are not serviced by Residential Recycling Collection Service.



- G. Commercial Single Stream Recycling Collection Service** shall mean the practice of collecting Source Separated Recovered Materials generated by commercial establishments in a commingled form without separating the fiber from the other materials as is required under Dual Stream Collection.
- H. Commercial Solid Waste** shall include Solid Waste that is not Residential Solid Waste, but for the purposes of this Agreement shall exclude commercial Vegetative Waste, the collection of which is not exclusive to the Contractor.
- I. Commercial Solid Waste Collection Service** shall mean the collection of Commercial Solid Waste within the Service Area. Such service includes both Containers and Compactors, but does not include Roll-off Collection Services.
- J. Compactor** shall mean any container which has compaction mechanism(s), whether stationary or mobile, all inclusive.
- K. Construction and Demolition Debris (C&D)** shall mean materials generally considered to be not water soluble and which are nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project. Mixing of a de minimis amount of waste other than C&D from the construction site will not automatically cause it to be classified as other than C&D.
- L. Container** shall mean and include any container designed or intended to be mechanically dumped into a loader packer type truck or recycling vehicle. All Containers must be of the specifications as designated by the Contract Administrator, in writing.
- M. Containerized Residential Recycling Collection Service** shall mean the Dual Stream Recycling collection of Recovered Materials by the Contractor from Dwelling Units in the Service Area that require the use of Containers for the collection of Recovered Materials, and which also receive Residential Collection Service for Solid Waste, and the delivery of those Recovered Materials to the Recovered Materials Processing Facility or designated Authority transfer station.
- N. Containerized Residential Solid Waste Collection Service** shall mean Solid Waste collection service of all Dwelling Units whose Garbage, Trash or Bulk Trash is collected by means of a central or shared Container and not by means of a Garbage Can.
- O. Contract** shall mean this Agreement.
- P. Contractor** shall mean that person or entity identified as such in the first paragraph of this Agreement that has entered into this Agreement to provide the services described herein for the Service Area.



- Q. Contract Administrator** shall mean the person designated by the Authority who shall act as the Authority's representative during the term of this Agreement.
- R. County** shall mean Palm Beach County.
- S. Curbside Residential Recycling Collection Service** shall mean the Dual Stream Recycling collection of Recovered Materials by the Contractor from all Dwelling Units in the Service Area that also receive Curbside Residential Solid Waste Collection Service for Solid Waste, and other Dwelling Units as designated by the Authority, and the delivery of those Recovered Materials to the Authority Recovered Materials Processing Facility or designated Authority transfer station.
- T. Curbside Residential Solid Waste Collection Service** shall mean Residential Solid Waste and Vegetative Waste Collection service for all Dwelling Units from which Garbage is collected by means of a Garbage Can at curbside or roadway and delivery to an Authority designated disposal facility or transfer station.
- U. Designated Facility** shall mean an Authority owned disposal, processing, recovery, recycling or transfer facility, or another facility if specifically designated in writing by the Contract Administrator to the Contractor.
- V. Dual Stream Recycling Collection** shall mean the practice of collecting Recovered Materials in two separate containers, one for fiber and one for commingled containers and other materials accepted in the Authority's recycling program.
- W. Dwelling Unit** shall mean any type of structure or building unit intended for or capable of being utilized for residential living other than a licensed Hotel or Motel unit.
- X. Fiscal Year** shall mean the period starting on October 1 of a given year and ending September 30 of the following year during this Agreement.
- Y. Garbage** shall mean all putrescible waste which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities, but shall not include Vegetative Waste or Special Waste.
- Z. Garbage Can** 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). A Garbage Can is also defined as a heavy duty, securely tied, plastic bag designed for use as a garbage receptacle. Such container including waste materials shall not exceed fifty (50) gallons in capacity or fifty (50) pounds in weight, unless a Contractor implements (with written authorization from the Contract Administrator or his designee) an automated or semi-automated collection system requiring the use of some other standard receptacle compatible with the Contractor's equipment supplied by the Contractor and approved by the Authority.



- AA. Hazardous Waste** shall mean Solid Waste as defined by the State of Florida Department of Environmental Regulation as a hazardous waste in the State of Florida Administrative Code, or by any future legislative action or by federal, state or local law.
- BB. Hotel or Motel** shall mean a structure or building unit(s) capable of being utilized for residential living where such unit or a 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 seven days or less. To meet this definition, the Hotel or Motel must be licensed to operate as such. "Transient" has the meaning as defined in Chapter 509, Florida Statutes (2011), or its successor law.
- CC. Land Clearing** shall mean the removal of vegetation for the purpose of improving real property through remodeling, new construction or agricultural use. Land clearing shall include, but is not limited to, trees, brush, dirt, rocks or similar obstructions/materials being removed from a parcel of assessed residential land using mechanical devices such as a bobcat, backhoe, front-end loader, tractor, bulldozer, etc. Removal refers to the physical action of the equipment digging, scraping, bulldozing, and/or pulling debris from the ground. Transporting legally cut vegetation to the curb using a mechanical device does not constitute land clearing. A chainsaw is not to be considered a mechanical device in the removal process.
- DD. Mixed Paper** shall be defined as a mixture of paper products including magazines, catalogues, phone books, cereal boxes, soda and beer can boxes, chipboard, file folders, envelopes, letter paper, junk mail, notebook paper and any other clean paper products.
- EE. Peak Times** shall mean the period beginning on November 1 of a given year and ending on April 30 of the following year, unless otherwise specified by the Authority.
- FF. Public Awareness Program** shall mean that program developed by the Authority to inform and encourage residential and commercial collection customers to use all Collection services offered by the Authority through the Agreement. It shall also mean information concerning level of service and changes in scope of service.
- GG. 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 waste stream for sale, use, or reuse as raw materials, but the term does not include materials destined for any use that constitutes disposal, including but not limited to landfilling, placement upon the land or in the water, or combustion. The materials currently designated by the Authority for Residential Recycling Collection Service and Commercial Recycling Collection Service are newspapers (including inserts); magazines; catalogs; phone books; mixed paper, aluminum cans, foil, and pans; plastic containers #1 - #7 (except styrofoam); glass bottles and jars; gable-topped containers; aseptic containers; corrugated cardboard; kraft bags; and steel and ferrous cans.



- HH. Recovered Materials Processing Facility (RMPF)** shall mean any facilities operated or managed by, for or on behalf of the Authority for the purpose of receiving, sorting, processing, storing, and/or preparing Recovered Materials, plus other items authorized by the Authority, for sale, as specifically designated by the Contract Administrator, in writing.
- II. Recycling Container** shall mean a rigid container made of plastic or other suitable substance or a paper bag that is used for the storage of Recovered Materials.
- JJ. Residential Recycling Collection Service** shall mean Curbside Residential Recycling Collection Services and Containerized Residential Recycling Collection Service.
- KK. Residential Solid Waste** shall mean Garbage, Trash and Bulk Trash resulting from the normal housekeeping activities of a Dwelling Unit, but shall not include Vegetative Waste. Residential Solid Waste shall also mean Construction and Demolition Debris (C&D) resulting from minor home repair from the Dwelling Unit.
- LL. Residential Solid Waste Collection Service** shall mean Curbside Residential Solid Waste Collection Service and/or Containerized Residential Solid Waste Collection Service.
- MM. Roll-off Collection Service** shall mean the Collection of C&D-only roll-off containers, or the Collection of C&D by other mechanical means, within temporary locations in the Service Area, limited to new construction sites and remodeling or refurbishment sites. Permanent businesses or manufacturing companies that generate C&D on site as part of their operations may obtain roll-off containers from any source, including the Contractor, for the purpose of recycling the C&D material, if, and only if, they also have a container for all other Commercial Solid Waste which is collected exclusively by the Contractor. Roll-off collection Service also includes the collection of commercial vegetative waste.
- NN. Service Area** shall mean that portion of the unincorporated area of the County as described in Exhibit I, for which Contractor has been granted an exclusive franchise.
- OO. Sludge** shall mean a solid or semi-solid, or liquid generated from any waste water treatment plant, water supply treatment plant, air pollution control facility, septic tank, grease trap, portable toilets and related operations, or any other such waste having similar characteristics or effects.
- PP. Solid Waste** shall mean Residential Solid Waste and Commercial Solid Waste, but shall not include Special Waste, as defined in this Agreement, or Recovered Materials. Solid Waste shall mean Bulk Waste, Garbage, rubbish, refuse, Trash, Vegetative Waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations, but for the purpose of this Agreement shall not include Special Waste.



- QQ. Solid Waste Authority Disposal Facility** shall mean place or places specifically managed or operated by the Solid Waste Authority of Palm Beach County.
- RR. Source Separated** shall mean that Recovered Materials are separated from Solid Waste at the location where the recovered materials and solid waste are generated. The term does not require that various types of Recovered Materials be separated from each other, and recognizes de minimis Solid Waste may be included in the recovered materials. Materials are not considered Source Separated when two or more types of Recovered Materials are deposited in combination with each other in a Container located where the materials are generated and when such materials contain more than 10 percent solid waste by volume or weight, in which case the materials are Solid Waste. The term “various types of Recovered Materials” means metals, paper, glass, plastic, textiles and rubber.
- SS. Special Services** shall mean any services requested or required by the customer which are in addition to, or a change in, Residential Solid Waste Collection Service, Residential Recycling Collection Service, Commercial Recycling Collection Service and Commercial Solid Waste Collection Service as set out or similar to those listed in Exhibit II.
- TT. Special Waste** shall include automobiles, boats, internal combustion engines, non-automobile tires, Sludge, dead animals, livestock waste, septic tank waste, Biohazardous or Biomedical Waste, liquid waste, and Hazardous Waste. Special Waste may also include items determined by the Contract Administrator to be reasonably unmanageable.
- UU. Trash** shall mean all refuse, accumulation of paper, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than Garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, but shall not include Vegetative Waste.
- VV. Force Majeure** shall mean any event which 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 nonperforming party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, or sabotage.
- WW. Vegetative Waste** shall mean any vegetative matter resulting from yard and landscaping maintenance by any party and shall include materials such as tree and shrub trimming materials, grass clippings, palm fronds, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards.



3. **SERVICES PROVIDED BY CONTRACTOR:** The Contractor shall provide mandatory Residential Solid Waste Collection Services and Residential Recycling Collection Service in the Service Area. The right to provide such Collection Services in the Service Area shall be exclusive to the Contractor

The Contractor shall provide Commercial Solid Waste Collection Services in the Service Area, which shall be an exclusive right to the Contractor. The Contractor shall be responsible for the billing and collection of Commercial Solid Waste Collection Services and disposal costs not being billed and collected by the Authority or its designee.

Roll-off Collection Services shall not be exclusive to the Contractor. Collection of commercial Vegetative Waste shall not be exclusive to the Contractor. Collection of commercial Recovered Materials shall not be exclusive to the Contractor. Notwithstanding any other provision of this Agreement, collection of Solid Waste contained in roll-off containers excluded from Roll-off Collection Services for businesses in the Service Area is exclusive to the Contractor.

The Contractor shall provide Commercial Recycling Collection Services in the Service Area upon request by the Customer or the Authority, or through the solicitation efforts of the Contractor. However, Commercial Recycling Collection Services are not exclusive to the Contractor in the Service Area.

The Contractor shall use good faith and its best efforts to cooperate with any commercial recycling haulers collecting Source Separated Recovered Materials from commercial customers in the Service Area.

4. **SOLID WASTE AND VEGETATIVE WASTE COLLECTION SERVICE:**

- A. **Curbside Residential Solid Waste and Vegetative Waste Collection Services:** The initial Curbside Residential Collection Service provided by this Agreement shall be as set forth in this Section 4A and shall continue until such time as the Contract is terminated. Whereas the Contractor is providing Solid Waste and Vegetative Waste Collection Service on behalf of the Authority, all Solid Waste and Vegetative Waste collected by the Contractor in the Service Area(s) must be collected in the manner and for the rates and fees provided herein, and delivered to a Designated Facility. Solid Waste collected by the Contractor in the Service Area(s) pursuant to this Agreement may not be delivered to any facility other than those specified herein unless authorized by the Contract Administrator, in writing. In addition to the provisions and prohibitions provided for herein, Contractor is required to comply with all Federal, State and local laws, regulations and rules, including rules of the Authority, and is subject to the penalties provided for therein. To the extent that the requirements, prohibitions and penalties provided for in this Agreement are more stringent than those provided for under Federal, State and local laws, regulations and rules, including any rules of the Authority, this Agreement prevails.

1. **Conditions and Frequency of Service:** All Curbside Residential Solid Waste and Vegetative Waste properly containerized in Garbage Cans or



otherwise prepared for collection as dictated by this Agreement shall be collected by the Contractor.

All Curbside Residential Solid Waste Collection Service, with the exception of the holidays identified in Section 7, shall be provided twice per week, unless options of service (Exhibit II) are implemented, with not less than forty-eight (48) hours nor more than seventy-two (72) hours between regularly scheduled pick-up days. Missed Saturday Residential Solid Waste and Vegetative Waste must be collected by 10:00 a.m. on the following Monday.

All Vegetative Waste up to six (6) cubic yards placed at an accessible pick-up location shall be collected separately from Residential Solid Waste and Recovered Materials by the Contractor. If the customer has moderately commingled Residential Solid Waste and Vegetative Waste, the Contractor shall separate the Residential Solid Waste from the Vegetative Waste and collect the materials separately. If, due to the extent of commingling, separating the Vegetative Waste from the Residential Solid Waste is impractical, the Contractor shall tag the pile with an Authority provided tag, and is not required to collect the commingled material until the first regularly scheduled collection day after customer has properly separated the material, although nothing shall preclude the Contractor from collecting the Vegetative Waste and Residential Solid Waste sooner. In the event the customer does not wish to properly separate the material, the customer may pay the Contractor or any other private hauler to collect the non-conforming material. If the Contractor fails to tag the non-conforming pile, the Contractor will be required to collect the pile at no cost to the customer or the Authority by the end of the next Business Day. The Contractor shall not intentionally commingle Vegetative Waste with Residential Solid Waste.

Vegetative Waste shall be collected one time per week on one of the two scheduled route days. The Contractor shall not be required to collect more than six (6) cubic yards of Vegetative Waste per dwelling unit per week. In the event that more than six (6) cubic yards is placed at the curb by the customer, the Contractor shall collect a minimum of six (6) cubic yards and tag the remaining pile with an Authority provided tag. The Contractor shall at a minimum return on each subsequent regular Vegetative Waste collection day and collect six (6) cubic yards until the pile is gone, however nothing shall preclude the Contractor from collecting the Vegetative Waste sooner.

With the exception of palm fronds, tree branches and Christmas trees, The Contractor shall have a reliable expectation that all Vegetative Waste will be bagged or containerized, and that each container, when filled, will not exceed 50 pounds in weight or 50 gallons in capacity. The Contractor shall have a reliable expectation that branches will not exceed 6 feet in length or 50 pounds in weight, that there is no length limitation on palm fronds, and that Christmas trees will be presented whole or in sections that in either case shall not exceed 8 ft in length or 50 pounds in weight. In the event that



Vegetative Waste is not presented as stated in this paragraph, the Contractor shall tag the pile with an Authority provided tag, and is not required to collect the non-conforming material until the first regularly scheduled collection day after the customer has properly presented the material, although nothing shall preclude the Contractor from collecting the Vegetative Waste sooner.

Trash, Bulk Trash, and Construction and Demolition Debris (C&D) resulting from minor home maintenance and repair only will be collected at the curb. Contractor is not required to collect sections of fencing or debris resulting from the demolition of sheds, storage buildings and other like structures or debris generated by major remodeling/construction projects. Contractor is required to collect a maximum of two (2) cubic yards of C&D per collection day per dwelling unit. In the event that the customer places more than two (2) cubic yards of C&D for Collection, the Contractor shall collect two (2) cubic yards of C&D and shall tag the remaining pile with an Authority provided tag. The Contractor shall at a minimum return on each subsequent regular Solid Waste collection day and collect a minimum of two (2) cubic yards until the pile is gone, however nothing shall preclude the Contractor from collecting the C&D sooner. Small pieces of C&D, such as tile or roofing material, shall be containerized and weigh not more than 50 pounds per container. There shall be no weight limit for any item of Bulk Trash.

In the event Bulk Trash contains Chloroflorocarbons (CFC's), the Contractor shall collect the Bulk Trash item separately in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to the Authority landfill, the Belle Glade transfer station or to a scrap dealer located in Palm Beach County.

2. **Accessibility:** Contractor shall collect all Residential Solid Waste and Vegetative Waste placed Curbside where the edge of the waste is within six (6) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location agreed to by the Contractor that will provide safe and efficient accessibility for the Contractor's collection crew and vehicle. In the event there is insufficient space between the curb and the sidewalk to place Residential Solid Waste and Vegetative Waste, if the edge of all Residential Solid Waste and Vegetative Waste to be collected is within two (2) feet of the sidewalk, the Contractor shall be required to collect it.

In the event there is no other accessible location available to the customer, all Residential Solid Waste and Vegetative Waste placed under electrical wires, trees or other obstructions preventing the use of a vehicle with mechanical loading capability shall be collected by means of a rear-load collection vehicle. Contractor may request, in writing, the Contract Administrator to approve an alternate Collection location. Contract Administrator's decision regarding the approval of a suitable alternate Collection location shall be final.



For purposes of this Agreement, public road or public right-of-way means a road owned and maintained by the County or special district, or a road on private property for which an easement has been granted to the public and when such road is constructed and maintained to a standard whereby access is available by the collection vehicle.

Where the resident of a dwelling unit is physically unable to deliver Residential Solid Waste to curbside and this is so certified by the Contract Administrator, or the residential structure is located in such a manner as to prevent access to the Residential Solid Waste by the Contractor's crew or vehicle, an alternative location may be arranged between the customer and the Contractor at no extra cost to the customer. In the event the customer and the Contractor cannot agree on an alternative location the Contract Administrator shall designate the alternative location, and the Contract Administrator's decision shall be final. Regardless of any accommodation made pursuant to the facts described in this paragraph, Vegetative Waste must continue to be placed curbside.

Except in the case described in the previous paragraph, if the customer requests Special Services, such as back door service, these services shall be billed directly to the customer by the Contractor in accordance with Exhibit II. In the event that a Special Service request is not listed in Exhibit II, such charges shall then be established through negotiations between the Contractor and the customer. In the event the customer and the Contractor cannot reach an agreement on the cost, the Contract Administrator shall determine the cost, and such determination shall be final.

B. Containerized Residential Solid Waste Collection Services: The initial Containerized Residential Collection Service provided by this Agreement shall be as set forth in this Section 4B and shall continue until such time as the Contract is terminated.

1. Conditions and Frequency of Service: The Contractor shall provide Containerized Residential Solid Waste Collection Service to all Dwelling Units in the Service Area that are suitable to receive such service and request such service. A minimum of once per week service is required of all customers, or such other minimum frequency as provided by law. Normal Collection service, not including Bulk Trash collection, shall be twice per week. However, the customer may elect to receive once a week service during off-Peak Times of the year and up to three times per week Collection service during Peak Times, as required, at no additional cost to the customer as long as the average is two times per week on an annual basis. The size and location of the Container and frequency of collection (more than the minimum of once per week) shall be determined by the Contractor and the residential complex in accordance with this Agreement. However, size and frequency shall be sufficient to provide that no Residential Solid Waste need be placed outside the Container. Storage capacity shall be suitable for the



amount of waste generated by the customer. In the case of an unresolved dispute, the Contract Administrator shall resolve such issue. The Contractor shall be paid the appropriate containerized unit collection rate in accordance with Exhibit II. Any service requested by the residential complex above three times per week or greater than the two times per week annual average, with the exception of Bulk Trash collection, shall be paid in accordance with the "commercial solid waste collection" rates in Exhibit II.

The frequency of collection of Bulk Trash outside the container shall be no less than once per week unless otherwise agreed to by the customer and approved by the Contract Administrator. Any disputes as to the frequency of Bulk Trash collection shall be resolved by the Contract Administrator, whose determination shall be final. In the event Bulk Trash contains Chloroflorocarbons, (CFC's), the Contractor shall collect the Bulk Trash item separately, in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to the Authority landfill, the Belle Glade transfer station or to a scrap dealer located in Palm Beach County. There shall be no weight limit for any Bulk Trash item.

- 2. Method of Collecting:** Collection shall occur on a regular basis with a frequency of pick-up as provided herein. Such service shall be provided by mechanical Container as defined herein. However, where a customer generates less than two (2) cubic yards per week of waste, alternate non-mechanical containers (e.g., Garbage Can(s)) may be utilized.

The Contractor shall provide Containers at the approved rental rates as necessary. Commercial Container rental rates, terms, and provisions contained in the Agreement shall also apply to Containers rented for residential service. Customers may own their Container(s) provided that the customer is completely responsible for its proper maintenance. Such Containers shall be of a type that can be serviced by the Contractor's equipment.

The Contractor shall collect all Residential Solid Waste placed in a Container or alternate non-mechanical container, and shall not be required to collect Residential Solid Waste that is not so placed. The Contractor has a reliable expectation that Vegetative Waste will not be commingled with Garbage. Where alternate non-mechanical containers (e.g., Garbage Can(s)) are used, they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers or Compactors shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

All Containers and Compactors provided by the Contractor shall be in good condition. In the event a Compactor, which is provided by a source other than the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case by case



basis, within 24 hours of notification, sufficient to provide uninterrupted service to the customer until the Compactor is repaired or replaced. Contractor may charge the customer for any Container rental in accordance with the rates set forth in Exhibit II. In the event a Compactor, which is provided by the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case by case basis, within 24 hours of notification sufficient to provide uninterrupted services until Compactor is repaired or replaced at no charge to the customer. The Contractor shall have a regularly scheduled replacement program for all Containers to ensure Containers are in good condition.

3. **Service Interruption:** The Contractor may not stop service to a residential containerized customer for non-payment of fees for Container rental or special services without notification by certified letter to the Contract Administrator or his designee and the customer at which time the Contract Administrator shall have five (5) Business Days following receipt of such notice to investigate and respond.

C. **Commercial Solid Waste Collection Service:** The Contractor shall collect and dispose of all Commercial Solid Waste in the Service Area. Such Commercial Collection Service shall be governed by the following material terms:

1. **Conditions and Frequency of Service:** A minimum of once a week service is required of all commercial customers or such other minimum frequency as provided by law. However, customers utilizing a roll-off Compactor Container shall have the ability to receive service on an on-call basis provided the roll-off Compactor is free from leaks or spillage. Permanent roll-off and Compactor Containers must be collected within 24 hours of customer request. There shall be no odor at any time emanating from the roll-off Compactor, or vermin in the immediate area. If complaints are received, or an inspection conducted by the Authority proves the roll-off Compactor violates any of the above criteria, the Contract Administrator will determine the frequency of service. The size of the Container and the frequency of collection shall be determined between the customer and the Contractor. However size and frequency shall be sufficient to provide that no Commercial Solid Waste need be placed outside the Container. Storage capacity shall be suitable for the amount of waste generated by the customer.
2. **Method of Collecting:** Service shall be provided by mechanical Container as defined herein. However, where a customer generates less than one (1) cubic yard per week of waste, alternate non-mechanical containers may be utilized (e.g., Garbage Can(s)). Commercial small waste generators who generate less than one (1) cubic yard per week may use up to three (3) Garbage Cans, and shall be charged the monthly rate, as set out in Exhibit II.

The Contractor shall provide Containers as necessary however, customers may own their Container provided that the customer is completely



responsible for its proper maintenance. Such customer provided Containers shall be of a type that can be serviced by the Contractor's equipment. All Commercial Solid Waste shall be placed in a Container, Compactor or acceptable other Garbage Can. Vegetative Waste shall not be commingled with Garbage. All Containers or Compactors shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

Compactors may be obtained by customers from any source provided that such Compactor must be of a type that can be serviced by the Contractor's equipment and the customer shall be completely responsible for its proper maintenance. Compactor frequency of collection shall be sufficient to contain the waste without spillage.

All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container and any other labeling as may be required by Authority rule. In the event a Compactor, which is provided by a source other than the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case by case basis, within 24 hours of notification sufficient to provide uninterrupted service to the customer until the Compactor is repaired or replaced. The Contractor may charge the customer in accordance with the rates set forth in Exhibit II.

In the event a Compactor, which is provided by the Contractor, is damaged or in need of repair, Contractor shall provide front load Containers, or upon the written approval of the Contract Administrator a roll-off container which may be approved on a case by case basis, within 24 hours of notification sufficient to provide uninterrupted service until the Compactor is repaired or replaced. The Contractor may charge the customer for collection and disposal only in accordance with rates set forth in Exhibit II.

3. Level, Type and Disclosure of Rates for Commercial Collection and Other Services:

- a. **Commercial Collection Service:** The Contractor shall only charge rates as set out in Exhibit II or as otherwise allowed by this Agreement. The Contractor may not bill the customer more than thirty (30) days in advance unless otherwise requested by the customer. The customer shall subscribe to a level of service sufficient to meet the needs of the customer in a sanitary and efficient manner using the Level of Service form included in Exhibit II. However, upon failure of the parties to reach such an agreement, the Contract Administrator or his designee shall establish the level and type of service to be provided including the location, size of the Container and number of pick-ups per week and the "TOTAL RATE" to be charged within the approved rate limits contained in



Exhibit II. The Contractor will be responsible for the billing and collection of Commercial Solid Waste Collection Services, disposal tipping fees, Special Service(s) fees and Container rental charges except as otherwise provided in this Agreement.

- b. **Disclosure:** By October 1st of each year of this Agreement, the Contractor shall provide the customer an annual disclosure statement which may be placed either directly on the billing statement generated by the Contractor's billing system or on a separate cover letter included with the billing statement, and provide a Level of Service form as provided in Exhibit II. Contractor shall send a commercial customer list to the Authority as well as a master copy of the disclosure statement which includes the following language:

"REGULATION BY THE SOLID WASTE AUTHORITY"

The terms and conditions of this Commercial Solid Waste and Recycling Collection Service Agreement are regulated by a franchise granted by the Solid Waste Authority of Palm Beach County. Should the customer have any questions relating to the terms and conditions of this Agreement, the customer may call the Contract Administrator at 1-866-792-4636.

"COMMERCIAL COLLECTION CONTAINERS"

The commercial collection container shall be of a type that can be serviced by the Contractor's collection equipment. The customer may either purchase the commercial collection Container from any source or rent such Container from the Contractor at the rental rate as approved by the Authority. If the customer chooses to use a Compactor, the customer may rent, lease or own the Compactor from any source, provided that the Compactor can be serviced by the Contractor's collection equipment. Commercial collection Containers and Compactors shall be maintained in a serviceable, safe, and sanitary condition by the owner of the Container or Compactor. However, damage caused by the Contractor to a customer owned Container or Compactor shall be repaired at no cost to the customer or the Authority.

"SPECIAL SERVICES"

If the customer requests, the Contractor is required to provide special services for collection of solid waste such as rolling Containers out of storage areas, opening doors or gates for access, or other such special services. However, such special services may be provided by the customer, through its own or other personnel. If the Contractor provides special services, such charge must be separately stated under the "RATES FOR SERVICES" disclosure statement. The maximum for these special service rates are fixed by the Solid Waste Authority. A copy of these rates can be obtained from the Contractor or Contract Administrator.

The "RATES FOR SERVICES" statement shall incorporate or have attached a rate schedule which specifies the Collection Rate based on size of Container and frequency of service; TYPE indicating whether the Container is for Solid Waste or Recovered Materials, DISPOSAL based on a cost per cubic yard; CONTAINER RENTAL expressed in a monthly flat rate based on the size of the Container; and the cost



per month for each SPECIAL SERVICE REQUIRED BY THE CUSTOMER. The notification shall specify the size of Container and frequency of collection of each Container for each business, distinguishing between solid waste and recycling collection service. The notification shall specify in which Service Area the business is located. The notification shall itemize each cost individually. A sample notification shall be approved by the Contract Administrator or his designee before distribution to the customer.

- D. Method of Payment:** The Authority or its designee will be responsible for the billing and collection of payments for Residential Solid Waste Collection Service. The Contractor shall be responsible for billing and collection of payments for Commercial Solid Waste Collection Service at rates not to exceed those initially set out in Exhibit II as adjusted in subsequent years in accordance with Section 6 and Exhibit III. Contractor shall also be responsible for billing and collection of payments for Special Services related to Residential Solid Waste Collection Service.
- E. Hours of Collection:** Curbside Residential Solid Waste Collection Service shall be provided between the hours of 6:00 a.m. and 5:00 p.m. Monday through Saturday. Dwelling Units receiving Containerized Residential Solid Waste Collection Service and non-residential collection sites located within 150 yards of residential uses shall only be collected between the hours of 7:00 a.m. and 5:00 p.m. Monday through Saturday. Other nonresidential locations may be collected at any time. The hours of collection may be extended due to extraordinary circumstances or conditions with the prior consent of the Contract Administrator.
- F. Routes and Schedules:** The Contractor shall provide the Contract Administrator, in a format acceptable to the Contract Administrator, the schedules for all Collection routes and keep such information current at all times.

Proposed route or schedule changes in Service Area 3 located south of the L-32 Canal affecting dwelling units currently serviced on Monday and Thursday or Tuesday and Friday that would result in Saturday services will not be approved. If the Contractor desires to make subsequent changes in the curbside collection service routes or schedules that will result in a benefit to the community, a written request shall be made to the Contract Administrator not less than 60 days prior to the requested date of change. Such request shall include the proposed location and details of the route or schedule change, and the reason for change.

The Contract Administrator shall review requested day or starting point change(s) to routes and approve or deny the request(s) within 10 Business Days. The Contract Administrator's decision shall be final. In the event a requested route or schedule change is approved by the Contract Administrator, the Contractor shall notify the customer(s) affected in writing or other manner approved by the Contract Administrator not less than two (2) weeks prior to the change, at no cost to the Authority. Notification of day or starting point changes to routes for Curbside Residential customers shall be by door hanger, unless otherwise approved by the Contract Administrator, and distributed by the Contractor at no cost to the Authority



and the customer. Notification to Curbside customers shall be done twice - once two (2) weeks prior to the change and once one (1) week prior to the change. The Contractor shall provide a draft copy of the route change notification to the Contract Administrator for review and approval not less than three (3) weeks prior to printing and distribution.

- 5. RECYCLING COLLECTION SERVICE:** The Contractor shall provide Residential and Commercial Recycling Collection Service in the Service Area, as provided within the Agreement. The Authority or its designee shall be responsible for the billing and collection of payments for Residential Recycling Collection Services. The Contractor shall be responsible for billing and collection of Commercial Recycling Collection Service cost not being billed and collected by the Authority or its designee. Unless otherwise provided for in this Agreement, all Recovered Materials collected by the Contractor in the Service Area(s) must be collected in the manner and for the rates and fees provided herein, and delivered to the Authority's Recovered Materials Processing Facility or an Authority transfer station, or other facility designated in writing by the Contract Administrator. Notwithstanding the foregoing, the Contractor shall retain the right to continue to provide Commercial Recycling Collection Service to contractor's existing Commercial Recycling Collection Service customers in the Service Area, including the delivery of said materials to facilities not designated by the Authority, under agreements effective and in place as of the date of award of the franchise governed by this Agreement for the term of said agreements. Unless specifically provided to the contrary herein, Contractor shall not compete with the Authority for Recovered Materials within the Franchise area. Recovered Materials collected by the Contractor in the Service Area(s) pursuant to this Agreement may not be delivered to any facility other than those specified herein unless authorized by the Contract Administrator, in writing. In addition to the provisions and prohibitions provided for herein, Contractor is required to comply with all Federal, State and local laws, regulations and rules, including rules of the Authority, and is subject to the penalties provided for therein. To the extent that the requirements, prohibitions and penalties provided for in this Agreement are more stringent than those in Federal, State and local laws, regulations and rules, including rules of the Authority, this Agreement prevails. Contractor shall, upon request of the Authority, provide Authority with a list of all Commercial Recycling Collection Service customers in the Service Area as of the effective date of this Agreement, which list shall include the expiration date for each such customer.

A. Curbside Residential Recycling Collection Services will be governed by the following terms and conditions:

- 1. Conditions and Frequency of Service:** The Contractor shall provide Curbside Residential Recycling Collection Services to all Dwelling Units receiving Curbside Residential Solid Waste Collection Service located in the designated Service Area and to other such Dwelling Units as determined appropriate by the Contract Administrator. This service shall be provided once every week, unless otherwise specified by the Authority, on a scheduled route basis which shall coincide with one of the two regularly scheduled solid waste collection pick-up days.



Recovered Materials shall not be commingled with other Residential Solid Waste. Contractor's collection personnel shall not knowingly collect Recovered Materials and place in a solid waste collection vehicle or Garbage Can. Commingling of Solid Waste with Recovered Materials shall be subject to assessments as set forth in this Agreement. Recovered Materials set out for collection by Customers must be collected in a vehicle designated solely for the purpose of collecting Recovered Materials. Said vehicle shall contain signage designating the vehicle as such and include the Authority's toll-free new bin telephone number.

2. **Accessibility for and Manner of Curbside Recycling Collection:** Contractor shall collect all Recovered Materials placed in a Recycling Container or paper bag and additionally cardboard and/or paper bags, which may be placed beside the container, when any edge of said Recovered Materials is placed within six (6) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location agreed to by the Contractor that will provide safe and efficient access for the Contractor's collection crew and vehicle. The Contractor must collect as many Recycling Containers, paper bags, bundles, or flattened cardboard, as the customer sets out. Cardboard and/or paper bags shall be collected if placed next to, or inside, the Recycling Container(s). Where the resident is physically unable to deliver Recovered Materials to curbside and this is certified by the Contract Administrator, or the Dwelling Unit is located in such a manner as to prevent access to the Contractor's crew or vehicle, an alternative location may be arranged between the customer and the Contractor at no extra cost to the customer. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pick-up, and such designation shall be final.
3. **Recycling Containers:** The Contractor shall ensure distribution of Recycling Containers as supplied by the Authority to each unit that is to receive Curbside Residential Recycling Collection Service in the Service Area. The title to these Recycling Containers shall be vested with the Authority. However, customers may use their own additional Recycling Containers or paper bags as long as they are similar and suitable for the service.

B. Containerized Residential Recycling Collection Services will be governed by the following terms and conditions:

1. **Conditions and Frequency of Service:** The Contractor shall provide Containerized Residential Recycling Service to Dwelling Units as are designated by the Authority that are located in the Service Area. Containerized Residential Recycling Service shall be provided at least once every week on a scheduled route basis as set out in paragraph 2 below, and up to twice a week as necessary during Peak Times of the year.



2. **Accessibility and Schedule for Containerized Residential Recycling Collection:** All Recovered Materials, with the exception of cardboard, are to be collected in a Recycling Container or Container designated for Recovered Materials which shall be located in such location and shall be collected on a schedule as mutually agreed to by the owner or governing association (of the multiple unit residential complex or development being serviced) and the Contractor that will provide safe and efficient access for the Contractor's collection crew and vehicle. Cardboard shall be collected if placed next to, or inside, the Recycling Container or Container. If there is a large amount of cardboard placed outside of the Container (i.e., in the case of a 101 gallon Container), an alternate, larger Container shall be provided, upon agreement by the customer and the Authority. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pick-up, and such designation shall be final.

C. **Commercial Recycling Collection Service:** The Contractor shall provide Commercial Recycling Collection Services on behalf of the Authority for any business in the Service Area where the Authority has arranged, negotiated or contracted for such service, and Contractor shall have the right to solicit Commercial Recycling Collection Service agreements with any business in the Service Area upon terms and conditions consistent with this Agreement.

1. **Conditions and Frequency of Services:** The Contractor shall provide Commercial Recycling Collection Services to all businesses or commercial entities located in the designated Service Area resulting from its own solicitation, by request of the customer, or where a contract meeting the terms and conditions of this Agreement is arranged by the Contract Administrator or his designee. The size and frequency of service of the Container designated for Recovered Materials shall be determined by a waste audit and agreed to by the customer and the Contractor. However, size and frequency shall be sufficient to provide that no Recovered Materials need be placed outside the Container. Storage capacity shall be suitable for the amount of Recovered Materials generated by the customer. The Contractor shall provide Containers as necessary however, customers may own their Container provided that the customer is completely responsible for its proper maintenance. Such Containers shall be of a type that can be serviced by the Contractor's equipment. Compactors may be obtained by customers from any source provided that such Compactor be of a type that can be serviced by the Contractor's equipment and the customer shall be completely responsible for its proper maintenance. Compactor frequency of collection shall be sufficient to contain the Recovered Material without spillage. All Commercial Recovered Materials shall be placed in a Container, Compactor or other acceptable Recycling Container. All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container. All Containers and Compactors provided by the Contractor shall be clearly labeled to indicate they hold Recovered Materials only.



Recovered Materials shall not be commingled with other solid waste. Contractor's collection personnel shall not knowingly collect Recovered Materials and place them in a Solid Waste collection vehicle. Commingling of Recovered Materials with Solid Waste shall subject the Contractor to assessments as set forth in this Agreement. Recovered Materials set out for collection by customers must be collected in a vehicle designated solely for the purpose of collecting Recovered Materials and shall be delivered to a facility designated by the Authority. Said vehicle shall contain signage designating vehicle as such and include the Authority's toll-free new bin telephone number (1-866-639-2467).

Where Recycling Containers are used, they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

2. **Level, Type and Disclosure of Rates for Commercial Recycling Collection and Other Services:** The customer shall subscribe to a level of service sufficient to meet the needs of the customer in a sanitary and efficient manner. However, upon failure of the parties to reach such an agreement, the Contract Administrator, or his designee, at the election of the customer and Contractor may establish the level and type of service to be provided including the location, size of the Container and number of pick-ups per week and the "TOTAL RATE" to be charged within the approved rate limits contained in Exhibit II. The Contractor will be responsible for the billing and collection of Commercial Recycling Collection charges except as otherwise provided in this Agreement.
3. **Ownership:** Notwithstanding any other provision of this Agreement, a commercial generator of Recovered Materials retains ownership of those materials until he or she donates, sells, or contracts for the donation or sale of those materials to another person or entity. Nothing in this Agreement shall prevent a Recovered Materials dealer or other person or entity properly registered to engage in the Recovered Materials business in Palm Beach County, whether for profit or nonprofit, from accepting and transporting commercially generated, Source Separated Recovered Materials from such commercial generator, provided however, that such activities are subject to applicable State and local laws, regulations and rules, including rules of the Authority, and provided that the transporter reports such information to the Authority in accordance with applicable State and local laws and rules, including rules of the Authority.

- D. **Authority Public Drop-off Recycling Collection Services:** The Contractor shall provide Public Drop-off Recycling Collection Services to all Authority Public Drop-off Locations within the unincorporated and municipal areas of the Service Area at the approved Commercial Recycling Collection Service collection rate set out in



Exhibit II as may be adjusted in accordance with Section 6 and Exhibit III. The Authority will provide the containers. The frequency of collection shall be sufficient to provide that no Recovered Materials need be placed outside the Container and shall be determined by the Authority. The Contract Administrator or his designee will establish the number of Containers to be collected and frequency of collection as defined in Exhibit VII. The Authority has the right to add or remove up to five (5) containers annually and/or increase or decrease service as deemed necessary.

The Contractor shall provide the Contract Administrator, in a format acceptable to the Contract Administrator, the schedules for all Collection routes and keep such information current at all times. Public Drop-off Commercial Recycling Container collection sites located within 150 yards of residential uses shall only be collected between the hours of 7:00 a.m. and 5:00 p.m. Monday through Saturday.

The Contractor shall bring Recovered Materials collected from the Public Drop-off locations to the Authority owned Recovered Materials Processing Facility or an Authority transfer station.

Authority owned Public Drop-off Recycling Collection Containers damaged by the Contractor shall be replaced at no charge to the Authority within three (3) Business Days.

- E. Method of Payment:** The Authority or its designee will be responsible for the billing and collection of payments for Residential Recycling Collection Service.

The Contractor shall be responsible for billing and collection of payments for Commercial Recycling Collection Service, not to exceed the rates as set out in Exhibit II. The rate set out in Exhibit II shall be adjusted in subsequent years in accordance with Section 6 and the Payment Adjustment Schedule (Exhibit III). The Authority shall provide recycling Containers for commercial customers utilizing a 95 or 101 gallon Container(s) at no charge to the Contractor or customer. The Contractor may be asked to bill the Authority or the customer for all or a part of the Containers used by the customer for Commercial Recycling Collection Service, at the rate set out in Exhibit II, as determined by the Contract Administrator.

- F. Hours of Collection:** Residential Recycling Collection Service shall be conducted between the hours of 6:00 a.m. and 5:00 p.m., Monday through Saturday. Dwelling Units receiving Containerized Residential Recycling Collection Service and nonresidential collection sites located within 150 yards of residential uses shall only be collected between the hours of 7:00 a.m. and 5:00 p.m. Monday through Saturday. Other nonresidential locations may be collected at any time. The hours of collection may be extended due to extraordinary circumstances or conditions with the prior consent of the Contract Administrator.

- G. Routes and Schedules:** Route and schedule changes shall be handled as specified in Section 4, Paragraph F.



H. Replacement of Recycling Containers for Residential Dwelling Units:

1. The Contractor will replace at its expense any Container or Recycling Container damaged through the fault or negligence of the Contractor or its personnel (including agents, employees or subcontractors) in accordance with Section 10, and report all such replacements to the Authority. Replacement Recycling Containers or Containers designated for Recycling for Residential Dwelling Units will be provided by the Authority with the cost for replacement containers deducted from the Contractor's monthly fees.
2. The Authority, at its expense, will supply to the Contractor, for distribution to the customer, replacement Recycling Containers or Containers which were originally provided by the Authority and lost or damaged by the occupant of a Dwelling Unit, and the Contractor shall report all such replacements to the Authority.
3. The Contractor shall promptly deliver Recycling Containers or Containers as requested by the Authority on behalf of the residential customers for the purpose of excess Recovered Materials or for new residential customers.

- I. **Contaminated Recovered Materials:** In the event the curbside customer places solid waste in the Recycling Container(s) or Container(s), the Contractor must collect all Recovered Materials and leave the solid waste in the Recycling Container(s) or Container(s). The Contractor must then place a contamination sticker on the Recycling Container(s) or Container(s) advising the customer of the reason the solid waste was not collected. Contamination stickers will be provided to the Contractor by the Authority.

In the event the Contractor is unaware that a load of Recovered Materials collected pursuant to Residential Containerized Recycling Collection or Commercial Recycling Collection is commingled with Solid Waste, and the Contractor is charged a disposal fee by the Authority, the Contractor is authorized to make an effort to identify the customer responsible for the contamination and charge the customer the applicable disposal charges based on the size of the container serviced for that customer.

- J. **Recovered Materials Processing Facility:** The Contractor shall deliver all Recovered Materials collected from the Service Area to the Solid Waste Authority RMPF, or a SWA transfer station or other facility designated, in writing, by the Contract Administrator.
- K. **Change in Scope of Recycling Collection Service:** From time to time, at the sole option of the Authority, it may be necessary to modify the scope of Recovered Materials that will be included in Recycling Collection Service. Should this occur, the Authority and the Contractor agree to enter into good faith negotiations to amend this Agreement to reflect the impact of any such modification.



6. CHARGES, RATES AND LEVEL OF SERVICES:

- A. Solid Waste and Recycling Collection Rate Adjustments:** For all Collection services with the exception of those specifically excluded, the charges shall be initially based on the rates established in Exhibit II, and as subsequently adjusted pursuant to this Agreement. For all cost components other than fuel, the Contractor shall receive an annual adjustment in the Residential Solid Waste Collection Service, Residential Recycling Collection Service, Commercial Recycling Collection Service, and Commercial Solid Waste Collection Service and Residential Recycling Collection Service rates. At the end of the first year of this Agreement, and each year thereafter, the adjustment shall be made based on the Refuse Rate Index ("RRI") as set out in Exhibit III.

Additionally, for Residential Solid Waste Collection Service, Residential Recycling Collection Service, Commercial Recycling Collection Service and Commercial Solid Waste Collection Service the Contractor shall receive a monthly fuel price adjustment for the fuel cost component as set out in Exhibit III.

No change in rates except for the Payment Schedule adjustment as provided by this Agreement shall be made without the approval of the Authority Board. Annual rate adjustments shall be effective the following October 1, unless otherwise mutually determined by the Authority and the Contractor.

B. Billing, Collection, and Payments:

1. The Authority will be responsible for the billing and collection of payments for those units included in the Authority's mandatory Residential Solid Waste Collection Services and the Residential Recycling Collection Services programs. The Authority shall make monthly payments in arrears to the Contractor for the Residential Solid Waste Collection Service and Residential Recycling Collection Services provided pursuant to this Contract. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the Authority collects from customers for such service. Payments from the Authority to the Contractor will be due and paid no later than the tenth day of the month following the month during which services were rendered.

On or before October 1, and before commencement of work by the Contractor under the terms of this Agreement, the Authority shall provide to the Contractor the estimated total number of units to be serviced. By November 1 of each Fiscal Year, the Authority shall provide to the Contractor a copy of the annual assessment roll providing a detailed listing of all the units to receive these services. Thereafter and for the duration of this Agreement, the Authority shall promptly notify the Contractor of new residential units to be served and/or deleted and payments will be adjusted accordingly. New Dwelling Units which are added for service during the Authority's Fiscal Year will be added to the customer service list and payment will be paid by the Authority to the Contractor in the Contractor's



monthly payment. Payment will be prorated based upon the day of Certificate of Occupancy and verification of the beginning of actual service, whichever is later. The payments from the Authority to the Contractor for units added by Certificate of Occupancy are paid no later than the tenth day of the month, two months following the month during which the Dwelling Unit is provided a Certificate of Occupancy. After the first year of the Agreement, the Dwelling Unit becomes part of the total number of the subsequent year's total number of units, provided annually to the Contractor on or before October 1.

2. In the event the Contractor provides service to Dwelling Units whose parcel was not included on the annual assessment roll provided by the Authority, the Contractor must provide a written list of such Dwelling Units to the Contract Administrator within 90 days receipt of the assessment roll. Upon receipt of such written list by the Authority, the Contract Administrator will verify the customer address and that service to the unit is proper within 30 days, and if proper, shall remit monthly payments to the Contractor for such service effective as of October 1 of that Fiscal Year or the date service began, whichever is later. If the Authority has not received notification within 90 days by the Contractor, no adjustments to payment will be made until the next Fiscal Year annual roll is certified for the same units. However, the Authority reserves the right to correct any errors of omission or commission per the laws and rules that govern the Authority. In the event the Authority pays the Contractor for a residential unit in error for whatever reason, the Contractor shall notify the Contract Administrator. Upon determination of any overpayment, the Contract Administrator will verify the error and make appropriate adjustment to the Contractor's payment to correct the error.

C. Solid Waste Disposal Costs: Collection service costs and Solid Waste disposal costs shall be treated separately for the Solid Waste Collection services being provided pursuant to this Contract. Residential and commercial Solid Waste disposal costs shall be separated from residential and commercial collection service costs as shown in Exhibit II. Residential disposal costs will be part of the special assessment billed by the Authority except as otherwise provided in this Agreement. The Contractor will be given a disposal credit for each residential unit as calculated in Exhibit II. The non-assessed portion of the commercial disposal costs will be part of the service charge billed by the Contractor. The Contractor shall pay the Authority for all Solid Waste disposal costs incurred for disposing of all Solid Waste at the Authority's Disposal Facilities except for the portion of disposal costs which have been separately credited by the Authority.

D. Extraordinary Rate Adjustment: The Contractor may petition the Authority at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the cost of operations that could not reasonably be foreseen by a prudent operator. The Contractor's request shall contain substantial proof and justification, as determined by the Contract Administrator, to support the need for the rate adjustment. The Authority may request from the Contractor, and the Contractor



shall provide, such further information as may be reasonably necessary in making its determination. The Authority Board, in its sole discretion, may approve or deny the request, in whole or in part, within 120 days of receipt of the request and all other additional information required by the Authority.

- E. Franchise Fee:** To compensate the Authority for the cost of administration, supervision and inspection rendered for the effective performance of this Agreement, as well as other costs related to Collection, the Contractor shall pay to the Authority a fee of three percent (3%) of all gross revenues charged for services or operations conducted in the Service Area. Solid Waste disposal costs paid by the Contractor to the Authority under this Agreement shall be deducted from the gross revenue total prior to calculation of the franchise fee due to the Authority. Franchise fees shall be payable within forty-five (45) days of the last day of each calendar quarter. A late charge of 1.5% of the monies due for the Franchise fee shall be calculated monthly until payment is received. Misrepresentation of revenues by Contractor shall result in the following: 1) Contractor must pay the Authority the calculated difference determined from the misrepresentation within five (5) Business Days; 2) Contractor must pay an additional 20% assessment based on the misrepresented amount; 3) Contractor shall submit a Certified Financial Statement on a quarterly basis for the remainder of the Agreement. Such Certified Financial Statement must include the opinion of a Florida Certified Public Accountant who has conducted an audit of the Contractor's books and records in accordance with generally accepted auditing standards which include tests and other procedures necessary, that the Financial Statements are fairly presented, in all material respects, in conformity with generally accepted accounting practices.
- F. Exclusive Franchise:** Authority agrees to assist the Contractor in taking timely action against any entity violating, and/or in defense of, the Contractor's exclusive franchise rights granted under this Agreement.
- 7. HOLIDAYS:** The Contractor shall not be required to perform Collection on Thanksgiving Day and Christmas Day. Residential Solid Waste, Recovered Material and Vegetative Waste not collected from curbside service customers on Thanksgiving Day and Christmas Day shall be collected on the next scheduled service day. Residential Solid Waste and residential Recovered Material not collected from container service customers shall be collected on the next Business Day. The Contractor shall not be required to maintain office hours on Thanksgiving Day and Christmas Day. However, on all holidays except Thanksgiving Day and Christmas Day, the Contractor shall provide collection of Commercial Solid Waste, Commercial Recovered Material, Residential Solid Waste, Vegetative Waste and Residential Recovered Material and provide for operations personnel to accept calls from the Authority and the Contractor's customers.
- 8. SPECIAL SERVICES:** Rates charged for Special Services may not exceed the special service rates as listed in Exhibit II. In the event the requested special service is not included within Exhibit II, the Contractor may negotiate with the customer for the rate. Upon failure of the parties to reach an agreement on the rate, the Contract Administrator shall establish the rate. The Contractor shall be responsible for billing and collection of payment for all Special Services.



9. **PUBLIC AWARENESS PROGRAM:** The Contractor shall assist the Authority with the Public Awareness Program by distributing door hangers, stickers, flyers or other medium to residential and commercial customers as requested by the Authority. Additionally it is the Contractor's responsibility to provide information about those customers who repeatedly do not prepare or set out their Recovered Material or solid waste as specified within this Contract to the Authority.

The Commercial Recycling customer will also be notified, by the Authority through the Contractor, about special commercial recycling events, workshops, educational forums and symposiums and other activities, as needed.

10. **TREATMENT OF CONTAINERS:** The Contractor shall collect Residential Solid Waste, Vegetative Waste and Recovered Materials and Commercial Solid Waste and Recovered Materials with as little disturbance as possible and shall leave any receptacle at the same point it was collected. Unless otherwise specified in this Agreement, any Container, Compactor or Recycling Container requiring repair, replacement or delivery for whatever reason shall be repaired and/or replaced or delivered within five (5) Business Days of the request of the customer or the Authority. Unless otherwise specified in the Agreement, any Container, Compactor or Recycling Container damaged by the Contractor or reported in poor condition by the customer or the Authority shall be repaired or replaced at the Contractor's expense. Unless otherwise specified in the Agreement, for Recycling Containers provided to the Contractor by the Authority, the cost of Recycling Containers provided to replace those damaged by the Contractor or reported in poor condition by the customer or the Authority shall be deducted from the Contractor's monthly fees. Garbage Cans shall be replaced as provided for in Section 18. Throwing of any Garbage Can, Container or Recycling Container is prohibited. The Contractor shall neatly re-place the Container, Recycling Container and Garbage Can to the point of collection.

11. **PERSONNEL OF THE CONTRACTOR:**

- A. The Contractor shall assign a qualified person or persons to be in charge of the operations within the service area and shall give the name(s), office and cellular telephone numbers and, if applicable, email address of the person(s) to the Contract Administrator.
- B. Supervisory personnel must be present on all routes to direct operations in a safe and satisfactory manner. All supervisory personnel shall operate a non-collection vehicle that is clearly marked with Contractor's name and office telephone number.
- C. Contractor shall provide personnel sufficient to complete all routes. Supervisory personnel may temporarily operate collection vehicles in an emergency situation.
- D. The Contractor shall keep all contact information provided to the Authority current at all times.
- E. The Contractor's collection employees shall wear a uniform or shirt bearing the company's name during operations.



- F. The Contractor's name and office telephone number shall be properly displayed on all Solid Waste and recycling collection vehicles and Containers provided by the Contractor. All vehicles utilized for the collection of Recovered Material shall be clearly identified for that purpose.
 - G. The Contractor shall provide operating and safety training for all personnel.
 - H. The Contractor's employees shall treat all customers in a polite and courteous manner.
 - I. The Contractor shall provide emergency contact name(s), office, home and cellular telephone numbers and email address for all key personnel.
 - J. In the event of a dispute between customer and Contractor, key personnel of the Contractor shall be available to meet with Contract Administrator or his designee as requested by the Authority.
 - K. Any employee of the Contractor who removes or diverts Solid Waste or Recovered Materials from the Authority's system without authorization shall be prohibited from providing solid waste or Recovered Materials collection services under this Agreement.
12. **SPILLAGE:** The Contractor shall not litter or cause any spillage to occur upon the premises, roadway or the right-of-way wherein the collection shall occur. During hauling, all solid waste, Vegetative Waste and Recovered Materials shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. In the event of any spillage or leakage, including but not limited to, hydraulic and other fluids from the collection vehicle or materials such as paint, by the Contractor, for any reason or source, the Contractor shall clean up all spillage and leakage at no cost to the Authority or the customer within two (2) Business Days unless otherwise specified within this Agreement.
13. **SOLID WASTE AND RECOVERED MATERIALS PROCESSING FACILITIES:** All Residential Solid Waste, Vegetative Waste, and Recovered Material, and all Commercial Solid Waste and Recovered Material collected by the Contractor in the Service Area(s) pursuant to this Agreement shall be hauled to a Designated Facility. For all Service Areas the Contractor is free to use any suitable Designated Facility.

The Contract Administrator may specify in writing facilities not owned by the Authority as Designated Facilities. These facilities are supplemental to the facilities owned by the Authority. The Authority does not guarantee the continued availability of facilities not owned by the Authority. In the event a Designated Facility not owned by the Authority is unavailable, closes, or has its Designated Facility status revoked, Contractor shall use an alternate Designated Facility at no charge to the Authority.

Facilities managed and operated by the Authority, are periodically closed for maintenance an average of 30 Business Days every five (5) years. In the event a Designated Facility is closed, the Contractor shall take the solid waste, Vegetative Waste and Recovered Materials to another Designated Facility at no charge to the Authority, except as limited herein.



In the event an Authority owned Designated Facility closes more than 30 Business Days in a five (5) year period, for all routes in any Service Area, Contractor shall receive additional compensation for the additional travel time to an alternate Designated Facility. Contractor's rates shall be increased to 1.08 times the rate set out in Exhibit II, as adjusted by Exhibit III, if applicable, for each Business Day the Authority owned Designated Facility is closed in excess of thirty (30) Business Days and for each type of waste or Recovered Material for which acceptance is unavailable.

Unless otherwise specified in this Agreement, in the event that a load of Recovered Materials collected pursuant to Curbside Residential Recycling Collection Service or Containerized Residential Recycling Collection Service delivered to the Designated Facility contains more than 10%, by volume of the total load, material which is not Recovered Material or that there is more than 5% fiber products within the commingled Recovered Material or 5% commingled Recovered Material by volume within a load of fiber, the Authority has the right to reject the load and to charge the Contractor the full disposal fee for each ton within the load.

Unless otherwise specified in this Agreement, in the event that a load of Recovered Materials collected pursuant to Commercial Recycling Collection Service delivered to the Designated Facility contains more than 10% by weight or volume of the total load of solid waste, trash or commingle within a load of paper products, the Authority has the right to reject the load and to charge Contractor the full disposal fee for each ton within the load. The Contractor may pass this cost through to a commercial customer in the event that the Contractor can prove that the customer caused the contamination to the satisfaction of the customer. It is the responsibility of the Contractor to notify the Authority of any customer who has repeatedly contaminated the Recovered Materials.

The Authority currently operates a Dual Stream recycling program for both residential and commercial Recovered Materials. If at any time during the term of this Agreement the Authority begins to accept Single Stream Commercial Recovered Materials, the Authority reserves the right to designate a specific subset of facilities for the receipt and pre-processing of the material. The Authority shall designate at least one facility in each Service Area. In the event the Authority fails to designate at least one facility in a Service Area(s), Contractor's rates for Commercial Recycling Collection for those accounts receiving Single Stream Commercial Recovered Material Collection service shall be increased to 1.08 times the rate set out in Exhibit II, as adjusted by Exhibit III, if applicable, for each Business Day no such designated facility is provided in the Service Area(s).

- 14. COLLECTION 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 the contractual duties specified in this Agreement. Collection equipment utilized in this Agreement shall be not more than five (5) years old upon commencement of this Agreement. Upon execution of this Agreement and semi-annually thereafter, the Contractor shall provide in a format specified by the Contract Administrator a list of the equipment to be used by the Contractor to provide services relating to this Agreement. Solid Waste collection equipment shall be of the enclosed loader packer type, or other equipment that meets industry standards and is approved by the Contract Administrator, unless otherwise provided within this Agreement. All Equipment shall be kept in good repair,



appearance and in a sanitary, clean condition at all times. Recovered Materials collection equipment shall be of a dual compartment type (one compartment for paper products; one compartment for other Recovered Material), separate trucks or other equipment that meets industry standards and are approved by the Contract Administrator, and must be compatible for unloading at the designated RMPF or transfer station. In the event a compacting vehicle is used for the collection of Recovered Materials, compaction pressure may not exceed 50 pounds per square inch for the commingled non-paper Recovered Materials to avoid glass breakage. Equipment utilized for the collection of Recovered Materials shall be clearly identified for that purpose. The Contractor shall have available reserve equipment which can be put into service within two (2) 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. Contractor shall notify the Contract Administrator or his designee by phone within two hours of any equipment breakdown. If the public road or public right-of-way in the Service Area is substandard, as specifically designated by the Contract Administrator, in writing, the Contractor must provide lightweight equipment to service these roads.

15. **VEGETATIVE WASTE:** All Vegetative Waste shall be collected separately from Residential Solid Waste and Recovered Materials. The Contractor must sweep the street clean and rake up any remnants of vegetation remaining following the collection of any Vegetative waste not collected on the regular scheduled Collection day. Contractor is not required to collect debris generated by Land Clearing activity which includes but is not limited to stumps, tree trunks and logs.
16. **SPECIAL WASTE, HAZARDOUS WASTE, BIOHAZARDOUS OR BIOMEDICAL WASTE AND SLUDGE:** The Contractor shall not be required to collect and dispose of Special Waste.
17. **OFFICE AND EQUIPMENT YARD:** The Contractor shall maintain an office and equipment yard within Palm Beach County where complaints from the Authority and commercial customer inquiries shall be received. It shall be equipped with sufficient telephones, with no less than two phone lines, and shall be open during normal business hours and shall have local customer service and sales representatives sufficient to provide adequate phone coverage and assistance to customers within their own Service Area(s) from 8:00 a.m. to 5:00 p.m., Monday through Friday and from 8:00 a.m. to 2:00 p.m. on Saturday, with the exception of Thanksgiving Day and Christmas Day. The Contractor shall provide a fax machine with a dedicated fax line and computer to receive complaints from the Authority. If during the term of this Agreement, the transmission of complaints is through electronic media (email), Contractor must have a dedicated computer with internet access to receive, process, and respond to such communication in the same timely manner as when fax communication was utilized. The Contractor shall provide an answering machine during non-office hours for customer requests and questions to be responded to during the following Business Day. The Contractor shall provide a contact person for the Authority to reach during all non-office hours. The contact person must have the ability to authorize Contractor operation in the case of Authority direction or situations requiring immediate attention. An equipment yard must be established within Palm Beach County no later than September 1, 2013. Failure to establish an office and equipment yard may result in loss of franchise, pending the Contract Administrator's review of whether the



Contractor is using his best efforts to establish an equipment yard in a timely manner. Equipment yard means a real property location that shall be utilized by the Contractor for the storage and keeping of all equipment needed by the Contractor to provide all services under this Agreement in the Service Area.

- 18. COMPLAINTS:** All service complaints shall be directed to the Contract Administrator, or his designee. The complaint will be forwarded to the Contractor by telephone, computer or electronic media not less than twice daily where it shall be recorded on a complaint log by the Contractor. The complaint shall be resolved no later than 3:00 p.m. the next Business Day after it is received by the Contractor. When the complaint is received on a Saturday or the day preceding Thanksgiving Day and Christmas Day, it shall be resolved by the Contractor no later than the next regular working day.

When the Contract Administrator or his designee notifies the Contractor of a complaint, the Contractor shall take the appropriate steps that may be necessary to resolve the complaint by 3:00 p.m. on the next Business Day after its receipt. If a complaint cannot be resolved by 3:00 p.m. on the next Business Day following scheduled Collection day, the Contract Administrator shall be notified in writing of reason for non-resolution of complaint.

Non-conforming solid waste, Recovered Materials and Vegetative Waste not properly tagged by the Contractor shall be collected by the Contractor by 3:00 p.m. on the next Business Day following scheduled Collection day. Complaints of sloppy service provided by Contractor, including, but not limited to solid waste, Recovered Materials or Vegetative Waste being left in the roadway or Garbage Cans not being returned to point of collection on the scheduled Collection day shall be resolved by 5:00 p.m. on the same day.

The Contractor shall investigate and provide the Contract Administrator or his designee with a full written explanation of the disposition of any complaint involving a claim of damage to private or public property as a result of actions of the Contractor's employees, agent, or sub-contractors within 24 hours of receipt. The Contract Administrator will consider all documentation provided and make final determination of party responsibility. If the Contractor fails to provide a written explanation of the disposition of such complaints within 24 hours of receipt, determination of responsibility shall be in favor of the customer and Contractor shall be held liable for all necessary repairs. Any damage shall be repaired within five (5) Business Days, with the exception of mailboxes and Garbage Cans, which shall be repaired or replaced within three (3) Business Days. With regard to complaints of damage to or missing Garbage Cans, on an annual basis Contractor, at its expense, shall replace a minimum number of Garbage Cans per Service Area as set forth in Exhibit V. Replacement Garbage Cans shall be similar in size and style as that which was reported as damaged or missing and shall be replaced to the satisfaction of the customer. Once the minimum number of Garbage Can replacements as set forth in Exhibit V has been met, Contractor shall be responsible for replacing, at its expense, any additional Garbage Can(s) determined to be damaged or missing through negligence of Contractor's personnel (including agents, employees or subcontractors) however Contractor shall not be required to replace Garbage Cans which exhibit signs of normal wear and tear. In the case of an unresolved dispute, the Contract Administrator's or his designee's decision shall be final.



19. QUALITY OF PERFORMANCE OF CONTRACTOR: It is the intent of this Agreement to ensure that the Contractor provides high quality services.

A. Complaints: All complaints received by the Contract Administrator, or his designee, and reported to the Contractor shall be promptly resolved pursuant to the provisions of Section 18 of this Agreement. Complaints shall not include customer informational requests or Recycling Container requests. A complaint not resolved by 3:00 p.m. on the next Business Day, unless otherwise provided in this Agreement, shall count as two complaints. In the event complaints received from curbside customers exceed any of the following percentage(s), which reflect the percentage of the residential curbside customers within the Service Area served by the Contractor during any Fiscal Year, the Contract Administrator shall levy as liquidated damages in the amount of \$200.00 per incident to reimburse the Authority for the cost of receiving, logging, investigating, and following up on the complaint.

Complaint Type	Annual %	Monthly %
Garbage, Trash and Damage	4%	0.5%
Recycling	2%	0.25%
Vegetation	2.5%	0.35%

B. Other Administrative Charges: In addition to the liquidated damages provided for in Subsection 19A related to customer complaints, the Contract Administrator may, without regard to the percentage of customer complaints, also levy liquidated damages at the rate of \$200.00 per day per incident for any other infraction of this Agreement to reimburse the Authority for the cost of receiving, logging, investigating and following up on the complaint and or failure to perform, and additional costs that cannot be reasonably quantified. Such infractions include but are not limited to:

1. Failure to provide clean, safe, sanitary equipment;
2. Failure to maintain office hours as required;
3. Failure to provide documents and reports in a timely and accurate manner;
4. Failure to repair or replace and/or deliver a Container, Compactor, Recycling Container, Garbage Can, or mailbox within the required time period;
5. Failure to clean spillage other than the clean-up required by the Palm Beach County Health Department, as provided in Section 19(C)4 below;
6. Failure to cover and or secure materials on collection vehicles;
7. Collection employees out of uniform;
8. Name and phone number, and if applicable, size not displayed on Collection vehicles or Containers;
9. Failure to provide schedule and route maps;
10. Using an improper truck for the specific service provided;
11. Failure to submit a disclosure notice to either a customer or the Contract Administrator;
12. Failure to report recycling activity monthly (on or before the 10th day of the following month), in the format determined by the Authority, for the purpose of tracking and verifying countywide recycling activity;



13. Failure to collect Recovered Materials, Solid Waste or Vegetative Waste on schedule for any customer who has been missed more than three times within a 12 month period;
14. Failure to respond to customer calls, including all residential and commercial customers, in a timely and appropriate manner;
15. Failure to place a contamination sticker in Recycling Containers, as required;
16. Failure to repair damage to property resulting from Contractor's (including agents, employees or subcontractors) equipment failure or negligence within five (5) Business Days.

C. Major Prohibitions and Liquidated Damages: The following constitute serious violations of this Agreement that have negative impacts on the Authority, the costs of which are not reasonably quantifiable, and are subject to liquidated damages and potentially loss of Franchise.

1. Intentionally commingling Solid Waste, Vegetative Waste and/or Recovered Materials (including commingling recovered fiber with recovered commingle material, or recovered dual stream material with recovered single stream material in the event that the Authority authorizes single stream Commercial Recycling Collection Service) is prohibited and may result in liquidated damages in the amount of \$5,000.00 per incident to reimburse the Authority for the cost of inspecting, sorting, handling and disposing of the contaminated load, and the costs associated with potential injury to employees and workers who are exposed to said contamination, and upon the fifth offense may constitute default of contract and result in loss of Franchise.
2. Changing routes, including the starting point of a route without approval from the Authority or notification to the Authority and the customer is prohibited and will result in liquidated damages of \$2,000.00 per incident to reimburse the Authority for the costs of managing the service disruption, including the cost of receiving, logging, investigating and following up on customer complaints, communicating with the Contractor and coordinating the return to normal service. Additionally, the Contractor shall be required to return to the previous route(s) and schedule and properly notify customers in accordance with the requirements of this Agreement at no cost to the Authority or customer.
3. Billing commercial customers service charges unauthorized by this Agreement, such as special fuel surcharges, handling charges or billing charges is prohibited and will result in the assessment of liquidated damages in the amount of \$500 per incident to compensate the Authority for the cost of receiving, logging, investigating and following up on customer complaints, communicating with the Contractor and the customer, and coordinating the reimbursement to the customer for all non-approved charges. Contractor shall also be required to reimburse the customer for all non-approved charges paid by the customer.
4. Violating the exclusive Franchise in another contractor's Service Area without approval from the Authority is prohibited and will result in the assessment of liquidated damages of \$5,000.00 per incident to compensate



the Authority for managerial, and investigative costs associated with defending and reinstating the exclusive Franchise rights of the Authority's franchisee, in addition to reasonable attorneys fees incurred by the Authority. Additionally, Contractor will be required to pay restitution to the offended contractor in an amount equal to the contractor's lost collection charges at the rate per cubic yard, or pull, whichever is applicable, as of the time of the infraction for every cubic yard, or pull.

5. Failure to clean up spillage of any substance required to be cleaned up by and in accordance with the Palm Beach County Health Department will result in the assessment of liquidated damages in the amount of \$2,500.00 per day, per incident to compensate the Authority for the cost of receiving, logging, investigating and following up on customer complaints, assessing the extent of the damage, and communicating with the Contractor, the Health Department and the customer(s). Additionally, in the event of such failure to clean up spillage, the Authority retains the right to perform or contract for the performance of such clean-up and assess the Contractor for all costs incurred.
6. The Contractor, providing Collection service on behalf of the Authority, excepting as provided for in Section 5, is required to deliver all Commercial and Residential Solid Waste, Vegetative Waste and Recovered Materials collected pursuant to this Agreement to disposal facilities and/or Recovered Materials Processing Facilities, designated by the Authority. Diversion of these materials to any facility not designated by the Authority without the written consent of the Contract Administrator, whether within or outside Palm Beach County, is prohibited and will result in the following assessments:

The first offense will result in the assessment of liquidated damages in the amount of \$100,000.00 to compensate the Authority for the investigative and legal costs and expenses incurred to ascertain and quantify the extent of the violation. Additionally, in the case of Solid Waste, the Contractor shall reimburse the Authority for lost revenue based on the per ton tipping fee for garbage in effect at the time of the offense for each ton of material diverted, plus reimbursement for lost energy revenues, if any. In the case of Recovered Material, in addition to liquidated damages, the Contractor shall reimburse the Authority for lost net revenue based solely on the then current average commodity value as determined by Authority sales and the then current incremental processing cost paid by the Authority for processing at the Authority-owned Recovered Materials Processing Facility.

The second offense may result in, loss of franchise(s) and a ten (10) year ban on the ability to bid on future Solid Waste Authority of Palm Beach County Solid Waste and recycling collection agreements.

Provided that the Contractor provides timely notification to the Authority, and notwithstanding the above, the parties agree that it is not the intent of



this subsection to punish the Contractor, beyond the payment of restitution, for the random, infrequent or inadvertent actions of an employee, acting in a manner other than as directed by the Contractor, that result in the diversion of materials from an Authority approved facility.

To the extent allowed by law, the imposition of the above liquidated damages is in addition to any fines or penalties that may arise out of any proceeding, criminal or civil, for violations of the Palm Beach County Solid Waste Act (Ch. 2001-331), any Authority rule, or any other Federal, State, or local act, ordinance, resolution or rule.

7. Failure to complete, defined as failing to provide scheduled service to a minimum of 95% of the households, a route or community on the regular scheduled pick-up day shall result in the assessment of liquidated damages in the amount of \$1,000.00 for each route/community per day not completed to reimburse the Authority for the value of services not rendered, costs of managing the service disruption, including the cost of receiving, logging, investigating and following up on customer complaints, communicating with the Contractor and coordinating the return to normal service. Each missed route/community shall be completed by 10:00 a.m. of the next Business Day following regular scheduled collection day. Failure to collect missed routes/communities by 10:00 a.m. the next Business Day as required will result in an additional \$1,000.00 assessment for each route/community not completed.

For the purpose of this Section, the Contract Administrator may deduct any charges from payments due or to become due to the Contractor. In the event the Contractor fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided within this Agreement, the Contract Administrator may arrange for the repairs and assess the Contractor for the cost of the repairs and any applicable administrative charges. The Contract Administrator may assess administrative charges and liquidated damages pursuant to this Section on a monthly basis in connection with this Agreement and shall at the end of each month during the term of this Agreement notify the Contractor and the Governing Board of the Authority in writing of the charges assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment it shall, within five (5) Business Days after receiving such monthly notice, request in writing an opportunity to be heard by the Authority Board and present its defense to such assessment. Notwithstanding the foregoing, any individual assessment of liquidated damages in an amount greater than or equal to \$10,000, or loss of Franchise, shall be imposed only upon the prior approval of the Governing Board of the Authority.

The Authority shall notify the Contractor in writing of any action taken with respect to Contractor's claims and the decision of the Authority Board will be final. Any aggrieved party that wishes to appeal may apply in the Circuit Court of Palm Beach County, Florida, within thirty (30) days of the rendition of such decision, for review by Writ of Certiorari in accordance with the applicable Florida Appellate Rules.



D. Filing of Requested Information and Documents:

1. In addition to any other requirements of this Agreement, the Contractor shall be required to file pertinent statistical and aggregate cost information pertaining to solid waste Collection and recycling Collection services that is requested by the Authority. The results of all recycling activity conducted by the Contractor in the Service Area during each month, whether residential or commercial, shall be reported accurately to the Authority, in a format and with such dates as specified by the Authority, on or before the 10th day of the following month.
 2. The Contractor shall file and keep current with the Authority all documents and reports required by this Agreement. By September 1st of each year this Agreement is in effect, the Contractor shall ensure and certify to the Authority, in a format acceptable to the Contract Administrator, that all required documents are current and on file with the Authority.
 3. The Contractor shall maintain a detailed list of collection vehicles and route schedules and maps for the term of this Agreement and each month shall file a written report of equipment and routes, or as requested by the Contract Administrator, in a format as provided by or acceptable to the Contract Administrator.
 4. Annually, no later than the last Business Day of October, the Contractor shall provide the Authority a list of all residential and commercial roll-off compactors or permanent roll-off containers within the Service Area. The list shall include at a minimum the customer name, customer contact person, customer contact telephone number, service address, compactor or container size, Authority decal number, and level of service,
 5. Failure to file any document or report within three (3) Business Days of the required filing date, except where granted an extension by the Contract Administrator, may result in the assessment of liquidated damages as authorized pursuant to this Section 19.
- 20. NATURAL DISASTERS:** In the event of a hurricane, tornado, major storm or other natural disaster, the Contractor's sole responsibility shall be to reestablish regular routes and schedules for the collection of Solid Waste, Recovered Materials, and Vegetative Waste as soon after the natural disaster as possible. The collection and disposal of Solid Waste shall be the highest priority. The collection and disposal of debris generated by a natural disaster shall not be the responsibility of the Contractor. Under a separate Agreement, the Authority shall procure collection and disposal services for debris generated by a natural disaster. The Contractor agrees to provide full cooperation with the Authority and the debris collection contractor in the aftermath of a natural disaster in an effort to return the county to its pre-disaster state, and resume normal collection services.



21. **FORCE MAJEURE:** Neither the Authority nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid.

Neither party shall, however, be excused from performance if nonperformance is due to forces which 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 a Force Majeure event, give written notice to the other party describing the Force Majeure preventing continued performance of the obligations of this Agreement.

22. **PERMITS AND LICENSES:** The Contractor shall obtain, at their own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect throughout the Term of this Agreement. Any changes of the licenses or permits shall be reported to the Authority within ten (10) Business Days of the change. Failure to obtain and maintain all permits and licenses, including but not limited to any permit or license which may in the future be required by the Authority to engage in the business of Collection in Palm Beach County, shall constitute an event of default.

23. **PERFORMANCE BOND:** The Contractor shall furnish to the Authority a performance bond executed by a surety company rated A- VII or higher by A.M. Best & Co., having a successful record of continuous operation, and licensed, admitted and authorized to do business in the State of Florida and/or a clean irrevocable letter of credit issued by a bank within Palm Beach County to ensure the faithful performance of this Agreement and all obligations arising hereunder in the appropriate amount determined in accordance with Exhibit IV, attached. A clean, irrevocable letter of credit or bond, either of which meeting the requirements of this section, may be substituted for the other upon approval by the Authority. The form of this bond or letter of credit, and the Surety Company, shall be acceptable to Authority legal counsel and the Contract Administrator and shall be maintained during the term of this Agreement as provided in Section 1. The bond(s) shall be endorsed to show the Authority as obligee and it shall provide that bond(s) shall not be canceled, limited or non-renewed until after thirty (30) days' notice has been given to the Authority. Current performance bonds evidencing required coverage must be in force and on file at the Authority at all times.

24. **INSURANCE:**

- A. **Worker's Compensation Insurance:** Worker's 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.
- B. **Liability Insurance:** The Contractor shall, during the term of this Agreement, and any extensions hereof maintain in full force and effect commercial general liability insurance policy and automobile liability insurance policy, which specifically covers all exposures incident to the Contractor's operations under this contract. Such



insurance shall be with an insurance company with a current AM Best Rating of A-VII or better, and authorized to do business in the state of Florida and each policy shall be in an amount of not less than \$1,000,000.00 Combined Single Limit for personal bodily injury, including 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 Contractor's Agreement or indemnity and Fire Legal Liability. In addition to the above liability limits, the Contractor shall maintain \$5,000,000.00 in umbrella and/or excess liability coverage. Policy(ies) shall be endorsed to show the Authority, a political subdivision of the State of Florida, as an additional 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 Authority. Current certificates of insurance evidencing required coverage must be on file with the Authority at all times. Contractor expressly understands and agrees that any insurance protection furnished by Contractor shall in no way limit its responsibility to indemnify and save harmless Authority under the provisions of Section 26 of this Agreement.

- 25. INDEMNIFICATION:** The Contractor will hold the Authority harmless from any and all liabilities, losses or damages the Authority may suffer as a result of claims, demands, costs or judgments against the Authority arising out of the acts or omission of the Contractor or its employees, which said liabilities, losses, damages, claims, demands, costs or judgment arise out of the matters which are the subject of this Agreement and the work to be performed thereby. The Contractor shall not be responsible for nor be required to indemnify or hold the Authority harmless for any act, omission, negligence or other liability to the extent caused by the act or omission of the Authority or any one of its employees or agents.
- 26. ACCESS AND AUDITS:** The Contractor shall maintain within Palm Beach County adequate records of the solid waste collection and/or recycling services for every year of the Agreement and for five (5) years following the end of the term of this Agreement. Upon request, the Authority or its designee shall have the right to review all records maintained by the Contractor upon 48 hours written notice. In the event that the Authority exercises its right to review under this Section within the term of this Agreement or within the five (5) year period following the end of the term of this Agreement, Contractor must then continue to maintain all records until released by the Authority. If the Contractor fails to maintain records as required pursuant to this Section or infringes the Authority's right to review said records at any time during the period beginning on the date of execution of this Agreement and ending on the date five (5) years after the end of the term of this Agreement, or in the event the Authority has exercised its right to review, the date beyond the date five (5) years after the end of the term of this Agreement that the records are released by the Authority, the Authority will suffer damage, the amount of which is difficult or impossible to ascertain. Therefore, as a consequence of the aforementioned failure, and in addition to the liquidated damages specifically provided for in this Agreement, the Contractor shall pay to the Authority, as liquidated damages, the sum of \$1,000,000.
- 27. POINT OF CONTACT:** All dealings, contacts, notices, and payments between the Contractor and the Authority shall be directed by the Contractor to the Contract Administrator or designee.



28. **NOTICE:** Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO THE CONTRACTOR:

**Local
Advanced Disposal Services Solid Waste Southeast, Inc.
363 Tall Pines Road
West Palm Beach, Florida 33413**

Attention: Joseph Sandora, General Manager

**Corporate
ADS Waste Holdings, Inc.
90 Fort Wade Road, Suite 200
Ponte Vedra, FL 32081**

Attention: General Counsel

28. **NOTICE:** Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

AS TO THE AUTHORITY:

**Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412**

Attention: Contract Administrator Copy to: Executive Director

AS TO THE CONTRACTOR:

**Advanced Disposal Services Solid Waste Southeast, Inc.
363 Tall Pines Road
West Palm Beach, Florida 33413**

Attention: Charlie Appleby, CEO

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, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next Business Day. The original of the notice must additionally be mailed as required herein.

29. **DEFAULT OF CONTRACT:**

- A. The Authority may cancel this Agreement, except as otherwise provided below in this section, by giving Contractor thirty (30) days advance written notice, to be served as hereafter provided, upon the happening of any one of the following events:
1. Contractor 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 readjustment 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; or
 2. By order or decree of a Court, 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 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; or

3. 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 Contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or
 4. The Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by the Authority pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto, whether such default is considered minor or major, and said default is not cured within thirty (30) days of receipt of written notice by Authority 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 Contractor of written demand from Authority to do so, Contractor 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 Contractor having the burden of proof to demonstrate [a] that the default cannot be cured within thirty [30] days, and [b] that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time).
- B. However, notwithstanding anything contained herein to the contrary, failure of Contractor to provide collection service for a period of two (2) consecutive scheduled Business Days, the Authority may secure the Contractor's billing records (at the request of the Authority, the Contractor shall immediately provide such records). On the third Business Day, in order to provide interim collection services, the Authority may hire an alternate service provider until such time as the matter is resolved and the Contractor is again able to perform pursuant to this Agreement; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) Business Days all liability of the Authority under this Agreement to the Contractor shall cease and this Agreement may be deemed immediately terminated by the Authority. The cost to provide interim collection service, including all of the Authority's costs, shall be at the Contractor's expense, paid by the Authority and deducted from Contractor's payment(s).
- C. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Section, in the event that Contractor's record of performance shows that Contractor has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by Contractor, in the opinion of Authority and regardless of whether Contractor has corrected each individual condition of default, Contractor may be deemed a "habitual violator", shall forfeit the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and



collectively, shall constitute a condition of irredeemable default. The Authority shall thereupon issue Contractor final warning citing the circumstances therefore, and any single default by Contractor of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of this Agreement. In the event of any such subsequent default, Authority may terminate this Agreement upon the giving of written Final Notice to Contractor, such cancellation to be effective upon the fifteenth consecutive calendar day following the date of Final Notice, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and Contractor shall have no further rights hereunder. Immediately upon receipt of said Final Notice, Contractor shall proceed to cease any further performance under this Agreement.

- D. In the event of any of the aforesaid events specified in paragraphs A, B, and C above and except as otherwise provided in said paragraphs, termination shall be effective upon the date specified in Authority's written notice to Contractor and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the Authority under this Agreement to the Contractor shall cease, and the Authority shall have the right to call the performance bond and shall be free to negotiate with other Contractors for the operation of the herein specified services. The Contractor for failure to perform shall reimburse the Authority all direct and indirect costs of providing interim collection service.

30. **PUBLIC WELFARE:** The Authority shall have the power to make changes in or to impose new and reasonable rules and regulations on the Contractor under this Agreement relative to the method of collection and disposal of Garbage, Trash, Bulk Trash, Vegetative Waste or Recovered Materials as shall from time to time be necessary and desirable for the public welfare; provided, however, that any such rule or regulation shall be delivered to and accepted for by the Contractor, or if the Contractor is a corporation, by an officer thereof. The Authority shall give the Contractor reasonable notice of any proposed change and an opportunity to be heard concerning those matters. The method of collection and disposal of Solid Waste and Recovered Materials set out herein shall also be liberally construed to include, but not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. The Contractor shall be reasonably and appropriately compensated as determined by negotiation and Agreement between the Authority and the Contractor for any additional services or other obligations required of the Contractor due to any modification in the Agreement under this Section.
31. **RIGHT TO REQUIRE PERFORMANCE:** The failure of the Authority at any time to require performance by the Contractor of any provisions hereof shall in no way affect the right of the Authority thereafter to enforce the same. Nor shall waiver by the Authority of any breach of any provisions hereof be taken or held to be waived of any succeeding breach of such provisions or as a waiver of any provision itself.
32. **TITLE TO WASTE:** The Authority shall, at all times, hold title and ownership to all Commercial Solid Waste, Recovered Materials and Vegetative Waste and Residential Solid Waste, Vegetative Waste, and Recovered Materials and all other waste collected by the Contractor pursuant to this Agreement and the Contractor shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials without specific written authorization from the Contract Administrator.



33. **GOVERNING LAW AND VENUE:** Any and all legal action necessary to enforce the Agreement will be held in a state court of competent jurisdiction located in Palm Beach County and the Agreement will be interpreted according to the laws of Florida.
34. **COMPLIANCE WITH LAWS:** The Contractor shall conduct operations under this Agreement in compliance with all applicable laws, regulations and rules.
35. **SEVERABILITY:** The invalidity, illegality, or non-enforceability 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 be determined to be void.
36. **ASSIGNMENT:** No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the Authority. The Authority shall have full discretion to approve or deny, with or without cause, any proposed assignment or assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written consent of the Authority shall be null and void and shall be grounds for the Authority to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Contractor, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the Authority under this Agreement to the Contractor shall cease, and Authority shall have the right to call the performance bond and shall be free to negotiate with other contractors or any other person or company for the service of the franchise area which is the subject of this Agreement. In the event of any assignment, assignee shall fully assume all the liabilities of the Contractor.

It is the intent of the parties that no person, corporation or company, whether by itself or through a relative, itself or through its parent(s), subsidiary(s) or holding companies, shall at any time hold or have control of more than three (3) of the four (4) Solid Waste and Recycling Collection Franchise Service Areas identified as Service Area 1, Service Area 2, Service Area 3, and Service Area 4, nor exceed this amount from the acquisition of an additional franchise.

For purposes of this section a parent, subsidiary or holding company shall mean any person, corporation or company holding, owning or in control of more than 10% of the stock or financial interest of another person, corporation or company.

37. **MODIFICATION:** This Agreement constitutes the entire contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto. Such modification shall be in the form of an Amendment executed by both parties.



- 38. INDEPENDENCE OF AGREEMENT:** 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 between the parties hereto, or as constituting the Contractor as the agent, representative or employee of the Authority for any purpose whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Agreement.
- 39. ANNEXATIONS AND INCORPORATIONS:** Adjustments to Service Area boundaries and the rights of the parties to this Contract due to municipal annexation or contraction will be as provided by Florida Statutes Section 171.062, as amended, or its successor. Adjustments to Service Area boundaries and the rights of the parties to this Agreement due to incorporation will be as provided by Florida Statutes Section 165.061, as amended, or its successor.
- 40. 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 for counties or municipalities 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 opening and awarding of bids for this Agreement is in conflict with, or requires changes in, the provisions of collection service or exclusive rights set out in this Agreement, the parties agree to enter into good-faith negotiations for the resolution of any such changes in this Agreement as a result of change in law.

- 41. OTHER RATE ADJUSTMENTS:** The Authority will strictly enforce all of the provisions of the Franchise Agreement including liquidated damages clauses for any performance quality problems. The Contractor shall not be allowed rate increases on the basis that the Contractor bid too low or agreed to do the work for a lower bidder's price. Non-performance of Franchise Agreement or a request for a rate increase, either of which are attributed to the Contractor accepting the Franchise Agreement award at an insufficiently low rate, may, at the Authority's sole discretion, result in cancellation of all Solid Waste and Recycling Collection Franchise Agreements for all Service Areas entered into with the Contractor.
- 42. SMALL BUSINESS ENTERPRISE AND LOCAL BUSINESS PARTICIPATION**

A. SMALL BUSINESS ENTERPRISE

The Authority Governing Board has set fifteen (15) percent as the Authority's goal for local Small Business Enterprise (SBE) participation in this contract. The percentage of participation shall be calculated by dividing the actual payments made to local certified SBEs providing goods and/or services necessary to support the required services under the agreement by 60% of Net Total Expenses which Net Total Expenses are defined as the total revenues received by Contractor, from any source, to provide the services required by this Agreement less disposal fees paid to the Authority.



The goal is to encourage doing business with local SBEs with certifications from the Palm Beach County Office of Small Business Assistance or any other Florida governmental agency. The Authority does not have a certification program therefore proof of current certification from one of the above listed sources will be required. For the purposes of this requirement, the term "local SBE" means a SBE, certified by the Palm Beach County Office of Small Business Assistance or any other Florida governmental agency, which SBE has a permanent place of business within the county and which holds a business tax receipt issued by the county that authorizes the business to provide the goods, services, or construction to be purchased and which business tax receipt is issued prior to the issuance of this invitation for bids. For the purposes of this requirement, having a "permanent place of business" within the county means having headquarters which are located within the county or a permanent office or other site located within Palm Beach County from which the local business will produce or provide a substantial portion of the goods or perform a substantial portion of the services to be purchased and which headquarters or office was in existence prior to the issuance of the invitation for bids. A post office box or location at a postal service center shall not constitute a permanent place of business.

Contractor's submitted local SBE plan showing how it will assist the Authority in achieving this goal through local SBE supplier and subcontractor participation or any other method is incorporated into this Agreement. The Authority will require documentary proof semi-annually, acceptable to the Authority, of the implementation, progress, and final outcome of the proposed local SBE plan. Contractor is required to make a Bona Fide Effort to implement the plan, to do business with local SBEs, and to achieve the fifteen (15) percent goal. Failure to make a Bona Fide Effort to implement Contractor's plan and to solicit, encourage, engage and pay local SBEs to provide goods and services related to the collection of solid waste and recovered materials in an effort to achieve the goal shall be considered by the Authority as a failure to perform a material provision of the Contract, and further, shall be cause for debarment in accordance with the SWA Purchasing Manual, Section 11, paragraphs D or E.

Hiring of minority personnel, although laudable, does not qualify for the purposes of meeting the goal. The goal is to encourage doing business with local SBEs with certifications from the Palm Beach County Office of Small Business Assistance (OSBA) or any other Florida governmental agency. The Authority does not have a certification program. Proof of current certification from one of the above listed agencies will be required.

In response to the invitation to bid, the Contractor provided a list of certified local SBE suppliers and subcontractors who will be used on the contract. The Contractor will only be permitted to replace a certified local SBE supplier or subcontractor that appears on this list and who becomes unwilling or unable to perform with another certified local SBE supplier or contractor unless otherwise authorized by the Authority. For the purposes of replacing a listed, local SBE, it shall be sufficient that the replacement SBE have its certification and have established its local headquarters or office, in accordance with the requirements above, at any date prior to the date when Contractor determined that the listed, local SBE needed to be replaced.



For the purposes of this agreement, "Bona Fide Effort" shall mean the obligation to make every effort a similarly situated, prudent business entity operating under similar circumstances would make when acting in a determined manner to obtain the intended result by action or expenditure, which is not unreasonably disproportionate or burdensome under the circumstances. The following actions are required to demonstrate a Bona Fide Effort, the quality, quantity, intensity and timeliness of which shall be used to determine compliance with this Section:

1. Contractor, in the absence of due cause, must use all of the certified local SBE suppliers and contractors listed by the Contractor in its response to the Invitation to Bid, unless the local SBE contractor becomes unwilling or unable to perform. Contractor shall not replace a listed, local SBE until the Authority has confirmed that the listed, local SBE is unwilling or unable to perform. If the Authority agrees that the listed, local SBE is unwilling or unable to perform, the local SBE must be replaced with another certified local SBE supplier or contractor unless otherwise authorized by the Authority.
2. For every procurement, Contractor must consult the list(s) of certified local SBEs, provided by one or more of the following: the Palm Beach County Office of Small Business Assistance or any Florida governmental agency and make a Bona Fide Effort to identify certified local SBEs that provide the supplies or services sought.
3. For every procurement, Contractor shall contact certified local SBEs that provide the supplies or services sought, assess their qualifications and interest to provide the supplies or services sought, and provide them with the opportunity to submit a quote, bid or proposal.
4. Contractor shall thoroughly investigate the capabilities of local SBEs and maintain documentary evidence that it did not reject local SBEs without sound reasons.
5. Contractor shall advertise in general circulations, trade association, and/or small business focused media concerning local SBE supplier and subcontractor opportunities.
6. Contractor shall use the services of community organizations, local SBE contract groups, local or state assistance offices, and other organizations that provide assistance in the recruitment and placement of local SBEs.
7. Contractor shall conduct outreach to foster relationships with local SBEs and the organizations that provide assistance in the recruitment and placement of local SBEs.

The Contractor agrees to maintain all relevant records and information necessary to document compliance with this contract and shall allow the Authority to inspect such records upon request.



B. LOCAL BUSINESS PARTICIPATION

The Governing Board of the Authority has made it a priority for this contract that the use of local businesses be maximized by all bidders when selecting subcontractors. For the purposes of this requirement, the term "local business" means a business which has a permanent place of business within the county and which holds a business tax receipt issued by the county that authorizes the business to provide the goods, services, or construction to be purchased and which business tax receipt is issued prior to the issuance of this invitation for bids. If the business is a joint venture/partnership, it is sufficient for qualification as a local business if at least one (1) of the joint ventures/partners meets the test set forth in this subsection. For the purposes of this requirement, having a "permanent place of business" within the county means having headquarters which are located within the county or a permanent office or other site located within Palm Beach County from which the local business will produce or provide a substantial portion of the goods or perform a substantial portion of the services to be purchased and which headquarters or office was in existence prior to the issuance of the invitation for bids. A post office box or location at a postal service center shall not constitute a permanent place of business.

In response to the invitation to bid, the Contractor provided a list of local businesses that will be used on the contract. That list is incorporated herein as a part of this contract. The Contractor will only be permitted to replace a listed local business that becomes unwilling or unable to perform. To the extent that Contractor is required to replace a listed local business, or if a new subcontracting opportunity becomes available, Contractor shall use Bona Fide Efforts, acceptable to the Authority, to utilize a local SBE and then, if none are available or acceptable, to use a local business to supply the needed goods or services. Bona Fide Efforts, under this local business section, shall be demonstrated by, to the greatest extent possible, taking actions similar to those required to demonstrate Bona Fide Efforts in the SBE section, above. For the purposes of replacing a listed local business, it shall be sufficient that the replacement business have established its local headquarters or office, in accordance with the requirements above, at any date prior to the date when Contractor determined that the listed, local business needed to be replaced.

The Authority will require documentary proof semi-annually, acceptable to the Authority, of the implementation, progress, and final outcome of the Contractor's efforts to utilize local businesses.

The Contractor agrees to maintain all relevant records and information necessary to document compliance with this contract and shall allow the Authority to inspect such records upon request.

- 43. PUBLIC ENTITY CRIMES:** No Contractor may be a person or affiliate identified on the Department of General Services "convicted vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from public contracting and purchasing process because they have been found guilty of a public entity crime. The Contractor is required to comply with Florida Statutes Section 287.133, as amended, or its successor.



- 44. **SUBSTANTIAL COMPLIANCE:** The Contractor shall promptly collect all materials disposed of by the customer, provided the materials are prepared and placed within substantial compliance with the guidelines as set forth herein. Any dispute as to the standards of substantial compliance shall be determined by the Contract Administrator or his designee.

- 45. **COMPETENCY TO CONTRACT:** The Contractor expressly recognizes, acknowledges, and agrees the Solid Waste Authority of Palm Beach County is a legally constituted agency, that is, a dependent special district created by the Florida Legislature in Chapter 2001-331, Laws of Florida. Furthermore, the Contractor expressly admits, acknowledges, and recognizes the Authority's jurisdiction and ability to enter into collection franchise agreements in Palm Beach County. The Contractor expressly recognizes, acknowledges and agrees that the Authority has the legal right under Chapter 2001-331, Laws of Florida, to maintain flow control of Solid Waste generated within Palm Beach County, and has the right under 403.7046 F.A.C. to provide for the exclusive collection, transportation and processing of Recovered Materials from single family and multi-family residential properties. The Contractor hereby waives any legal causes of action regarding the Solid Waste Authority's competency and/or ability to enter into solid waste collection franchise agreements.

- 46. **COMMUNITY SERVICE:** The Contractor shall provide collection of debris through means of roll-off Container(s), placement and collection pull service or by mechanical means utilizing a clamshell vehicle throughout each Fiscal Year, at no cost to the Authority or others, for illegal dumping, neighborhood cleanups and special events, including, but not limited to the Great American Cleanup, and other events as requested by the Authority.

Contractor shall pay the cost of loading and transporting containers and/or debris to an Authority approved disposal facility. The Authority shall pay the cost of disposal.

For neighborhood cleanups and special events, Contractor shall provide collection of debris on a schedule as determined by the Authority's community service manager or designee. In the case of illegal dumping that is determined by the Authority to pose a nuisance or danger to the public, Contractor shall provide collection of debris within 24 hours of notice sent by either electronic means or by phone.

The maximum quantity of debris to be collected within each Service Area during each fiscal year of the Agreement is as follows:

Service Area	Cubic Yards
1	1,200
2	900
3	500
4	500

Contractor shall receive a written quarterly report from the Authority to accurately reflect the amount of debris collected each quarter and the total year-to-date.



47. **MOBILIZATION AND PREPARATION:** Prior to the commencement of the term of this franchise Agreement, the Contractor shall prepare for the collection services in the Service Area in a responsible manner and, at a minimum, shall adhere to the requirements as set out in Exhibit VII. In the event the Contractor fails to meet the deadlines of any one of the tasks outlined in Exhibit VIII, the Authority has the right to assess and collect as liquidated damages the amount of \$10,000 for each task deadline missed to compensate the Authority for the costs, including additional supervision, associated with assisting the Contractor in getting back on schedule. Failure to meet the deadline of more than two tasks may lead to loss of the exclusive franchise for each Service Area.
48. **OFFICE OF THE INSPECTOR GENERAL:** Palm Beach County has established the Office of the Inspector General, Ordinance (OIG) No. 2009-049, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Authority has entered into an agreement with Palm Beach County for Inspector General services. This agreement provides for the Inspector General to provide services to the Authority in accordance with the authority, functions and powers set out in the ordinance. All parties doing business with the Authority and receiving Authority funds shall fully cooperate with the Inspector General including providing access to records relating to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the Contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with this Agreement and detect corruption and fraud. Failure to cooperate with the Inspector General or interference with or impeding any investigation shall be a violation of Ordinance 2009-049 and punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
49. **SCRUTINIZED COMPANIES:** As provided in F.S. 287.135, by entering into this contract with the Authority, or performing any work in furtherance hereof, Contractor hereby certifies that Contractor and Contractor's affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473. If the Authority determines, using credible information available to the public, that a false certification has been submitted by Contractor, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135.



In Witness Whereof, the **Solid Waste Authority of Palm Beach County**, at a regular meeting thereof, by action of the Authority Board authorizing and directing the foregoing be adopted, has caused these presents to be signed by the Authority's Executive Director, and the Authority's seal to be hereunto affixed, and **Advanced Disposal Services Solid Waste Southeast, Inc.** has executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

Witness:

1. [Signature]
2. Barbara Novello

By: [Signature]
Mark Hammond
Executive Director
(Seal)

Approved as to Form and Legal Sufficiency:

By: [Signature]
General Counsel to the Authority

**ADVANCED DISPOSAL SERVICES
SOLID WASTE SOUTHEAST, INC.:**

Attest:

[Signature]
Corporate Secretary
Assistant

By: [Signature]
(Corporate Seal)

Witness:

1. [Signature]
2. Lauren Perkins

Name: Charlie Appleby, CEO
Title: Chief Executive Officer

Approved by Authority Board on February 13, 2013, Item No. 9.G.1



Solid Waste and Recycling Collection Franchise Agreement

Exhibits

EXHIBIT I**Solid Waste Authority Franchise Area Boundaries**

Description of the boundaries of franchise known as **Service Area 1** in Palm Beach County, Florida is as follows:

<u>Section</u>	<u>Township</u>	<u>Range</u>
31 thru 36	40	41
1 thru 36	41	41
1 thru 18, 22, 23, 24, 25, 26, 27, 34, 35, 36	42	41
1, 2, 3, 10, 11, 12, 13, 24, 25, 36 (north of and inclusive of the north side of SR 80)	43	41
1, 12 (north of and inclusive of the north side of Forest Hill Blvd)	44	41
25, 26, 27, 31, 32, 33, 34, 35 36	40	42
1 thru 36	41	42
1 thru 36	42	42
1 thru 36	43	42
1 thru 12 (north of and inclusive of the north side of Forest Hill Blvd)	44	42
30, 31, 32	40	43
5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33	41	43
3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34	42	43
3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34	43	43
3, 4, 5, 6, 7, 8, 9, 10 (north of and inclusive of the north side of Forest Hill Blvd)	44	43

Less and excepting therefrom all incorporated areas.

All references are as to the Palm Beach County Property Appraiser's property control numbers (tax folio numbers) as used in reference to the Property Appraiser's assessor maps in Palm Beach County, Florida.

Description of the boundaries of franchise known as **Service Area 2** in Palm Beach County, Florida is as follows:

<u>Section</u>	<u>Township</u>	<u>Range</u>
31 thru 36	40	40
1 thru 36	41	40
1 thru 36	42	40
1 thru 36	43	40
1 thru 36	44	40
19, 20, 21, 28, 29, 30, 31, 32, 33	42	41
4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 26, 27, 28, 29, 30, 31, 32, 33, 34, 35	43	41
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 thru 40	44	41
9, 10 (south of and inclusive of the south side of Forest Hill Blvd)	44	42
13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42	44	42
1 thru 6	45	41
1 thru 6	45	42
7, 8, 9, 10 (south of and inclusive of the south side of Forest Hill Blvd), 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34	44	43
3, 4, 5, 6	45	43

Less and excepting therefrom all incorporated areas.

All references are as to the Palm Beach County Property Appraiser's property control numbers (tax folio numbers) as used in reference to the Property Appraiser's assessor maps in Palm Beach County, Florida.

Description of the boundaries of franchise known as **Service Area 3** in Palm Beach County, Florida is as follows:

<u>Section</u>	<u>Township</u>	<u>Range</u>
1 thru 36	45	40
1 thru 36	46	40
1 thru 24	47	40
7 thru 36	45	41
1 thru 36	46	41
1 thru 30	47	41
7, 8, 17, 18, 19, 20, 29, 30, 31, 32	45	42
9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24 (east of and inclusive of the east side of the Florida Turnpike and north of and inclusive of the north side of Boynton Beach Blvd)	45	42
5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32	46	42
5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32	47	42
7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22 (north of and inclusive of the north side of Boynton Beach Blvd)	45	43

Less and excepting therefrom all incorporated areas.

All references are as to the Palm Beach County Property Appraiser's property control numbers (tax folio numbers) as used in reference to the Property Appraiser's assessor maps in Palm Beach County, Florida.

Description of the boundaries of the franchise known as **Service Area 4** in Palm Beach County, Florida is as follows:

<u>Section</u>	<u>Township</u>	<u>Range</u>
25, 26, 27, 28, 33, 34, 35, 36 (south of and inclusive of the south side of Boynton Beach Blvd and east of and inclusive of the Florida Turnpike)	45	42
1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 (east of and inclusive of the east side of the Florida Turnpike)	46	42
1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 (east of and inclusive of the Florida Turnpike)	47	42
27, 28, 29, 30, 31, 32, 33, 34 (south of and inclusive of the south side of Boynton Beach Blvd)	45	43
3 thru 33	46	43
4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 29, 30, 31, 32	47	43

Less and excepting therefrom all incorporated areas.

All references are as to the Palm Beach County Property Appraiser's property control numbers (tax folio numbers) as used in reference to the Property Appraiser's assessor maps in Palm Beach County, Florida.

EXHIBIT II
APPROVED RATE SCHEDULE
SERVICE AREA 2
FY 2014-2015 MONTHLY RATES

RESIDENTIAL COLLECTION (PER UNIT)

Services	Curbside Service	Containerized Service
Solid Waste	\$5.96 (2x/wk)	\$4.47 (2x/wk avg)
Vegetative	\$4.47 (1x/wk)	XXXXXXXX
Recycling	\$3.00 (1x/wk)	\$2.25 (1.5x/wk avg)
Total:	\$13.43	\$6.72

COMMERCIAL COLLECTION

Container Solid Waste Collection Rate	\$3.25 per cubic yard
Compactor Collection Rate (8 cubic yards or less)	\$4.06 (1.25x the container collection rate)
Commercial Recycling Collection Rate	\$1.70 per cubic yard
Small Business Generator (less than 1 cubic yard per week)	\$28.00 per month (\$14.00 collection and \$14.00 disposal)
96 Gallon Recycling Container (1 time per week)	\$10.00
Compactor Collection Rate (greater than 8 cubic yards Roll-off Compactors)	\$185 per pull
Roll-off Collection Rate	\$150 per pull

SPECIAL SERVICES RATES ESTABLISHED BY THE AUTHORITY
(Not to be Adjusted during the Term of the Agreement)

SERVICE	RATE PER SERVICE
Rolling Out Commercial 95 or 101 Gallon container with 10 or more feet per direction	\$1.00 (no charge for Residential regardless of distance, no charge for commercial less than 10 feet per direction)
Rolling Out Container (and returning it to original location)	\$1.84 per service per container
Back Door Service (Residential Curbside Only)*	\$22.00 per dwelling unit
Opening (and closing) Doors or Gates	No Charge
Locks for Containers	\$9.00 (one time) Charge for Replacements based on cost +10%
Unlocking Containers	\$1.35
Supplying (and retrofitting) locking mechanism on container per customer request only	\$55.00
Adding wheels to or changing wheels on Containers	No Charge
Adding lids to or changing lids on Containers	No Charge
Moving Container Location Per Customer Request	No Charge
Changing Out Sizes (above twice per year)	\$25.00
Additional Scheduled Pick-ups for Residential Containerized Customers	Same as Applicable Commercial Collection Rates (No Disposal Charges)
Additional Unscheduled (picked up by end of business the following day but not including "on-call") Pick-ups for Commercial and Residential Containerized Customers	\$25.00 Special Service Fee Plus Applicable Commercial Collection and Disposal Rates Per Dumpster (No Disposal Charges for Residential)
Special Service or special equipment required because of impaired accessibility	Negotiable
Turn around compactors (commercial customer only)	\$10.00 (No Charge for Multi-family)
Stump/Land Clearing Collection	Negotiable
Residential Vegetation Collection	\$9.00 Per CY
Residential Mixed Collection (vegetation with C&D and/or bulk)	\$22.00 Per CY

* No charge for residents medically unable to bring solid waste or Recovered Materials to curbside as delineated in Section 4.

MONTHLY CONTAINER RENTAL RATES ESTABLISHED BY THE AUTHORITY

(Not to be Adjusted during the Term of the Agreement)

CONTAINERS (NON-COMPACTING)	
SIZE (cubic yards)	RATE w/out locking mechanism
2 YD	\$20.00
3 YD	\$21.00
4 YD	\$22.00
6 YD	\$25.00
8 YD	\$27.00

Capacities in between these values can be obtained by interpolation.
Capacities outside of these values can be obtained by extrapolation.

COMMERCIAL SOLID WASTE AND VEGETATIVE DISPOSAL CHARGE CALCULATION

The Authority will determine the commercial disposal fee rates (\$/cubic yard) each Fiscal Year based on a calculation supplied by the Authority and the tipping fee. The calculation for non-compacted Garbage and Trash is 134 lbs/cubic yard times the Authority's tipping fee (\$/ton) times 1 ton/2000 lbs = ____ \$/cy. Commercial non-compacted Vegetation is calculated at 275 lbs/cubic yard times the Authority's tipping fee (\$/ton) times 1 ton/2000 lbs = ____ \$/cy. The compacted rate for commercial solid waste or vegetative waste may be billed at either actual expense or three times the rate for non-compacted solid waste or vegetative rate, respectively.

In the unlikely event the Authority charges a tipping fee for Recovered Materials, the Contract Administrator will determine the conversion factor and calculate the factor times the tipping fee for Recovered Materials. The Contractor will be responsible for billing Commercial Recycling Collection customers for the Recovered Materials disposal fee.

RESIDENTIAL SOLID WASTE DISPOSAL CREDIT CALCULATION

Category	Type	Generation Factor (Tons/Year)	Times(x) Garbage Tipping Fee	Annual Credit per unit
I	Single Family	1.10	x	=
II	Multi-family, 4 or less units	0.67	x	=
III	Mobile Homes	1.10	x	=
IV	Multi-family, more than 4 units	0.74	x	=

RESIDENTIAL VEGETATIVE WASTE DISPOSAL CREDIT CALCULATION

Category	Type	Generation Factor (Tons/Year)	Times(x) Vegetation Tipping Fee	Annual Credit per unit
I	Single Family	0.85	x	=
II	Multi-family, 4 or less units	0	x	=
III	Mobile Homes	0.58	x	=
IV	Multi-family, more than 4 units	0	x	=

EXHIBIT III

PAYMENT ADJUSTMENT SCHEDULE

A. Annual Adjustment

The annual adjustment shall be applied to the base residential and commercial collection rates as shown in Exhibit II and as provided within this Agreement.

- 1) The following cost components and weights shall be used to calculate the annual adjustment for all components except for fuel:

Labor	35%
Vehicle Maintenance	05%
Maintenance	10%
Other/Administration	40%

- 2) The following indices are used to calculate the adjustment for each cost component category. The change in each index shall be calculated by dividing the average of the index over the twelve month period ending the December preceding the effective date of the adjustment by the average over the previous twelve month period.

Cost Component

Labor	<p>Index: Employment Cost Index, Series ID CIU2015600000000I, Not Seasonally Adjusted; Compensation – Total Compensation; Sector – Private Industry; Periodicity - Quarterly Index Number; Industry/Occupation – Administrative and Support and Waste Management and Remediation Services (see Note 2 below)</p>
Vehicle Replacement	<p>Index: Producer Price Index - Commodities, Series ID WPU141106, Not Seasonally Adjusted; Group – Transportation Equipment; Item – Trucks over 14,000 lbs. GVW.</p>
Maintenance	<p>1/3 Labor:</p> <p>Index: Producer Price Index - Commodities, Series ID WPU141106, Not Seasonally Adjusted; Group – Transportation Equipment; Item – Trucks over 14,000 lbs. GVW.</p>

2/3 Parts:

Index:

Consumer Price Index – All Urban Consumers, Series ID CUUR0000SETC, Not Seasonally Adjusted; Area – U.S. City Average; Item – Motor Vehicle Parts and Equipment.

Other

Index:

75% of:

Consumer Price Index – All Urban Consumers, Series ID CUUR0000SA0, Not Seasonally Adjusted; Area – U.S. City Average; Item – All Items.

Notes:

- (1) All indices as published by the United States Department of Labor, Bureau of Labor Statistics (www.bls.gov).
- (2) Labor Index uses average of four quarterly periods. All others use average of twelve monthly periods.
- (3) The percentage weight for each cost component is multiplied by the change in each appropriate index to calculate a weighted percentage change for each component cost factor. The weighted percentage changes for each cost component are added together to calculate the Refuse Rate Index, as follows:

RRI Sample

Cost Component	Weight	Source	% Change	% Weighted Change
Labor	35%	ECI	1.20%	0.42%
Vehicle Replacement	5%	PPI - Trucks	3.74%	0.19%
Maintenance Labor & Parts	10%	1/3 PPI 2/3 CPI	3.21%	0.32%
Other	40%	CPI - All Items	1.84%	0.55%
Total	90%	at 75%		1.48% RRI

B. Monthly Fuel Adjustment (Fuel Surcharge/Credit)

The rates subject to adjustment shall be subject to a monthly fuel price surcharge/credit for fluctuations in the price of fuel. For the purpose of this Agreement, fuel is assumed to represent 10% of the Contractor's costs therefore 10% of the approved rates shall be so adjusted.

The rates shall be adjusted as follows:

For the rates subject to adjustment, a monthly fuel surcharge/credit shall be charged/credited basis based on the percentage change in the monthly average price of fuel as published by the Oil Price Information Service (OPIS) and measured by the OPIS Standard Rack, OPIS No. 2 Distillate Gross Prices, Unbranded Average for Miami, Florida between the month of November 2012 and the month two (2) months prior to the effective date.

For example:

For the month of October 2013, the fuel surcharge/credit shall be calculated by dividing the reported unbranded average price for August 2013 by the unbranded average price for November 2012, multiplying the result by ten (10) percent of the bid or Authority established price, and subtracting ten (10) percent of the bid or Authority established price.

Assuming:

Index for November 2012	315.98
Index for August 2013	340.67
Commercial Solid Waste Collection Rate (per yd.)	\$3.25

Surcharge: $340.67/315.98 \times .10 \times 3.25 - (.10 \times 3.25) = \$.0254$

The surcharge/credit shall be rounded to the nearest cent, which in this example would result in a \$.03 per cubic yard surcharge.

EXHIBIT IV**PERFORMANCE BOND REQUIREMENT**

The annual performance bond due to the Authority from the Contractor is calculated as:

Gross Annual Revenues (Minus Disposal Fees paid to the Authority) x 1/3 = Performance Bond Required

Sample Performance Bond Requirement

Gross Revenue	\$2,450,000
Less Disposal Fees	<u>750,000</u>
	\$1,700,000

Annual Performance Bond Requirement = $0.3333 \times \$1,700,000 = \$566,667$

EXHIBIT V

**ANNUAL GARBAGE CAN REPLACEMENT
MINIMUM REQUIREMENTS**

Service Area	Number of Garbage Cans
1	150
2	150
3	150
4	150

The replacement must be similar in style, material, quality and capacity to that which was damaged or reported as missing and replaced to the satisfaction of the customer within the timeframe required by the Agreement.

EXHIBIT VI

MONTHLY FINANCIAL REPORTING FORMAT

The Contractor shall submit to the Authority within forty-five (45) days of the end of each month a revenue statement prepared in accordance with general accepted accounting standards for each residential and commercial operation within each Service Area. Therefore, if a Contractor has two (2) Service Areas, four (4) separate monthly statements will need to be submitted: two (2) residential and two (2) commercial.

The Contractor shall disclose all methods of allocations used to distribute revenues between Service Areas and/or commercial and residential operations. The disclosure shall be in narrative form and include the basis for the allocation method.

The required format for monthly financial statement reporting in accordance with this franchise Agreement is shown below.

Advanced Disposal Services Solid Waste Southeast, Inc.

Statement of Revenues and Disposal Expenses

(Residential or Commercial) Service Area 2

For (month, year) ended (month, year)

Revenues:

(list by type - commercial and residential, including collection rates, container rental, special service rates, etc.)

\$ _____

Total Revenue:

\$ _____

Disposal Expenses:

Disposal fees paid to the Authority

\$ _____

Net

\$ _____

Franchise Fees (Net x .03%)

\$ _____

"The Accompanying Notes are an Integral Part of this Statement"

**EXHIBIT VII
AUTHORITY PUBLIC DROP-OFF RECYCLING CONTAINERS**

SERVICE AREA 2						
Organization	Address	CityStZip	DistrictNum	ServiceDays	Frequency	Qty*
Atlantic Property & Equipment	4601 10th Ave N	Lake Worth, FL 33463	2	Mon	1	1
Duthie-FreemanCentre Condo	4400-4401 Charlotte St	Lake Worth, FL 33461	2	Mon	1	1
Kings Liquor	7099 Lake Worth Rd	Lake Worth, FL 33467	2	Mon - Thurs	2	1
Lion Country Safari	2003 Lion County Safari Rd	Loxahatchee, FL 33414	2	Wed - Sat	2	2
Nassau Square	7721 Lake Worth Rd	Lake Worth, FL 33467	2	Mon	1	1
Palm Beach State College	4200 Congress Ave	Lake Worth, FL 33461	2	Mon - Thurs	2	6
Palm Coast Plaza	3044 Military Trl S	Lake Worth, FL 33463	2	Wed	1	1
PBC - Fire Rescue Station #35 (Lantana)	2501 Lantana Rd W	Lantana, FL 33462	2	Mon - Thurs	2	2
Plantation Plaza	2650 Military Trl S	West Palm Beach, FL 33415	2	Wed - Sat	2	2
SWA CCTS	1810 Lantana Rd	Lantana, FL 33462	2	Mon - Wed - Fri	3	1
The Marketplace	7350 Lake Worth Rd	Lake Worth, FL 33463	2	Mon - Thurs	2	2
Vi at Lakeside Village	2792 Donnelly Dr	Lake Worth, FL 33462	2	Mon - Wed	2	1
Worth Plaza	7111 Lake Worth Rd	Lake Worth, FL 33467	2	Mon - Thurs	2	3
			13 Stops			24
Flagler Square	1860 Forest Hill Blvd	Lake Clarke Shores, FL 33406	Lake Clarke Shores	Thurs	1	1
			1 Stop			1
Fun Depot	2001 10th Ave N	Lake Worth, FL 33461	Lake Worth	Mon - Thurs	2	2
Gaslight Business Park Condo Assoc Inc	1937 10th Ave N	Lake Worth, FL 33467	Lake Worth	Mon - Thurs	2	2
Lake Worth Commerce Center	1100 Barnett Dr	Lake Worth, FL 33463	Lake Worth	Mon - Thurs	2	2
			3 Stops			6
Family Matters (WIC, Lantana)	1216 Lantana Rd W	Lantana, FL 33462	Lantana	Mon - Thurs	2	1
Lantana Municipal Beach	100 Ocean Ave	Lantana, FL 33462	Lantana	Mon	1	2
Leisureville Press	635 Gator Dr	Lantana, FL 33462	Lantana	Wed - Sat	2	1
			3 Stops			4
Hotshots Paintball	16169 Southern Blvd	Loxahatchee Groves, FL 33470	Loxahatchee Groves	Wed	1	1
PBC - Fire Rescue Station #21 (Loxahatchee)	14200 Old Okeechobee Blvd	Loxahatchee Groves, FL 33411	Loxahatchee Groves	Wed - Sat	2	2
			2 Stops			3
Janitors Supply Outlet	3395 Lake Worth Rd Ste 14	Palm Springs, FL 33461	Palm Springs	Mon	1	1
Locks of Love	2925 10th Ave N	Palm Springs, FL 33461	Palm Springs	Mon	1	1
			2 Stops			2
Royal Palm Professional Center	11440 Okeechobee Blvd	Royal Palm Beach, FL 33411	Royal Palm Beach	Sat	1	1
			1 Stop			1
Boys and Girls Club of PBC, Inc.	3401 South Shore Blvd	Wellington, FL 33411	Wellington	Wed	1	1
Chancellor Corp Center	12008 South Shore Blvd	Wellington, FL 33414	Wellington	Wed	1	1
Collision Physician	3060 Fairlane Farms Road	Wellington, FL 33414	Wellington	Wed	1	1
Commerce Park/Forum Publication	11496- 11576 Pierson Road	Wellington, FL 33414	Wellington	Wed	1	1
Commerce Park/Tri-City Flooring	11586 Pierson Rd	Wellington, FL 33414	Wellington	Wed	1	1
Estates, The	2301 Wellington Green Dr	Wellington, FL 33414	Wellington	Wed - Sat	2	1
Fortune Way G Building	11320 Fortune Circle	Wellington, FL 33414	Wellington	Wed - Sat	1	1
Lake Wellington Professional Center	12230 Forest Hill Blvd #110	Wellington, FL 33414	Wellington	Wed	1	1
PS Business Park	3132 Fortune Way	Wellington, FL 33414	Wellington	Wed	1	1
Shoppes at Chancellor	12020 South Shore Blvd #400	Wellington, FL 33414	Wellington	Wed - Sat	2	1
Village Walk of Wellington	2500 Village Walk Cir	Wellington, FL 33414	Wellington	Wed	1	1
Wellington Country Plaza	12789 Forest Hill Blvd W #E	Wellington, FL 33414	Wellington	Wed - Sat	2	6
Wellington, Village of	14000 Greenbriar Blvd	Wellington, FL 33414	Wellington	Wed	1	1
			13 Stops			18
			Municipal Stops	25 Stops	Total Municipal Containers	35
			Total Stops	38 Stops	Total All Containers	59

*Quantity - All containers are 8 cubic yard containers unless otherwise noted.


EXHIBIT VIII**MOBILIZATION AND PREPARATION**

Task	Completion Deadline
Hire Operations Manager and provide verification to SWA	4/15/13
Submit Residential Curbside Routing to SWA	5/3/13
Provide SWA with truck orders or verification of vehicle source(s)	6/3/13
Hire supervisors and provide verification to SWA	7/5/13
Secure container source and provide verification to SWA	7/5/13
Equipment yard and office sited and set up	8/23/13
Office and accounting staff hired and in place	8/23/13
Maintenance staff hired and in place	8/23/13
Disposal bond in place with SWA for October 1, 2013	8/23/13
Provide transition report to SWA outlining plan to minimize disruptions during transition period	9/2/13
Secure vehicles	9/2/13
Supervisors run routes	9/2/13 through 9/30/13
Drivers hired and in place	9/13/13
Drivers and supervisors run routes	9/13/13 through 9/30/13
Disclosure notices mailed to commercial customers	9/13/13

Ninth Order of Business

MEMORANDUM

To: Mayor Roger Manning
City Council Members

From: Pam E. Booker, City Attorney 
Ken Cassel, City Manager

Date: December 4, 2017

Subject: Florida Power & Light Franchise Agreement

Attached please find an ordinance for the City of Westlake granting a franchise agreement to Florida Power and Light ("FP&L"), its successors and assigns for the purposes of providing electric services within the jurisdictional boundaries for the Westlake. The franchise agreement is for a term of thirty (30) years. FP&L has requested utilization of the City's public rights of way for the provision of electric services to the residential and non-residential service users. The ordinance will grant FP&L a non-exclusive right to utilize the public right of ways to serve properties within the City of Westlake's boundary. In exchange for the utilization of the public rights of way, FP&L has agreed to pay the Westlake six percent (6%) of the monthly billings, commencing ninety (90) days after the effective date of this ordinance. There are a few exceptions to the six percent, found in paragraph five of the agreement.

The ordinance has been reviewed and approved by the City Manager, the City Attorney and Patrick Bryan, attorney for FP&L. We would recommend approval of the ordinance, which will come back for second reading on January 8, 2018. Should you have any questions, please do not hesitate to contact me at (772) 971-8676.

December 11, 2017 First Reading
January 8, 2017 Second Reading

ORDINANCE NO. 2017- 8

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, GRANTING TO FLORIDA POWER AND LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE AGREEMENT, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF WESTLAKE; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Westlake Florida, recognizes that the City of Westlake and its citizens need and desire the continued benefits of electric services; and

WHEREAS, the provisions of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provisions of such service in addition to costly administrative functions and the City of Westlake does not desire to undertake to provide such services; and

WHEREAS, Florida Power & Light Company (FP&L) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, the City of Westlake is a newly incorporated municipality in Palm Beach County and the City desires to enter into an Agreement with FP&L, its successors and assigns, a thirty (30) year electric franchise agreement; and

WHEREAS, the City of Westlake and FP&L desires to enter into an Agreement providing for the payment of fees to the City of Westlake for the nonexclusive right and privilege of supplying electricity and other services within the City of Westlake in exchange for the nonexclusive right and privilege of supplying electricity and other services within the City of Westlake free of competition from the City of Westlake pursuant to certain terms and conditions; and

WHEREAS, the City Council for the City of Westlake deems it to be in the best interest of the City of Westlake and its citizens to enter into this Electric Franchise Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AS FOLLOWS:

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for a period of thirty (30) years from the effective date hereof, the non-exclusive right, privilege and franchise (hereinafter called "franchise") to

construct, operate and maintain in, under, upon, along, over an across the present and future roads, streets, alleys, bridges, easements, right-of-ways and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the City of Westlake, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including without limitation, conduits poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public right-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonable sufficient, adequate and efficient electric service to all of its customers and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public right-of-way unless or until widening otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public right-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulations as may be provided by law.

Section 5. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever, (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal (6.0%) of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FP&L's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed (6.0%) of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (services for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 6. If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Palm Beach County, Florida, where the number of Grantee's active electrical customers is equal to or less than the number of Grantee's active electrical

customers within the incorporated area of the Grantor, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6.0% of the Grantee's residential, commercial and industrial revenues (as such customers are defined by FP&L's tariff), under the same terms and conditions as specified in Section 5, hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 5 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other Palm Beach County municipality, provided however, that such new franchise agreement shall include additional benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with the other Palm Beach County municipality. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

Section 7. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provision of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person provided; however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and

conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously identified facilities of the Grantor for a term no shorter than the offered by the other person. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 8. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantors Clerk and termination shall be effective on the date of delivery of such notice.

Section 9. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action,

terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's City Manager and City Attorney and termination shall take effect on the date of delivery of such notice.

Section 10. Failure on the part of the Grantee to comply in any substantial respect with any of the provision of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case may require.

Section 11. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-ways, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 12. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such

records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor’s expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee’s customers by name or their electric consumption shall not be taken from the Grantee’s premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor’s right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the grantor whose fee, in whole or in part, for conducting such audit is contingent on the findings of the audit.

Section 13. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

Section 14. As used herein “person” means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 15. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor’s City Manager within thirty (30) days of adoption of this ordinance. This ordinance shall be effective upon the date the Grantee files such acceptance with the City Manager.

PASSED this _____ day of December, 2017 on first reading.

PASSED AND ADOPTED this _____ day of January, 2018, on second reading.

City of Westlake
Roger Manning, Mayor

Sandra DeMarco, City Clerk

City Attorney
Pam E. Booker, Esq.

Tenth Order of Business

ORDINANCE NO. 2017- 6

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, ESTABLISHING A HOUSING ASSISTANCE PURCHASE PROGRAM FOR VERY LOW INCOME, LOW INCOME, MODERATE INCOME AND MIDDLE INCOME GUIDELINES CONSISTENT WITH THE HOUSING AND URBAN DEVELOPMENT GUIDELINES AS ADJUSTED ANNUALLY FOR THE AREA MEDIAN INCOME FAMILIES; PROVIDING FOR A FUNDING MECHANISM, PROVIDING GUIDELINES FOR ELIGIBILITY; PROVIDING FOR AN ACCOUNTING FOR THE UTILIZATION OF SAID FUNDS; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Westlake ("City") finds that providing affordable housing to persons within the City is of paramount public importance to the creation of a sustainable and economically viable community, the City will create and implement a housing purchase assistance program; and

WHEREAS, the City of Westlake is interested in creating a local housing assistance purchase program to increase the availability of affordable housing units by combining local resources and cost saving measures into a local housing partnership and utilizing public funds to leverage private funds, thereby reducing the cost of housing; and

WHEREAS, the housing assistance purchase program will assist in achieving the growth management goals for the City's comprehensive plan, by allowing a more efficient use of land so as to provide housing units that are affordable to persons who are very-low income, low income or moderate income; and

WHEREAS, the housing assistance purchase program will promote mixed income housing so as to provide increased housing and economic opportunities for persons who are very-low income, low income, moderate income or middle income; and

WHEREAS, the Developer, Minto PBLH, LLC, ("MINTO") is establishing a Westlake Residences Master Homeowner's Association, Inc., to operate and manage the residential portions of the City as set for the in the Declaration of Restrictions, Covenants, and Easements for Westlake Residences to be recorded in the Public Records of the County ("Master Declaration"), which Master Declaration includes, without limitations, procedures and guidelines for the operation of the homeowners association and the imposition of a fee payable to the Westlake Community Foundation, Inc. upon the resale of a home in the community; and

WHEREAS, the Westlake Community Foundation, Inc., ("Foundation") is a not for profit corporation organized under the laws of the State of Florida to promote cultural, scientific, literary, educational, recreational, environmental and charitable purposes within the meaning of Section 501(c)(3) under the Internal Revenue Code of 1986, established for the purpose of but not limited to, providing down payment and closing cost housing assistance with proceeds from purchase and sale transactions on all properties within the jurisdictional boundaries of the City; and

WHEREAS, the Westlake Community Foundation, Inc., will transfer proceeds received from purchase and sale transactions to City of Westlake to be utilized for the purpose of providing down payment, closing cost, and rental assistance to qualified eligible applicants for very low income, low income, moderate income and middle income qualified eligible applicants; and

WHEREAS, the Developer, MINTO has agreed to voluntarily make financial contributions directly to the City of Westlake for all single family platted residential lots for utilization by the City for the purpose of providing down payment, closing costs and rental assistance to qualified eligible applicants for very low income, low income, moderate income and middle income applicants; and

WHEREAS, the Developer, MINTO has agreed to impose and collect a one-half percent (1/2%) fee on the purchase and sale of all non-residential properties within the jurisdictional boundaries of the City of Westlake, for the purpose of providing down payment, closing costs and rental assistance to eligible applicants for very low income, low income, moderate income and middle income applicants; and

WHEREAS, the City of Westlake shall utilize all funding proceeds received from MINTO, the FOUNDATION, and any other sources designated for housing assistance for the purposes of providing down payment, closing costs and rental assistance to qualified eligible applicants for very low income, low income, moderate income and middle income qualified eligible applicants.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AS FOLLOWS:

Section 1. **Incorporation:** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Establishment of Housing Assistance Purchase Program:** The City of Westlake hereby creates and establishes a housing assistance purchase program within the jurisdictional boundaries of the City of Westlake.

Section 3. **Purpose:** The purpose of this article is to authorize the City of Westlake to utilize funds received from all sources designated for the housing assistance purchase program to provide down payment, closing costs and rental assistance for the purchase or rental of single family and multi-family units within the jurisdictional boundaries for the City of Westlake and to implement policies, procedures, and guidelines for very low income, low income, moderate income and middle income eligible applicants to carry out the purposes of this article.

Section 4. **Voluntary Contributions:** MINTO has voluntarily agreed to provide funds to the City of Westlake for implementation of an affordable housing program within the jurisdictional limits of the City of Westlake.

- (a) MINTO, its successor or assigns, shall pay a one thousand five hundred (\$1,500.00) contribution to the City of Westlake at the time an application for a building permit is requested for construction of every single-family home.
- (b) The contribution may be adjusted upwards and/or downwards in the future based upon the price point of the housing product being developed. Multi-family housing units may pay a contribution less than \$1,500.00 per unit. Higher end homes may pay a fee in excess of \$1,500.00 per unit.
- (c) MINTO, its successors or assigns, shall pay a contribution to the City of Westlake at the time of application for a building permit is requested for construction of multi-family homes.

- (d) MINTO shall provide the City of Westlake one-half percent (1/2%) of the purchase price on all non-residential land sales within the jurisdictional boundaries for the City of Westlake within thirty (30) days of the closing. Sales to not for profit organizations or governmental entities may be exempt from the one-half percent (1/2%) purchase and sale contribution.

Section 5. Utilization of Funds:

- (a) The Housing Assistance Purchase Program shall utilize all funds received from any and all sources designated for housing assistance purchase or rental assistance to implement programs for the creation and preservation of affordable housing within the City of Westlake.
- (b) Funding shall be available on a first come, first qualified basis until the annual allocation and any supplemental funding is utilized, with preference being provided to essential service personnel.
- (c) The program shall include other lawful objectives not specifically listed if said objectives meet and further the purpose and intent of creating and preserving affordable housing within the City of Westlake.
- (d) The City of Westlake shall be authorized to utilize seven percent (7%) of the proceeds received for administrative costs and fees associated with the management and implementation of affordable housing programs.
- (e) An annual accounting shall be provided to the City Council detailing the use of all proceeds for down payment assistance purchases or rental assistance.

Section 6. Local Housing Partnership:

- (a) The local housing partnership includes but is not limited to Minto PBLH, LLC, the Westlake Community Foundation, the City of Westlake, Palm Beach County, community based organizations, for profit housing developers, lending institutions, and providers of professional services relating to affordable housing.
- (b) The local housing partnership shall support the program in a manner that includes providing support services for housing program beneficiaries such as training to prepare eligible applicants for the responsibility of home ownership, counseling, and other support services.

Section 7. Administration and Implementation:

- (a) The City Manager or the designee of the City Manager shall manage the program to ensure the maximum eligible housing assistance awards are provided to assist with affordable home ownership or rental assistance within the City of Westlake.
- (b) The City Manager or the designee of the City Manager shall ensure that related expenses of the program do not exceed seven percent (7%) of all proceeds received for the Housing Assistance Purchase Program.
- (c) Affordable and Workforce housing units shall not be clustered together or segregated away from market rate units of higher market purchase prices.
- (d) Affordable and Workforce housing units shall not be subleased without the express written consent of the City of Westlake, if permitted, they shall only be leased to affordable income eligible households for the duration of the loan or grant award time frame.

- (e) The availability of housing assistance shall be advertised in a newspaper of general circulation in the City at least thirty (30) days prior to the beginning of an application period.
- (f) An application and certification will be required for eligible applicants to ensure that eligible applicants are consistent with the income guideline qualifications as established by the United States Housing and Urban Development, Area Median Income guidelines.
- (g) Eligible applicants shall provide certification that they comply with income and affordability guidelines as set forth in any state or federal programs for which assistance is being provided.
- (h) Eligible applicants shall provide three percent (3%) of the purchase price, from their personal funds as part of the down payment to meet eligibility criteria.
- (i) Financial need shall be a criteria in the award of grants and/or loans. There will be no cash out provided to the eligible applicant at closing. The award will only provide gap, closing costs, and down payment assistance as needed.
- (j) All eligible persons shall agree to and enter into a covenant which shall run with the land and be made part of a mortgage agreement for a ten-year payback provision should the eligible applicant, spouse or survivors dispose of the property prior to the expiration of the ten-year time frame.
- (k) The City shall not discriminate in the application or award process on the basis of race, creed, religion, color, age, sex, sexual orientation, marital status, familial status, national origin or disability.

Section 8: Housing Assistance Purchase Program Trust Fund:

- (a) The Housing Assistance Trust Fund is hereby created and established.
- (b) The fund shall be separately stated as a special revenue fund in the City's audited financial statements and copies of such audited financial statements shall be provided to the City Council for the City of Westlake.
- (c) Amounts on deposit shall be invested as permitted by law.
- (d) All funds received from MINTO, the Westlake Community Foundation, Inc., and any other source received or designated for the housing assistance purchase program shall be deposited into the fund.

Section 9: Definitions:

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

- (a) *Affordable Housing* means housing that is affordable for households at or below 80% of the Area Median Income as defined by the United States Department of Housing and Urban Development (HUD) income limits per household size and that meets maximum housing payments established by HUD, Florida Housing Finance or local ordinance. Housing payments generally do not exceed 30% of household's gross monthly income.
- (b) *Affordable Housing Assistance* means any loans, grants, fee reductions or other incentives provided by the City of Westlake to facilitate the construction, purchase or rental of affordable and/or workforce housing to qualified eligible applicants.

- (c) *Affordable and Workforce Housing Loan Program* means a City of Westlake program that provides loans to be used for the construction and purchase of housing serving households up to 140% of the Area Median Income. Loans may be provided as direct loans or limited loan guarantees for single family new construction, multi-family new construction homes, and resale on existing housing inventory.
- (d) *Affordability Period* means funds provided under the housing program shall carry a ten (10) year restriction to maintain the affordable and or workforce housing designation. Should the housing unit be disposed of prior to the ten-year time frame, repayment of funds will be required. After the expiration of ten (10) of continued occupancy by the eligible applicant or surviving spouse the loan will be forgiven.
- (e) *Annual Reporting* means an annual accounting of all funds utilized during the prior year, with detailed data on the number of eligible applicants for which housing assistance was provided to for the purposes of home purchase or rental assistance.
- (f) *Essential Service Personnel* includes but is not limited to teachers and educators, other school district, community college and university employees, police and fire personnel, health care personnel and local government personnel in Palm Beach County.
- (g) *First Time Homebuyer* means a person who has not owned or occupied a home as their primary residence in the last three years.
- (h) *Housing Trust Fund* means a City of Westlake fund established for the construction, purchase or rental of affordable and workforce housing. All funds received from the MINTO, Developers, the Foundation and other sources will be deposited into the Housing Trust Fund to assist with the purchase or rental of affordable and workforce housing through the Housing Assistance Purchase Program and all funds shall only be utilized for housing assistance and allowable expenses.
- (i) *HUD* means the United States Department of Housing and Urban Development.
- (j) *Income Limits* means one of the determining eligibility factors for Federal and State housing assistance programs. Income limits are set by HUD on an annual basis. HUD provides definitions for very low, low, and moderate income which vary by program and are determined by the gross household income and household size.
- (k) *Low Income Person* means one or more natural persons or family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) for Palm Beach County.
- (l) *Middle Income Person* means one or more natural persons or family, the total annual adjusted gross household income of which does not exceed 140 percent of the median annual adjusted gross income for households within the state, or 140 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) for Palm Beach County.

- (m) *Moderate Income Person* means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) for Palm Beach County.
- (n) *Primary Residence* means a person's primary residence or main residence, the dwelling where the person usually lives. A person can only have one primary residence at any given time. It is considered the legal residence for the purposes of homestead exemption, income tax and/or acquiring a mortgage.
- (o) *Qualified Eligible Homebuyer Applicant* means a person or household who meets federal and/or state income guidelines for very low income, low income, moderate income or middle income persons or households and who must have been approved for financing by an organization other than the City, including but not limited to a non-profit corporation or a local lending institution or an entity, including an individual, partnership, for profit or non-profit corporation which has approved financing which meets the federal and/or state guidelines for very low income, low income, moderate income, or middle income persons or households.
- (p) *Very Low Income Person* means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income within the metropolitan statistical area (MSA) for Palm Beach County.
- (q) *Workforce Housing* means housing which is affordable for households with incomes between 121% and 140% of the Area Median Income. Area median income eligibility for workforce housing programs will be based on a percentage of the median income as published by the U. S. Department of Housing and Urban Development, Fannie Mae or the State of Florida, as adjusted for household size.

Section 10. **Restrictive Covenant:** The eligible applicant shall ensure that the housing unit continues to meet the eligibility criteria for the grant or loan award for the ten-year duration of the grant or loan by executing a restrictive covenant or other legal documents in a form acceptable to the City Attorney for the City of Westlake.

Section 11. **Enforcement:** The City of Westlake may use any lawful method to enforce this article and the provisions of the affordable housing assistance purchase program.

Section 12. **Severability:** Should the provisions of this ordinance be declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

Section 13. **Effective Date:** This ordinance shall be effective upon adoption on second reading.

PASSED this _____ day of November, 2017, on first reading.

PASSED AND ADOPTED this _____ day of December, 2017, on second reading.

City of Westlake
Roger Manning, Mayor

Sandra DeMarco, City Clerk

City Attorney
Pam E. Booker, Esq.

October 30, 2017

Pam Booker, Esq.
City Attorney, City of Westlake
4001 Seminole Pratt Whitney Road
Westlake, Florida 33470
Email: pbooker@westlakegov.com

Re: Westlake Community Foundation

Dear Ms. Booker:

We have acted as counsel to Minto PBLH, LLC, a Florida limited liability company ("Minto"), in connection with of the Westlake Community Foundation (the "Foundation"). You requested that we provide an analysis of the fee to be collected upon the resale of a home (the "WCF Fee") within the master planned community to be known as Westlake Residences.

In connection with the analysis set forth in this letter, we have reviewed the following:

- (a) Chapter 718 of the Florida Statutes ("FS 718");
- (b) Chapter 720 of the Florida Statutes ("FS 720");
- (c) Chapter 689 of the Florida Statutes ("FS 689");
- (d) 12 C.F.R.1228 – Restrictions on the acquisition of, or taking security interests in, mortgages on properties encumbered by certain private transfer fee covenants and related securities ("12 CFR 1228");
- (e) The proposed Declaration of Covenants, Restrictions and Easements for Westlake Residences (the "Declaration"), a copy of which is attached to this letter as Exhibit A.
- (f) The proposed Articles of Incorporation for the Foundation ("Articles"), a copy of which are attached to this letter as Exhibit B.
- (g) The proposed By-Laws for the Foundation ("By-Laws"), a copy of which are attached to this letter as Exhibit C.

FS 718, FS 720, FS 689, and 12 CFR 1228 are hereinafter collectively referred to as the "Statutory Documents."

For purposes of preparing this letter, we have not reviewed any documents other than the documents listed above. We have also not reviewed any documents that may be referred to in or incorporated by reference into any of the documents listed above. In addition, this letter and the analysis set forth in this letter assume that the Foundation will be created pursuant to the Articles, the initial board of the Foundation will properly establish, ratify and confirm the By-Laws, the Declaration will be recorded in the Public Records of Palm Beach County, Florida, and the WCF Fee will be utilized solely for the purposes as set forth in the Declaration, Articles and By-Laws.

Minto Communities, LLC
 October 30, 2017
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The Declaration provides that the WCF Fee will be paid to the Foundation upon each conveyance of a home subject to the Declaration (each, a “**Home**”) after the initial conveyance from the developer; provided, however, the WCF Fee is not required to be paid by any lender acquiring title to a Home by foreclosure or deed in lieu of foreclosure. Pursuant to the Articles and By-Laws for the Foundation, the WCF Fee is to be utilized for, among other thing, facilitating the creation and preservation of privately owned, community-enhancing affordable housing, local environmental advocacy programs, environmental education, community initiatives and community programs, and fundraising, community outreach and education in support of affordable housing within the City of Westlake, as provided in the Declaration, the Articles and the By-Laws.

We understand that Minto intends that grants by the Foundation will be funded through the collection by the Foundation of the WCF Fee. The Declaration provides that the WCF Fee will be paid to the Foundation upon each conveyance of a Home after the initial conveyance from Minto; provided, however, the WCF Fee is not required to be paid by any lender acquiring title to a home by foreclosure or deed in lieu of foreclosure. Each such purchaser shall pay the WCF Fee to the Foundation. Per the Declaration, the WCF Fee is not advance payment of any assessments. The Declaration provides that each owner of a Home, by acceptance of a deed or instrument of conveyance for acquisition of title to a Home shall be deemed to have covenanted and agreed that the WCF Fee shall be a charge and continuing lien in favor of the Foundation encumbering the Home and all personal property located thereon owned by the owner of the Home (“**Owner**”) from whom such WCF fee is due. The Declaration further provides that the lien is effective from and relates back to the date the Owner acquires title to the Home except as to bona fide first mortgages held by a lender on any Home in which event the lien is effective from and after recording a claim of lien in the Public Records. Pursuant to the Declaration, the WCF Fee shall continue in perpetuity regardless of the existence of the Westlake Residences Master Homeowners Association. Other than the acquisition of title by a lender acquiring title to a Home by foreclosure or deed in lieu of foreclosure, no transfer of title to a Home shall be exempt from the WCF Fee. The Declaration provides that the WCF Fee shall be utilized in the Foundation’s sole and absolute discretion, and the Foundation shall determine how the WCF Fee is allocated and utilized; provided, however, the Foundation is required to use the WCF Fee solely for a “direct benefit” as defined in 12 C.F.R. 1228.1 so that the Declaration is considered an “excepted transfer fee covenant” as defined in 12 C.F.R. 1228.1.

Resale contributions in the context of a condominium are considered transfer fees which are specifically prohibited by applicable sections of FS 718. Specifically, Section 718.112(2)(i), Florida Statutes, provides “*no charge shall be made by the association or anybody thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant...*”

There is no similar provision prohibiting such contributions or transfer fees in FS 720 governing homeowners associations. In addition, Section 720.3075 of the Florida Statutes sets forth prohibited clauses in association documents and does not include a prohibition on such contributions or fees.

Section 689.28 of the Florida Statutes prohibits “transfer fees” (defined as a fee or charged payable upon the transfer of an interest in real property) subject to applicable exceptions. Two of most applicable exceptions are as follows:

(a) *Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to*

a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.

(b) *Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering four or more parcels in a community, as defined in Section 720.301 of the Florida Statutes, for example a homeowners association, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant.*

Based on the foregoing, a capital contribution or contribution to a not-for-profit, charitable organization, such as the Foundation, is permissible under the Statutory Documents. We have found no reported Florida case which holds that the collection by a residential developer or residential homeowner's association (which does not constitute a condominium) of a contribution or fee similar to the WCF Fee is illegal or unlawful. However, we note that Section 718.112(2)(i) of the Florida Statutes, relating to condominium associations, expressly limits the ability of a condominium association to impose a transfer fee similar to the WCF Fee.

The Federal Housing Financing Agency ("FHFA") issued a final rule restricting regulated entities (FNMA, Freddie Mac, and Federal Home Loan Banks) from dealing in mortgages on properties encumbered by certain types of transfer fees. The rule does not make such fees unlawful, but only prohibits the regulated entities from purchasing, investing or dealing in any mortgages on properties encumbered by such fees unless the fees are excluded from the application of rule. The final rule, 12 CFR 1228, excludes private transfer fees paid to homeowners associations and certain tax exempt organizations that use the fee proceeds to directly benefit the property. A "direct benefit" is defined 12 CFR 1228 as follows:

Direct benefit means that the proceeds of a private transfer fee are used exclusively to support maintenance and improvements to encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for their benefit. Direct benefit also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that -

- (1) Are conducted in or protect the burdened community or adjacent or contiguous property, or*
- (2) Are conducted on other property that is used primarily by residents of the burdened community.*

The Declaration, Articles and By-laws restrict the use of the WCF Fee to a "direct benefit" as defined in such regulations. Provided that the WCF Fee is used for a "direct benefit" to the community encumbered by the Declaration as defined in 12 CFR 1228, then the Declaration, pursuant to which the WCF Fee is collected, should be considered an "excepted transfer fee covenant" under 12 CFR 1228. Accordingly, Federal mortgage programs should be permitted to provide mortgage loans secured by Homes pursuant to 12 CFR 1228 which provides as follows:

The regulated entities shall not purchase, invest or otherwise deal in any mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income

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stream from such covenants, unless such covenants are excepted transfer fee covenants. The Federal Home Loan Banks shall not accept such mortgages or securities as collateral, unless such covenants are excepted transfer fee covenants.

We note that we have not located any reported court case which interprets this provision with respect to the matters described in this letter.

The foregoing is a summary of certain pertinent issues with respect to the WCF Fee. The views set forth herein are based solely on existing facts and laws and are not a guarantee of what determination will be made in each instance in which a court ruling is sought relative to specific documents or matters referred to herein. Our initial analysis is made as of the date hereof, and we assume no obligation to update or supplement these views to reflect any fact or circumstance that may hereafter come to our attention or any changes in laws or new interpretations of the same that may hereafter occur or become effective. These views are preliminary in nature, and are subject to our review of the actual documents used to create the Foundation and the Declaration once recorded.

This letter is furnished at the request of the City Attorney of the City of Westlake and, except as set forth in the following paragraph, may not be provided to or relied upon by any other party without our prior written consent in each instance. Further, copies of this letter may not be furnished to any other party, nor may any portion of this letter be quoted, circulated or referred to in any other document without our prior written consent in each instance.

This letter speaks only as of the date hereof and the Florida and Federal laws set forth in the Statutory Documents as they exist on the date of this letter. We have no responsibility or obligation to update or supplement this letter if any applicable laws change after the date of this letter or if we later become aware of any facts or other developments, whether existing before or first arising after the date of this letter, that may change the analysis expressed in this letter.. In addition, we have no responsibility or obligation to consider the applicability or correctness of this letter to any person other than its addressee(s), or to take into account changes in law, facts or any other developments of which we may later become aware.

Sincerely,



Berger Singerman LLP

cc: Mr. John Carter, Minto Communities - USA (via email only)



CITY OF WESTLAKE

**DOWN PAYMENT ASSISTANCE APPLICATION
Housing Assistance Purchase Program**

Fiscal Year 2017-2018



I AM REQUESTING ASSISTANCE TO:

Purchase a New Home	_____
Workforce Housing Assistance	_____
Purchase an Existing Home in Need of Rehabilitation	_____

I AM A FIRST-TIME HOMEBUYER:

YES NO

I have not owned a home in the past 3 years		
I am an essential service employee		
I am a veteran		

APPLICANT'S INFORMATION:

Full Name (Last, First, MI) _____

Date of Birth: _____ Social Security Number: _____

Marital Status: Single: _____ Married: _____ Divorced: _____ Separated: _____

Email Address: _____ Telephone Number: _____

Property Address: _____

PRESENT ADDRESS:

ADDRESS:		
CITY:	STATE:	ZIP:
PHONE:	WORK:	CELL:
DO YOU OWN _____ RENT _____	HOW LONG:	MONTHLY PAYMENT:

DO YOU OWN _____ RENT _____	HOW LONG:	MONTHLY PAYMENT:
LANDLORD /LENDER'S NAME:	ADDRESS:	
CITY:	STATE:	ZIP:
PHONE:		

CURRENT EMPLOYER:

Employment Status:	Employed: _____ Unemployed: _____ Retired: _____ Disabled: _____
Company Name:	Address:
City:	State: Zip:
Phone:	No. Years: Job Title:
Yearly Income:	

OTHER EMPLOYMENT:

Company Name:	Address:
City:	State: Zip:
Phone:	No. Years: Job Title:
Yearly Income:	

INDIVIDUALS TO RESIDE IN THE HOME:

FULL LEGAL NAME	SOCIAL SECURITY NUMBER	RELATIONSHIP TO APPLICANT	DATE OF BIRTH	SEX	MONTHLY INCOME

OTHER INCOME: (List for All Occupants Who Will Reside in the Home)

<i>TYPE OF INCOME</i>	<i>MONTHLY INCOME</i>	<i>NAME OF PERSON RECEIVING INCOME</i>
Unemployment Benefits		
Social Security Benefits		
AFDC		
Child Support		
Other (Identify)		
Other (Identify)		

ASSETS AND ASSET INCOME: (List for All Occupants Who Will Reside in the Home)

Do You Own Any Other Property? (House, Vacant Lot, etc.) Yes: _____ No: _____

If yes, Please List the Location of Your Property(ies):

ADDRESS	EQUITY
1.	Market Value: Unpaid Balance:
2.	Market Value: Unpaid Balance:

List Mortgage Carrier for the Above Properties: _____

ASSET INFORMATION:

NAME OF COMPANY	ACCOUNT NUMBER	CHECKING ACCT #	SAVINGS ACCT #	BALANCE

Are you currently in the process of filing for bankruptcy? Yes: _____ No: _____

Are you currently in foreclosure? Yes: _____ No: _____

RELATIVE/EMERGENCY CONTACT: (Not Residing With You)

Name: _____ Relationship: _____ Phone: _____

Address: _____ City: _____ State: _____ Zip: _____

INSURANCE INFORMATION:

NAME OF INSURER	ADDRESS	POLICY NUMBER	POLICY PERIOD	TYPE(S) OF INSURANCE

SOCIAL SECURITY NUMBER COLLECTION DISCLOSURE STATEMENT:

Pursuant to Section 119.071(5), Florida Statutes, your social security number is requested for the purposes of determining employment, retirement, pension and insurance benefits, and receipt of Federal and State funded grant programs; performing identification verification and background checks; W-2 and W-9 filing; filing of worker’s compensation claims; payment of independent contractors and vendors without a Tax Identification number; payment of EMS transport services; and filing of Paramedic and EMT license renewals. Social security numbers will be used solely for one or more of these purposes.

CERTIFICATION AND WAIVER OF PRIVACY:

The applicant(s) certify that all information furnished in support of this certification, is given for the purpose of obtaining a grant (loan) under the City of Westlake’s Housing Assistance Purchase Program, and is true and complete to the best of the applicant(s) knowledge and belief. The applicant(s) further certify that he/she is aware of the fact that he/she can be penalized y fine and or imprisonment for making false statements. I hereby waive my right under the privacy and confidentiality provision act, and give my consent to the City of Westlake Housing Assistance Purchase Program, its agents and contractors to examine any confidential information given herein. I further grant permission, and authorize any bank, employer or other public or private agency to disclose information deemed necessary to complete this application.

DATE

SIGNATURE OF APPLICANT

SIGNATURE OF APPLICANT

CERTIFICATION AND WAIVER OF PRIVACY:

The applicant(s) certify that all information in this application, and all information furnished in support of this application, is given for the purpose of obtaining a grant (loan) under the City of Westlake’s Housing Assistance Purchase Program.

I/We understand that Florida Statutes 817 provides that willful false statements or misrepresentations concerning income, assets, or liability information relating to financial condition is a misdemeanor of the first degree, punishable by fines and imprisonment provided under Statutes 775.082 and 775.083. I/We further understand that any willful misstatement of information will be grounds for disqualification. I/We certify that the application information provided is true and complete to the best of my/our knowledge. I/We consent to the disclosure of information for the purpose of income verification related to making a determination of my/our eligibility for down payment assistance.

I/We agree to provide any documentation needed to assist in determining eligibility and are aware that all information and documents provided are a matter of public record. I hereby waive my rights under the privacy and confidentiality provision act, and give my consent to the City of Westlake Housing Assistance Purchase Program, its agents and contractors to examine any confidential information given herein. I further grant permission, and authorize any bank, employer or other public or private agency to disclose information deemed necessary to complete this application.

DATE:

SIGNATURE OF APPLICANT

DATE:

SIGNATURE OF CO-APPLICANT

City of Westlake
Housing
Assistance
Purchase
Program
Yearly Guidelines

Fiscal Year 2017 - 2018





CITY OF WESTLAKE

Housing Assistance Purchase Program

Guidelines

Fiscal Year 2017-2018

The City of Westlake is implementing an affordable and workforce housing assistance purchase program to maintain the economic and social sustainability of housing supply within the City limits at various income limits. The City has partnered with the Developer, Minto PBLH, LLC (“MINTO”) and the Westlake Community Foundation, Inc. (“FOUNDATION”), in an innovative program to fund eligible applicants under the Housing and Urban Development categories for low, moderate, and middle income households based upon income limitations.

The City, Palm Beach County, developers, local businesses and residents will all benefit from the availability of affordable and workforce housing units. The City will cooperate with other Federal, State and local governmental agencies and local for profit and not-for-profit organizations in a collaborative effort to maximize the utilization of funding sources for affordable housing and workforce housing assistance in creating a sustainable framework to meet the needs of the community and future residents.

DEFINITIONS

Affordable Housing – Housing that is affordable for households at or below 80% of the Area Median Income as defined by the United States Department of Housing and Urban Development (HUD) income limits per household size and that meets maximum housing payments established by HUD, Florida Housing Finance or local ordinance. Housing payments generally do not exceed 30% of household’s gross monthly income.

Affordable Housing Assistance – Any loans, grants, fee reductions or other incentives provided by the City of Westlake to facilitate the construction, purchase or rental of affordable and/or workforce housing to qualified eligible applicants.

Affordable and Workforce Housing Loan Program – A City of Westlake program that provides loans to be used for the construction and purchase of housing serving households up to 140% of the Area Median Income. Loans may be provided as direct loans or limited loan guarantees for single family new construction, multi-family new construction homes and resale on existing housing inventory.

Affordability Period – Funds provided under the Housing Program shall carry a ten (10) year restriction to maintain the affordable and or workforce housing designation. After the expiration of ten (10) years of continued occupancy by the eligible applicant or surviving spouse, the loan will be forgiven.

Annual Reporting – the City of Westlake shall provide an annual accounting of all funds utilized during the prior year, with detailed data on the number of eligible applicants housing assistance was provided to for the purposes of home purchase or rental assistance.

Essential Service Personnel - includes but is not limited to teachers and educators, other school district, community college and university employees, police and fire personnel, health care personnel and local government personnel in Palm Beach County.

First Time Homebuyer – A person who has not owned or occupied a home as their primary residence in the last three years.

Housing Trust Fund – A City of Westlake fund established for the construction, purchase or rental of affordable and workforce housing. All funds received from the Developer will be deposited into the Housing Trust Fund to assist with the purchase or rental of affordable and workforce housing through the Housing Assistance Purchase Program and all funds shall only be utilized for housing assistance.

HUD – the United States Department of Housing and Urban Development.

Income Limits – One of the determining eligibility factors for Federal and State housing assistance programs. Income limits are set by HUD on an annual basis. HUD provides definitions for very low, low and moderate income which vary by program and are determined by the gross household income and household size.

Primary Residence – a person’s primary residence or main residence is the dwelling where the person usually lives. A person can only have one primary residence at any given time. It is considered the legal residence for the purposes homestead exemption, income tax and/or acquiring a mortgage.

Qualified Eligible Homebuyer Applicant - a person or household who meets federal and/or state income guidelines for very low income, low income, moderate income or middle income persons or households and who must have been approved for financing by an organization other than the City, including but not limited to a non-profit corporation or a local lending institution or an entity, including an individual, partnership, for profit or non-profit corporation which has approved financing which meets the federal and/or state guidelines for very low income, low income, moderate income, or middle income persons or households.

Workforce Housing – Housing which is affordable for households with incomes between 121% and 140% of the Area Median Income. Area median income eligibility for workforce housing programs will be based on a percentage of the median income as published by the U. S. Department of Housing and Urban Development, Fannie Mae or the State of Florida, as adjusted for household size.

HOUSING TRUST FUND

Sources of Funds for the Housing Trust Fund include all voluntary funds received from Minto and future developers and property owners within the City of Westlake, through the FOUNDATION. The funds received shall be designated for the affordable housing and workforce housing assistance purchase program. All proceeds from the sale of properties within the City of Westlake designated for the

Housing Trust Funds shall be deposited into and only utilized for the Housing Program and related expenses.

- The Foundation shall collect \$1,500.00 from the sale and re-sale of all residential housing products within the City of Westlake's jurisdictional boundaries. Provisions for the collection of said funds is provided for in the Homeowner's Association documents.
- The Foundation may adjust the housing fee amount of \$1,500.00, upward or downward depending on the housing product type being developed. Multi-family housing products may contribute less than \$1,500.00 per housing unit, and higher end housing product types may contribute more than \$1,500.00 per housing unit.
- The Foundation shall collect a percentage of sale proceeds from the sale and re-sale of all non-residential properties within the City of Westlake's jurisdictional boundaries. Provisions for the collection of said funds is provided for in the commercial property owner's association documents.
- All funds collected and deposited into the Foundation, minus five percent (5%) for administrative expenses shall be transferred to the City of Westlake's Housing Trust Fund on a quarterly basis.
- All funds deposited into the City of Westlake's Housing Trust Fund shall be deposited in a separate and segregated account and shall be dedicated solely to the construction and purchase of single family and multi-family affordable and/or workforce housing units within the boundaries of the City of Westlake.
- Any funds which remain uncommitted at the end of the City's fiscal year, including interest, other earned income, or repayments on loans shall remain in the Housing Trust Fund and shall be used for the purposes set forth herein during the next fiscal year.
- A maximum of seven percent (7%) of the Housing Trust Funds may be utilized for administrative expense related to the costs associated with the loan processing, loan servicing, and operating expenses directly associated with the administration of the Housing Program or other related housing assistance programs.
- Annual reporting shall be provided to the City Council on all approved housing purchases funded through the Housing Trust Fund.
- All projects funded through the Housing Trust Fund must include an application process, written underwriting standards, loan and grant documents containing repayment provisions and provision and instruments that guarantee affordability periods.
- All fund loans, grants, or other financial incentives shall be reviewed and approved by the City Manager and the City Attorney, with documents being executed by the Mayor.
- The City may utilize Housing Trust Funds to provide rental assistance in the future, as rental units become available within the City of Westlake.

APPROVAL PROCESS

Eligible homebuyer applicants must qualify and must receive counseling prior to loan closing, with preference being given to first time homebuyers and essential service personnel.

Eligible homebuyer applicants must be very low income, low income, or moderate income, and middle income limits and occupy the property as their primary residence.

Eligible homebuyer applicants must provide three percent (3%) of the purchase price, from their personal funds as part of the down payment for eligibility purposes of the home assistance purchase program.

Eligible homebuyer applicants shall not have liquid assets exceeding \$30,000.00, except for amounts invested in financial instruments exclusively designated as a retirement account such as an IRA or 401K plan.

Applicants will be considered on a first come first served, first qualified basis for assistance, subject to funding availability. Applicants must meet all affordability and income guidelines for the appropriate income group.

The home must be located within the City of Westlake. Where State and/or Federal funds are utilized, the sales price of the home shall not exceed the maximum sales price as established by Palm Beach County and/or the State of Florida according to HUD guidelines. The sales price shall not exceed the median purchase price of the metropolitan statistical area, as adjusted annually, utilizing all other sources of funds.

Eligible homebuyer applicants must have a FICO credit score of at least 640. If the credit score is less than 640, the homebuyer applicant will be deemed ineligible for a grant or loan award.

No re-payment is due as long as the home remains the primary residence of the eligible homebuyer applicant or surviving spouse. If the home is sold or leased, title is transferred or conveyed, or the home ceases to be the primary residence of the eligible homebuyer applicant or surviving spouse during the term of the loan, the outstanding balance of the loan will be due and payable within 60 days.

INCOME GUIDELINES

WHP CATEGORIES	2017 HOUSEHOLD INCOME	2017 SALES PRICES
Low (60-80% of AMI)	\$40,740 - \$54,320	\$142,590
Moderate-1 (>80-100% of AMI)	>\$54,320 - \$67,900	\$183,330
Moderate-2(>100-120% of AMI)	>\$67,900 - \$81,480	\$224,070
Middle (>120-140% of AMI)	>\$81,480 - \$95,060	\$264,810

HOUSING ASSISTANCE LOAN REPAYMENT

Loans will be provided at zero percent interest to eligible homebuyer applicants. Loans provided under the program will be provided over a ten- year time frame, with ten percent (10%) of the loan amount being forgiven annually, except the first year, wherein 5% of the loan will be forgiven. The loan is forgivable in its entirety at the end of the ten-year time frame (term) from the date of execution of said mortgage and note, provided the title has remained under the ownership of the individuals signing said mortgage and note as their primary residence or a surviving spouse.

Disposition Within Months of Closing	Percentage of Loan Subject to Repayment	Percentage of Loan Forgiven
1 - 12	95%	5%
13 – 24	90%	15%
25 -36	80%	20%
37 – 48	70%	30%
49 – 60	60%	40%
61 – 72	50%	50%
73 – 84	40%	60%
85 – 96	30%	70%
97 – 108	20%	80%
109 – 121	10%	90%
122 or more	0%	100%

HOUSING ASSISTANCE LIMITS

Purchase assistance will be provided to eligible home buyers on new construction single family detached and attached housing units to assist with gap financing, down payment and/or closing costs. Awards will be provided based upon financial need. No cash out will be provided to income eligible applicants, only down payment and/or closing cost assistance will be provided.

Maximum awards by income category:	Very Low	\$60,000.00
	Low	\$45,000.00
	Moderate	\$40,000.00
	Middle	\$35,000.00

Maximum loan assistance amounts are based upon established affordability guidelines and creditworthiness as defined by established underwriting guidelines. Underwriting certification will be required.

FAIR HOUSING DISCLAIMER

Title VIII of the Civil Rights Act of 1968, as amended in 1988, the Fair Housing Act makes it unlawful to engage in discriminatory practices based on race, color, national origin, religion, sex, familial status or handicap (disability) in the sale, rental, and financing of dwellings and housing related transactions.



CITY OF WESTLAKE

REQUIRED DOCUMENTATION

Housing Assistance Purchase Program

Fiscal Year 2017-2018

The City of Westlake welcomes applicants to apply for assistance under the housing assistance purchase program. The program will provide assistance to eligible households purchasing property within the City of Westlake's to cover a portion of the costs of homeownership such as down payment assistance and/or assistance with closing costs.

The following items will be required as documentation:

1. Completed Application Form.
2. Proof of United States Citizenship
3. Provide most recent pay stubs for all household members who work.
4. Provide copies of the last three months' bank statements, 401(k)/ 403(B) account statements for all household members.
5. Provide copies of social security cards and picture ID (driver's license) for anyone living in the household.
6. Provide most recent Federal Income Tax Return, with a completed IRS form 4506-T
7. Proof of number of dependents claimed by bringing one of the following (as applicable):
Birth Certificate(s) on which the parent/applicant's name is listed, or
School records which provide the parent/applicants' name and address, or
Court Ordered letter(s) of Guardianship, or
Divorce Decree, or
Letter(s) of Adoption
8. Lender Pre-Approval Documentation



CITY OF WESTLAKE
NOTICE OF FUNDING AVAILABILITY
Housing Assistance Purchase Program
Fiscal Year 2017-2018

The City of Westlake announces the availability of funding for its Home Assistance Purchase Program. The program will provide assistance to eligible households purchasing property within the City of Westlake's City limits to cover a portion of the costs of homeownership such as down payment assistance and/or assistance with closing costs.

FUNDING

The limited funding is available through a voluntary program being funded by the developer Minto Communities, PBLH, LLC. The City's current allocation of funds is \$316,500, for the 2017-2018 fiscal year. The program is limited the availability of existing funds. Once existing funds are committed to approved applicants, future applications will not be processed until additional funding becomes available.

ELIGIBILITY

Eligible applicants for the program must qualify for housing assistance based upon Housing and Urban Development (HUD) guidelines for very low income, low income, or moderate income as adjusted to family size published annually, based upon annual gross income of the household. In addition to the HUD qualified applicants, funds will be available for Workforce Housing Participants based upon Area Median Income (AMI) limitations. Workforce Housing is intended to provide the dream of homeownership to teachers, police personnel, fire personnel and public service workers.

APPLICATIONS

Applications will be accepted beginning on Friday, December 15, 2017, from 9:00am -3:00pm, and on Mondays, Wednesdays and Fridays from 9:00am – 3:00pm, or by appointment by calling the City of Westlake at (561) 530-5880. The address to apply is 4001 Seminole Pratt Whitney Road, Westlake, Florida 33470.