

RESOLUTION 19-33

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING NON-EXCLUSIVE RESIDENTIAL SOLID WASTE COLLECTION FRANCHISE AGREEMENTS BETWEEN THE CITY AND BCC WASTE SOLUTIONS, COQUI DISPOSAL SERVICES, MR. TRASH, NATE'S SANITATION, WASTE MANAGEMENT OF FLORIDA AND WASTE PRO OF FLORIDA; DIRECTING THE CITY MANAGER TO INVESTIGATE THE RESOURCES NECESSARY TO EFFECT THE CITY'S BILLING AND COLLECTION OF SOLID WASTE COLLECTION FEES ON THE CITY WATER BILL; AUTHORIZING A BILLING AMENDMENT TO THE FRANCHISE AGREEMENT UNDER CERTAIN LIMITED CIRCUMSTANCES SET FORTH IN THE BODY OF THE RESOLUTION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, the City issued a request for proposals for residential solid waste collection services from haulers currently providing such service in the City or in unincorporated Bay County between the City and the Hathaway Bridge, West Bay Bridge or Philips Inlet (the "Island"); and

WHEREAS, the City has received and evaluated the responses received from the haulers desiring to provide residential solid waste collection service and willing to accept the term and conditions of the City's franchise.

NOW THEREFORE BE IT RESOLVED that:

1. The appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Residential Collection Unit Services Agreement between the City and BCC Waste Solutions, Coqui Disposal Services, LLC, Mr. Trash, LLC, Nate's Sanitation Service, Inc., Waste Management, Inc. of Florida, and Waste Pro of Florida, Inc., relating to residential solid waste collection services in the City.
2. The general form of the Residential Collection Unit Services Agreement attached, incorporated and marked Exhibit A is approved for all six firms listed above, in substantially the form attached and presented to the Council

today, draft dated December 3, 2018, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

3. The appropriate officers of the City are authorized and directed to investigate the resources necessary to effect the City's collection of solid waste collection fees billed to solid waste customers in the City or on the Island. Upon the City Manager's determination that the City is able to undertake responsibility for this obligation, and that assumption of this obligation is in the best interests of the City, the City Manager is hereby expressly authorized to negotiate and execute a uniform amendment to the Residential Collection Unit Services Agreement addressing the transfer of this obligation from the haulers to the City, which amendment shall be uniform across all Agreements then in effect (the "Billing Amendment"). The City Manager shall not be authorized to execute a Billing Amendment where the effect of the Billing Amendment is to increase solid waste collection fees then billed to customers without the approval of the City Council.

THIS RESOLUTION shall be effective immediately upon passage.

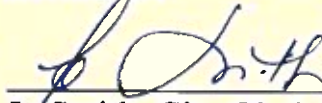
PASSED in regular session this 13th day of December, 2018.

CITY OF PANAMA CITY BEACH

By: 

Mike Thomas, Mayor

ATTEST:



Jo Smith, City Clerk

**RESIDENTIAL COLLECTION
UNIT SERVICES AGREEMENT**

between

CITY OF PANAMA CITY BEACH, FLORIDA

and

Exhibit A

**SOLID WASTE COLLECTION AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH, FLORIDA
AND
_____**
FOR

RESIDENTIAL COLLECTION UNIT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20__ between **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation of the State of Florida (hereinafter "City") and _____ (hereinafter "Contractor").

WHEREAS, City issued Request for Proposal (hereinafter "RFP") for Residential Collection Services; and

WHEREAS, Contractor has voluntarily applied for a Franchise pursuant to City Ordinance _____ and accepted the terms and conditions thereof and hereof; and

WHEREAS, Contractor desires to provide Collection services specified hereinafter; and

WHEREAS, City has received and evaluated bids from several bidders in response to RFP, and

WHEREAS, on _____, City Council adopted Resolution 19-33 which authorized execution of this Agreement by City and Contractor; and

NOW, THEREFORE, in consideration of the mutual promises and understandings set forth herein, City and Contractor agree that the following recitals are true, complete and not misleading, and further agree as follows:

SECTION 1: DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings as set forth in this Section. The words “**shall**,” “**will**,” and “**must**” are always mandatory and not merely discretionary. The word “**may**” indicates something that is not mandatory but permissible. The terms “**herein**,” “**hereunder**,” “**hereby**,” “**hereto**,” “**hereof**,” and any similar terms, shall refer to this Agreement; the term “**heretofore**” shall mean before the date of adoption of this Agreement; and the term “**hereafter**” shall mean after the initial date of adoption of this Agreement. When not inconsistent with the context, words in the plural shall include the singular and vice versa, words importing Persons shall include firms and corporations, words in the present tense shall include the future, and use of the masculine gender shall include the feminine gender.

“**Agreement**” – Agreement shall mean this written document and all appendices and amendments hereto, between City and Contractor, governing the provision of Collection Services.

“**Backdoor**” – Backdoor shall mean a location at the front, side or rear of a structure acceptable to both the Customer and Contractor for Residential Unit Collection Service. If a location cannot be agreed upon by the Customer and Contractor, Contract Administrator shall designate the location for Backdoor Residential Collection Service.

“**Backdoor Residential Collection Service**” – Backdoor Residential Collection Service shall mean Solid Waste Collection Service from adjacent to a back door, side door or other location proximate to a residence and easily accessible to the resident, and shall include wheeling the Cart to the curb to be emptied and returning the Cart to where it was found.

“**Bin**” – Bin shall mean a Recycling Bin.

“**Biological Waste**” – Biological Waste shall mean any solid or liquid waste that carries a relatively low risk of causing disease or infection to humans if not properly handled and includes, but is not limited to, dead animals or animal carcasses and large quantities of putrefied waste regardless of whether contained in a sealed vessel. The term does not include human remains that are disposed of by Persons licensed under Florida Statutes chapter 497. See Special Wastes.

“**Biomedical Waste**” – Biomedical Waste shall mean any solid or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste that contains human-disease-causing agents; discarded disposable sharps; human blood and human blood products and body fluids; and other materials that in the opinion of the Department of Health represent a significant risk of infection to Persons outside the generating facility. The term does not include human remains that are disposed of by Persons licensed under Florida Statutes chapter 497. See Unacceptable Wastes.

“Bulk Waste” – Bulk Waste shall mean any combination of Yard Waste, Special Waste and/or White Goods. Bulk Waste shall not include Solid Waste and Unacceptable Waste.

“Bulk Waste Collection Services” – Bulk Waste Collection Services shall mean the Collection of loose (not bagged or bundled) Bulk Waste and delivery to Disposal Facility by Contractor.

“Business Day” – Business Day shall mean any day, Monday through Friday, from 8 AM, local time until 5 PM, local time, except City recognized holidays described in Section 10 of this Agreement.

“Cart” – Cart shall mean a Solid Waste Cart.

“Change in Law” – Change in Law shall mean the adoption, promulgation or other written change in any federal, State or local law, regulation, rule or ordinance after the Effective Date of this Agreement.

“City” – City shall mean the City of Panama City Beach, Florida a municipal corporation of the State of Florida; and shall include City's elected officials, officers, employees, agents, volunteers and representatives.

“City Council” – City Council shall mean the governing body of the City of Panama City Beach, Florida.

“Collection” – Collection shall mean the act of picking up Solid Waste or Bulk Waste and delivery of Solid Waste or Bulk Waste to Disposal Facility.

“Commencement Date” – Commencement Date shall mean January 1, 2019, at 12:01 AM, local time.

“Compactor” – Compactor shall mean any Container, regardless of its size, which has a compaction mechanism, whether stationary or mobile, as may be more specifically defined by the Contractor Administrator.

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

(a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;

(b) Scrap from manufacturing facilities which is the type of material generally used in construction projects and which would meet the definition

of Construction and Demolition Debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities; and

(c) De minimis amounts of other non-hazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

“Container” – Container shall mean Compactors, Dumpsters, and Roll-offs.

“Contract Administrator” – Contract Administrator shall mean City Manager of the City, or his designee or designees, who shall represent City in the administration and supervision of this Agreement.

“Contract Year”– Contract Year shall mean the period beginning October 1st of each year and ending on September 30th of the subsequent year for the term of this Agreement.

“Contractor” – Contractor shall mean and include Contractor’ and Contractor’s permitted assignees and subcontractors.

“Curbside” - Curbside shall mean located sufficiently close the street for Contractor to service the Cart or, as applicable, pick up Bulk Waste. If a Curbside location cannot be agreed upon by the customer and Contractor, Contract Administrator shall designate the Curbside location.

“Disaster Debris” - Debris generated by a storm named by the National Oceanic and Atmospheric Administration (NOAA).

“Disposal Facility” – Disposal Facility shall mean a Solid Waste transfer station or any Solid Waste management facility that is the final resting place for Solid Waste, including Landfills and incineration facilities that produce ash from the process of incinerating municipal Solid Waste.

“Dispose”, “Disposed” or “Disposal” – Dispose, Disposed, or Disposal shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any Solid Waste or Bulk Waste into or upon any land or water so that such Solid Waste or Bulk Waste may enter other lands or be emitted into the air or discharged into any waters, including ground waters, or otherwise enter the environment.

“Dumpster” – Dumpster shall mean any Container, excluding Compactors, with a tight fitting lid and a minimum capacity of one (1) cubic yard, a maximum capacity of eight (8) cubic yards, as may be more specifically defined by the Contractor Administrator.

“Enclosure” – Enclosure shall mean any structure designed for the storage of Carts.

“Event of Default” – Event of Default shall mean an event specified in this Agreement as an Event of Default.

“Franchise Fees” – Franchise Fee shall mean the charge for the Contractor’s use of present and future streets, alleys, bridges, easements, and other public places in the Service Area.

“Garbage” – Garbage shall mean kitchen and table refuse, all general combustible waste, such as paper and rags, paperboard boxes, plastics, cans and every accumulation of trash and animal and vegetable matter that attend the preparation, decay, dealing in or storage of food such as: meats, fish, fowl, game, fruits and vegetables.

“Hazardous Waste” – Hazardous Waste shall mean explosives, radioactive waste, Biomedical Waste or any other waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include Special Wastes or human remains that are disposed of by Persons licensed under Florida Statutes chapter 497.

“Improper Set-out” – Improper Set-out shall mean the failure of the customer to set out the Cart in a manner and location as described in the Operations Plan.

“Late Set Out” - Late Set Out shall mean failure of the customer to set out the Cart by the time established in the Operations Plan.

“Missed Collection” - Missed Collection shall mean failure to empty and collect on the scheduled day a Cart that was Set Out.

“Operations Plan” – Operations Plan shall mean the means of providing collection service proposed by the Contractor and approved by the City.

“Person” – Person shall mean any and all Persons, natural or artificial, including any individual, firm, or association; any municipal or private corporation organized or existing under the laws of this State or any other state; any county of this state; and any governmental agency of this State or the Federal Government.

“Residential Collection Unit Services” – Residential Collection Unit Services (sometimes “Collection Services” herein) shall mean Solid Waste Collection Services and Bulk Waste Collection Services for Residential Service Units.

“Residential Service Unit” – Residential Service Unit shall mean a single family residence located in the Service Area. At the sole discretion of Contract Administrator based upon location, appearance and the absence of a public or private nuisance, a small business or a multi-family residential establishment, or residential accessory establishments owned by an association or commonly by members of an association, may from time to time be considered a Residential Service Unit(s) and therefore be permitted to utilize Solid Waste Cart(s). The term Residential Service Units shall not include establishments utilizing Container(s) for the accumulation and set-out of Solid Waste regardless of the use or purpose of the establishment. A City facility utilizing a Solid Waste Cart(s) shall be deemed a Residential Service Unit.

“Roll-off” – Roll-off shall mean any Container, excluding Compactors and Dumpsters, with a capacity of greater than eight (8) cubic yards which is normally loaded onto a motor vehicle and transported to a Disposal Facility, as may be more specifically defined by the Contractor Administrator.

“Scavenge” – Scavenge shall mean the unauthorized removal of Solid Waste or Bulk Waste after the generators thereof divest physical control.

“Scenic Corridor”- Scenic Corridor shall mean those portions of the roads listed upon attached Appendix B which lie within the Service Area.

“Scenic Corridor Collection Service” – Scenic Corridor Collection Service shall mean Residential Unit Collection Service where the Cart is located at the door of a structure or behind a structure, screen or other enclosure and shall include wheeling the Cart to the curb to be emptied and returning the Cart to where it was found.

“Service Area” – Service Area shall mean the entire area of the City from time to time established. The Service Area shall at all times during this Agreement include all property within the corporate limits of the City of Panama City Beach. The Service Area may include property within the unincorporated portions of Bay County lying between the City limits and Philips Inlet bridge, West Bay Bridge, or Hathaway Bridge.

“Set Out” - Set Out shall mean the proper preparation and placement of Solid Waste for Collection at the Residential Service Unit, in accordance with the Operations Plan.

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

“Small Business” – Small Businesses shall mean a commercial operation electing to use Residential Unit Collection Service. A small business shall be permitted no more than three Carts and shall be required to switch to a Container (not Residential Unit Collection Service) if the Carts overflow on more than a rare and isolated basis.

“Solid Waste” – Solid Waste shall mean Garbage and Trash whether in solid, liquid, semisolid, or contained gaseous form. Solid Waste shall not include Bulk Waste and Hazardous Waste.

“Solid Waste Cart” – Solid Waste Cart shall mean a receptacle with wheels with a capacity of up to approximately 95 gallons designed or intended to be mechanically dumped into a loader-packer type garbage truck and approved by Contract Administrator for the Collection of Solid Waste. All such Waste Carts must be clearly marked in a manner as approved by City.

“Solid Waste Collection Services” – Solid Waste Collection Services shall mean the Collection of Solid Waste and delivery to a Disposal Facility by Contractor.

“Special Pick-up Service” – Special Pick-up Service shall mean Residential Unit Collection Services provided by Contractor on a day other than the scheduled Collection day.

“Special Wastes” – Special Wastes shall mean solid or liquid wastes that can require special handling and management, including, but not limited to, waste tires, homeowner produced Construction and Demolition Debris, ash residue, Biological Wastes, bulky waste such as furniture, discarded appliance parts, other household items, metals and scrap metal, duct work, sheet metal, light iron and unprepared scrap iron, and debris.

“State” – State shall mean the State of Florida.

“Term” -- Term shall include the initial term and any successive renewal term(s) elected by the City.

“Trash” – Trash shall mean any residential household accumulation of useless material other than Garbage, Yard Waste, Special Waste, Hazardous Waste, or Unacceptable Waste.

“Unacceptable Waste” – Unacceptable Waste shall include ash residue, fuel tanks, Sludge, commercial Construction and Demolition Debris, Hazardous Waste, used oil, lead-acid batteries and Biomedical Waste,

“White Goods” – White Goods shall include discarded air conditioners, heaters, refrigerators, ranges, water heaters, freezers, and other similar domestic, large appliances. White Goods shall include freon and non-freon containing appliances.

“Yard Waste” – Yard Waste shall mean vegetative matter resulting from landscaping maintenance and minor land clearing operations and includes accumulations of shrubbery, cuttings, leaves, grass cuttings, palm fronds, tree trimmings, tree limbs and split trunks, mulch and associated rocks and soils.

“Tipping Fee” – Tipping Fee shall mean the fee collected by the operator of the Disposal Facility as compensation for accepting the delivery of Solid Waste or Bulk Waste.

SECTION 2: RESERVED

SECTION 3: REPRESENTATIONS

3.1 Representations by City

City represents to Contractor that City is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

3.2 Representations by Contractor

Contractor represents to City that:

- 3.2.1** Contractor is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- 3.2.2** Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are (a) necessary for Residential Unit Collection Services and (b) required to be issued under Federal, State, local law, regulation, rule or ordinance.
- 3.3.3** Contractor has obtained and submitted to City (a) certificates of insurance for all required insurance coverages specified in this Agreement and (b) documentation of performance bond as required by this Agreement.
- 3.3.4** To the best of Contractor's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Contractor of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by Contractor in connection with the transactions contemplated hereby.

SECTION 4: EFFECTIVE DATE AND TERM OF AGREEMENT

4.1 Effective Date

This Agreement shall become effective immediately upon execution but the obligations of the parties shall take effect on the Commencement Date.

4.2 Term of Agreement

4.2.1 Initial Term

Unless sooner terminated in accordance with the provisions in this Agreement, the term of this Agreement shall commence on the Commencement Date, and shall continue in effect for a period of three years.

4.2.2 Option to Renew

After the initial term as defined in Section 4.2.1 of this Agreement, City shall have the option at its sole discretion to renew for up to three (3) additional, consecutive terms of two (2) years each. To exercise its option, City shall provide written notice to Contractor no later than ninety (90) calendar days preceding the scheduled date of expiration. This provision in no way limits City's right to terminate this Agreement at any time during the initial term or any renewal term thereof pursuant to the provisions in this Agreement.

SECTION 5: RESIDENTIAL COLLECTION UNIT SERVICES

5.1 Non-Exclusive Franchise

Contractor is granted a non-exclusive franchise to provide Residential Unit Collection Services to any Residential Services Units located within the Service Area, and if requested facilities owned or operated by City, in accordance with this Agreement. Contractor shall collect, transport, and dispose or recycle all Solid Waste and Bulk Waste generated by each Residential Service Unit in the Service Area in compliance with the requirements contained in this Agreement. Contractor shall be responsible for all costs associated with its activities including payment of disposal fees, franchise fees, permit fees, and other costs.

5.2 Residential Collection Unit Services

5.2.1 Solid Waste Collection Services

Contractor shall be required to provide Solid Waste Collection Services via Solid Waste Cart(s) to each Residential Service Unit in the Service Area requesting service, subject to the terms and conditions of this Agreement and uniform rates and policies established by Contractor and fairly and evenly applied to all persons similarly situated.

Contractor shall provide Solid Waste Collection Service on the scheduled days and routes approved by Contract Administrator.

All Solid Waste Collection Service may be Curbside, except where Backdoor or Scenic Corridor Collection Service is required.

5.2.2 Bulk Waste Collection Services

Contractor may be required to provide curbside Bulk Waste Collection Service to each Residential Service Unit in the Service Area for which Contractor provides any Collection service under this Agreement, subject to the terms and conditions of this Agreement and uniform rates and policies established by Contractor and fairly and evenly applied to all persons similarly situated. Bagging or bundling of Bulk Waste shall not be required.

Contractor shall provide routine Bulk Waste Collection Service on the scheduled days and routes approved by Contract Administrator.

Contractor shall leave the collection area in a neat, clean and raked condition.

5.2.3 Customer Option Backdoor Residential Unit Collection Services

Contractor may make available Backdoor Residential Collection Services for Solid Waste from single family residences within the Service Area. All Backdoor Residential Collection Services shall be provided on the same days that Solid Waste Collection Service would have been provided to the residence if the residence had not requested Backdoor Residential Collection Services. Contractor may charge additional fees for providing optional Backdoor Residential Collection Services.

5.2.4 Medical Backdoor Residential Unit Collection Services

Contractor shall be required to provide Backdoor Residential Collection Services for Solid Waste from single family residences within the Service Area approved by City for medical Backdoor Residential Collection Services. City may approve Residential Service Units for Backdoor Residential Collection Services only if all adult occupants residing therein are handicapped or due to age or verified physical limitations cannot safely Set Out the Solid Waste Cart. All Backdoor Residential Collection Services shall be provided on the same days that Solid Waste Collection Service would have been provided to the residence if the residence had not been approved for medical Backdoor Residential Collection Services. City shall notify Contractor in writing of any residence approved for medical Backdoor Residential Collection Services. Contractor shall not charge any additional fees for the provision of medical Backdoor Residential Collection Services.

5.2.5 Scenic Corridor Collection Services

Contractor shall be required to provide Scenic Corridor Collection Services wherever Contractor provides Solid Waste Collection Services to an establishment located in whole or in part within a Scenic Corridor within the Service Area. Contractor shall not charge any additional fees for the provision of Scenic Corridor Collection Services. City may from time to time add or delete roads from the Scenic Corridors.

5.3 Special Pick-up Collection Service

Upon written notice, including written notice via email, from Contractor's customer, Contractor shall collect Bulk Waste from a customer on a calendar day other than the customer's scheduled Collection day. If the customer provides written notice, including written notice via email, to Contractor prior to 12:00 PM, local time, Contractor shall provide Special Pick-up Services on that same day. If the customer provides written notice, including written notice via email, to Contractor after 12:00 PM, local time, Contractor shall provide Special Pick-up Services before 12:00 PM, local time the next calendar day. Contractor may charge additional fees for providing special Bulk Waste pick-up Collection Service for collections that are extraordinary in quantity or quality.

5.4 Improper Set-outs

Contractor shall document Improper Set-outs, but shall nonetheless empty the Cart.

5.5 Overflowing Carts

Contractor shall document by photographing prior to disturbing, but shall not be obligated to pick up Solid Waste material left beside or overflowing from a Cart, except as provided in Section 10.

5.6 Emergency Services

Following a hurricane, tornado, or other natural or manmade disaster, the Contractor shall use its best efforts to immediately collect, by any means

available, all Solid Waste Carts offered for Collection. This shall be the Contractor's primary responsibility until the Contractor is able to provide Collection Services on a routine basis, as determined by the Contract Administrator. The Contractor shall use its best efforts to resume its Collection Services on the Scheduled Collection Days as soon as possible after the disaster.

In the event of a hurricane, tornado, or other natural or manmade disaster, the Administrator may grant the Contractor a variance from the Contractor's regular routes and schedules. Requests for a variance shall be submitted in writing to the Administrator. The Contractor shall furnish a map depicting the revised routes and shall provide the revised schedules in writing. The Contractor shall contact the Contract Administrator on a daily basis and describe the status of the Contractor's efforts to provide Collection Service and resume the use of normal routes and schedules.

Contractor shall develop a Contingency Plan, which shall describe the Contractor's plan of action in the event that an emergency or other situation renders the Contractor's operations yard or equipment unusable. The Contingency Plan shall be submitted to the Administrator by the Commencement Date. The Contingency Plan shall be kept up to date by the Contractor. The Contractor shall provide an updated copy of the Contingency Plan to the City whenever significant changes are made to the Contingency Plan. At a minimum, the Contractor shall provide an updated copy of the Contingency Plan annually on the anniversary date of this Agreement.

This Agreement does not give the Contractor the right to collect Disaster Debris for other than Contractor's residential customers, neither does this Agreement create for the Contractor the obligation to collect Disaster Debris from Contractor's residential customers. The City will enter into a separate contract with the Contractor if the City wishes to utilize the Contractor's services for the public Collection of Disaster Debris.

6.1 SECTION 6: DISPOSAL FACILITY

6.2 Solid Waste

Contractor shall dispose of Solid Waste Collected pursuant to this Agreement at a Disposal Facility designated by Bay County, Florida, pursuant to County Code Sec. 22-149 or an appropriately licensed and permitted facility approved by City.

6.3 Bulk Waste

Contractor shall dispose of Bulk Waste Collected pursuant to this Agreement at a Disposal Facility designated Bay County, Florida pursuant to County Code Sec. 22-149 or an appropriately licensed and permitted facility approved by City.

6.4 Local or Specials Laws

Contractor shall comply with all applicable laws and regulations addressing the waste stream in Bay County, Florida, and the Disposition of Solid Waste and Bulk Waste.

SECTION 7: COLLECTION EQUIPMENT

7.1 Collection Services Vehicles

7.1.1 Mandatory Equipment on Collection Services Vehicles

Contractor shall provide all Collection Services with the type of vehicles approved by the Contract Administrator. Those types of vehicles listed upon Attachment D are approved. Contractor shall equip all Collection Services vehicles with spill kits and, to fulfill Contractor's documentation obligation, working digital cameras. Images shall be retained for a minimum of 90 days. Spill kits shall include a broom, dust pan, and other items necessary to clean up spillage and litter caused by Collection Services. In addition, Contractor shall equip all Collection Services vehicles with oral telecommunication equipment providing instant, two-way communication between the vehicle and both Contractor's Route Supervisor and Contract Administrator.

7.1.2 Appearance and Maintenance of Collection Services Vehicles

Contractor shall paint all Collection Service vehicles uniformly with the name of Contractor, customer service office telephone number and the unique identification number of the vehicle in letters not less than six (6) inches high on each side and the rear of the vehicle. All Collection Services vehicles shall be uniquely numbered and a record kept of the vehicle to which each number is assigned. All Collection Services vehicles shall be cleaned and disinfected regularly, but not less frequently than monthly.

Contract Administrator, at its sole discretion, may require a vehicle to be removed from service under this Agreement while the appearance of the vehicle does not meet the requirements of this Agreement, the vehicle repeatedly causes spillage or litter, or Contract Administrator deems the appearance, condition, or maintenance of the vehicle to be unacceptable pursuant to guidelines issued by the Contract Administrator, provided Contractor is given reasonable written notice and opportunity to cure the vehicle's deficiency.

7.2 Collection Carts

7.2.1 Return of Collection Services Carts to Original Location

If the original location for the Cart is not blocking a roadway or driveway, Contractor shall return the Cart to the original location. If the original location for the Cart is blocking a roadway or driveway, Contractor shall return the Cart to the closest location not blocking a roadway or driveway to the original location.

Contractor shall replace all Carts upright. Contractor shall replace all Carts with the lid closed.

Where other than Curbside Collection Service is required, Contractor shall be solely responsible for opening the enclosure to provide Collection Services and closing the Enclosure upon completion of Collection Services if the Cart is located in an Enclosure.

7.2.2 Appearance of Collection Services Carts

City shall have the sole and unfettered discretion to determine and approve the construction and appearance of all new Carts to be put into service under this Agreement.

7.2.3 Purchase, Distribution, Maintenance, Storage and Replacement of Collection Services Carts

7.2.3.1 Purchase of Carts

Contractor, at its sole cost, shall provide all Carts required for the provision of Collection Services pursuant to this Agreement. Provided they are in good condition, Contractor may use Carts in use in the Service Area when Contractor submitted its application for this Agreement.

7.2.3.2 Distribution, Maintenance and Storage of Carts

Contractor, at its sole cost, shall distribute Carts to customers within two (2) Business Days of a written request of customer. Contractor shall provide and attach a Program Introduction Notice in form acceptable to City to each Cart delivered.

Contractor's employees shall take care to prevent damage to Carts by unnecessary rough treatment.

Contractor shall be solely responsible for the storage of replacement Carts.

7.2.3.3 Replacement of Carts

Upon notification to Contractor by City or a customer that a Cart has been lost, destroyed, stolen or that it has been damaged beyond convenient serviceability, or defaced, Contractor shall deliver a replacement Cart to such customer within two (2) Business Days. Contractor shall be solely responsible for the cost associated with the replacement of such Carts for the term of this Agreement. If the Contract Administrator determines that the Customer is responsible for the loss or damage to a Cart, the Contractor may charge the City the Cart replacement fee set forth on Attachment E.

7.2.3.4 Ownership of Carts

Ownership of all Carts shall reside with Contractor.

SECTION 8: CONTRACTOR'S PERSONNEL

8.1 Contractor's Representative

Contractor shall have competent and reliable representative(s) on duty that are familiar with the operation of the Collection Services within the Service Area and authorized to make decisions and act on its behalf. Contractor agrees that City shall have twenty-four hour, seven days a week (except Christmas day) access to the representative(s) via a non-toll call from City, email and text messaging. Answering machines, pagers or other devices that do not provide for instantaneous, two way conversations with Contractor's representative(s) shall not meet the requirements of this Section. Contractor shall conduct a background criminal check on Contractor's representative assigned to this contract for the benefit of City and shall make the results of that check available to the City should probable cause be shown implicating the representative in any loss or circumstance adversely affecting the City or the Collection Services. In addition, Contractor shall provide the names, office telephone number, mobile phone numbers and email addresses of Contractor's representatives and key personnel to the Contract Administrator. Such records shall be updated as personnel or contact information changes.

8.2 Contractor's Route Supervisor

Contractor shall have a minimum of one (1) permanent full time local Route Supervisor dedicated to the Service Area. Contractor shall provide local relief personnel coverage by qualified personnel when the permanent Route Supervisor is off duty. Contractor shall provide City with Route Supervisor's phone number and email address so contact can be made directly when required. Contractor shall conduct a background criminal check on Contractor's Route Supervisor assigned to this contract. The Route Supervisor shall:

- 8.2.1** Be equipped with and respond to the City and customers on Collection related email complaints from the field via a laptop computer with wireless internet access card, or other suitable device approved by the Contract Administrator.
- 8.2.2** Be equipped with a cellular phone for communications with City and customers to immediately return phone calls to City and customers.
- 8.2.3** Carry company identification credentials.
- 8.2.4** Utilize a company vehicle to respond and meet with customers; the vehicle shall be marked so as to clearly associate it with similarly marked Collection Equipment.
- 8.2.5** Participate in asset protection by ensuring all Carts are out of the street, lids closed and are properly being used by customer.
- 8.2.6** Be responsible to tag Carts, pull Carts back, and leave informational flyers on the front door or similarly conspicuous location to notify customer of an improper Set-out and, if permitted by the City, the reason why the Cart was not serviced.

- 8.2.7 Be responsible to identify overflowing Cart(s) and contact City to notify City of overflowing Cart(s).
- 8.2.8 Be responsible to respond to complaints on the same day complaint is received up to 6:00 PM, local time, regardless of when the Collection Services personnel complete the route.
- 8.2.9 Report lost or damaged Carts to Contractor for immediate repair or replacement.
- 8.2.10 Assist customers by distributing and explaining program information.
- 8.2.11 Be required, upon the request of City, to conduct route audits to verify information regarding Carts per customer and service per location.
- 8.2.12 Have strong public relations skills, be able to effectively deal with angry or difficult customers, be able to successfully solve problems while protecting Contractor's and City's interests, be highly motivated, dedicated, dependable, resourceful, and have the ability to establish positive relationships with City and the general public.
- 8.2.13 If requested, attend weekly meetings with City to discuss and evaluate Collection Services, solve performance related issues, provide input, and share information, to ensure delivery of quality service.
- 8.2.14 Be required, upon the request of City, to attend public meetings, with City, to explain or promote Collection Services.
- 8.2.15 Be required, upon the request of City, to perform duties related to Collection Services.

8.3 All Collection Personnel

Contractor shall adhere to the following personnel requirements:

- 8.3.1 Contractor shall hire and maintain qualified personnel to provide Collection Services under this Agreement. Contractor is encouraged but not required to hire qualified Bay County residents to fill vacant positions at all levels. Contractor shall conduct a background criminal check on all employees assigned to this contract.
- 8.3.2 Contractor shall furnish each employee involved in the performance of this Contract with a common and clean uniform and safety vest, shirt or jacket which clearly displays the name of Contractor. Such uniforms and safety equipment shall make the employee readily visible to other motorists. Contractor's employees shall wear complete uniforms and safety vest, shirt or jacket at all times. Contractor acknowledges that the City is a resort community, and that the appearance of Contractor's front line employees affects the image of the City, the attractiveness of the City to tourists, and ultimately the economy of the City.
- 8.3.3 Contractor shall provide regularly scheduled, on-going operating and safety training for all its employees. Such meetings shall be mandatory for all Collection and supervisory personnel, and held not less than once per

month. All temporary and newly hired permanent Collection personnel must receive comprehensive safety and operational training prior to working on the Collection vehicles. Training manuals and schedules shall be maintained at the local office of Contractor and available for review at any time by Contract Administrator.

- 8.3.4** All employees involved in the performance of this Agreement, including office and all Collection personnel, must be provided adequate training before and during their employment with Contractor. This training shall familiarize employees with the required duties and standards of performance, specific requirement on routes to which they will be assigned, teach the route layouts previously established and approved, and provide necessary knowledge to eliminate delays and missed Collections. All supervisory and Collection employees must be provided comprehensive safety training, equipment, and supplies prior to and during the performance of their duties. All Collection, administrative, supervisory and customer service personnel must receive customer service training prior to and during the time they are employed by Contractor.
- 8.3.5** Contractor's employees shall treat all customers, co-workers, City employees and any individual with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence, and the use of profanity are strictly prohibited. Contractor's employees shall not solicit tips, gratuities, gifts or anything of value including promises to return after hours to perform Collection Services while performing duties under this Agreement. Contractor's employees shall not Scavenge.
- 8.3.6** In performance of Collection Services, Contractor's employees must adhere to municipal, County, State and federal laws.
- 8.3.7** In performance of Collection Services, Contractor's employees shall refrain from any wanton, negligent or discourteous act.
- 8.3.8** City reserves the right to make a complaint regarding any employee of Contractor who violates any provision of this Agreement and recommend appropriate action be taken by Contractor.

SECTION 9: HOURS OF OPERATION

9.1 Collection Services Hours of Operation

Excluding holidays as defined in Section 10 and unless otherwise specified in this Agreement, Contractor shall provide Collection Services from Monday through Friday, 6:00 AM, local time until 7:00 PM, local time for all areas other than the Scenic Corridors. Hours of operation for the Scenic Corridors shall be 5:00 AM to 5:00 PM local time.

9.2 Extension of Collection Services Hours of Operation

If Contractor determines that the Collection Services will not be completed by 7:00 PM for all areas other than the Scenic Corridors, or by 5:00 PM in the Scenic Corridors, local Florida time on the scheduled Collection day, Contractor shall notify City by 3:00 PM, local Florida time and request an extension of the Collection hours. Contractor shall inform City of the areas not completed, the reason for non-completion, and the expected time of completion. City must approve any extension of hours of operation.

SECTION 10: HOLIDAYS

For purposes of this Agreement, the only holidays upon the commencement of this Agreement shall be Thanksgiving and Christmas Day. City, at its sole discretion, may add or delete holidays. If City elects to add or delete holidays, City will provide Contractor notice in accordance with the provisions of this Agreement. For customers that would have received Collection Services on the holiday, Contractor shall provide Collection Services for all materials set outside the Cart in addition to the materials set inside the Cart on the next scheduled Collection day.

SECTION 11: RESERVED

SECTION 12: RESERVED

SECTION 13: DAMAGE TO PUBLIC OR PRIVATE PROPERTY

Contractor shall take all necessary precautions to protect public and private property, including but not limited to facilities, utilities, mailboxes, site amenities, landscaping, sod, irrigation systems, roadway asphalt, driveways, vehicles, overhead wires, etc., during the performance of this Agreement. Except for reasonable wear and tear, Contractor shall repair or replace any private or public property which is damaged by Contractor. Such property damages shall be addressed for repair or replacement, at no charge to the property owner, within forty-eight (48) hours with property of the same or equivalent value at the time of the damage.

If Contractor fails to address the repair or replacement of damaged property within forty-eight (48) hours, City may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from payment to be made to Contractor.

SECTION 14: SPILLAGE AND LEAKAGE AND LITTER

Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles or litter which falls during collection activities by Contractor, Contractor's Vehicles or Contractor's employees. During transport, all materials shall

be contained, covered and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage, leakage, or litter caused by Contractor, Contractor's vehicles or Contractor's employees. Contractor shall perform all clean-ups immediately. If notified by Contract Administrator or his designee of spillage, leakage, or litter, Contractor shall clean up the spillage, leakage, or litter within two (2) hours of notification.

SECTION 15: RECORDKEEPING, REPORTING, AND REPORTING FORMAT

15.1 Recordkeeping

Contractor shall create, maintain, and make available records as defined in, and required by, all applicable local, state, and federal laws, rules and regulations, and reports as are reasonably necessary to:

- (i) Document proper Disposal of Solid Waste and Bulk Waste, including time delivered to Disposal Facility, tonnage of material disposed and other information as requested by Contract Administrator.
- (ii) Document customer accounts including the address, type of Collection Services, frequency for each Collection Service, and number of Carts for each Residential Service Unit.
- (iii) Document, including photographing, overflowing Carts and Improper Set-outs.
- (iv) Document Special Pick-up requests, and other additional services provided.
- (v) Such other documents and reports as City may reasonably require to verify compliance with the Agreement or to meet City's reporting requirements to address public and private nuisances.
- (vi) All of Contractor's records shall be retained and available to City and its representatives for a period of five (5) years after last or final payment.

15.2 Timing and Format

15.2.1 Monthly Reports

Contractor shall summarize monthly all of the forgoing records and submit to Contract Administrator within seven (7) calendar days following the end of each calendar month. A digital file containing copies of all photographs named by date and property address shall be included with the report.

15.2.2 Annual Reports

Contractor shall summarize annually all of the forgoing records and submit to Contract Administrator within thirty (30) calendar days following the Contract Year end.

15.2.3 Report Format

Within fourteen (14) days after the Commencement Date, Contractor will be required to submit to Contract Administrator for approval the format and sample contents of the records to be maintained and the reports to be produced in fulfillment of the requirements of this Agreement. Typically, documentation shall include time, date, address, and customer name.

SECTION 16: CITY INSPECTION RIGHTS

16.1 City's Right to Inspect Records, Books, Data and Documents

City or any of its duly authorized representatives shall have access, within twenty-four (24) hours of notification, to all books, records, data and documents of Contractor for inspection, copying and audit, at City's own expense.

16.2 City's Rights to Inspect Facilities and Equipment

City or any of its duly authorized representatives shall have access, within twenty-four (24) hours of notification, to inspect Contractor's facilities and equipment and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Agreement conform to the terms hereof and/or the terms of the solicitation documents, if applicable. City shall conduct the inspection of facilities and equipment during hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City's representatives.

18. BILLING, COLLECTION AND FRANCHISE FEE

18.1 Billing and Collection

Contractor shall be responsible for its own billing and collection for all services delivered under this Agreement.

18.2 Franchise Fees

City reserves the right to assess from time to time a Franchise Fee to all or some of the Collection Services. If the City elects to assess a Franchise Fee, Contractor may add the Franchise Fee to the bill for each customer. Commencing on the Commencement Date, the Franchise Fee shall be 2 percent of gross receipts billed for Residential Service Unit Collection Services (Solid and Bulk Waste). On or before the 25th day of each month, Contractor shall remit to the City the Franchise fee for gross receipts billed during the preceding month and furnish the City on the customer list required elsewhere in the Agreement for each customer listed the amount of the franchise fee added to each customer, together with a calculation of the entire franchise fee due to the City.

18.3 City and Contractor acknowledge and agree that in the event the City assumes responsibility for the billing and collection of services under this Agreement the Franchise Fee may be modified.

19. CUSTOMER LISTS

On or before the 25th day of each month, Contractor shall at its cost deliver to City, in a digital format specified by City from time to time, a list of every customer that contracted with Contractor for Residential Collection Unit Services during the previous month, and sub-lists of all customers added and deleted during the previous month. At a minimum, lists shall identify the customer by name and service address and include the level of service.

SECTION 20: COMPLIANCE WITH LAWS AND REGULATIONS

Contractor shall comply with all applicable federal, state, and local laws and regulations. Contractor shall include this Section in any contract Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. Services are defined as furnishing labor, time or effort in the State of Florida by a Contractor or subcontractor.

SECTION 21: RESERVED.

SECTION 22: OWNERSHIP OF MATERIALS

Title to Solid Waste and Bulk Waste shall pass to Contractor at time and point of initial collection.

SECTION 23: RESERVED

SECTION 24: ADDITION OF RECOVERED MATERIALS PROGRAM

City reserves the right to design and add a recycling program to Collection Services and retain any profit there from or subsidize any losses or improve recycling or waste and litter control, and provided that the program does not reduce or increase Contractor's profit (excepting the additional training described below in this section). City reserves the right to require Contractor to separate and market the recovered material for the benefit of City. Title to recovered material shall pass to Contractor in trust, nevertheless, for City. City shall bear the risk of loss, including theft, of recovered material, except for losses resulting from Contractor's negligence or intentional wrongdoing. In the event a program is established, Contractor shall without cost to the City, add to its employee training program the training required to perform their duties and to maximize City's recycling rate, minimize contamination, and promote recycling at all times.

SECTION 25: INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the City, its officers, agents and employees from and against any and all claims, suits, actions, damages and causes of action whatsoever , legal or administrative proceedings, liabilities, interest, attorney’s fees, costs of any kind whether arising prior to the start of activities or following completion or acceptance and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence whether active or passive by Contractor, or anyone acting under its control, direction, or on its behalf in connection with or incident to its performance of this Agreement and the RFP. Nothing in this Agreement, or under the RFP documents, shall be construed to affect in any way the City’s rights, privileges, and immunities under the doctrine of “sovereign immunity” and as set forth in Section 768.28, Florida Statutes.

SECTION 26: INSURANCE REQUIREMENTS

Contractor shall maintain, at its sole expense, during the term of this Agreement the following insurance:

- (i) Commercial General Liability Insurance naming the City as an additional insured with not less than the following limits:
 - General Aggregate\$3,000,000
 - Products-Comp/ Op Aggregate\$1,000,000
 - Personal and Advertising Injury.....\$1,000,000
 - Each Occurrence\$1,000,000
 - Fire Damage \$50,000

Coverage shall include contractual liability assumed under this Agreement, products and completed operations, Personal injury, broad from property damage, and premises-operations.
- (ii) Commercial Automobile Liability Insurance naming City as an additional insured with not less than the following limits:
 - Combined Single Limit\$1,000,000

Coverage shall include contractual liability assumed under this Agreement, owned, hired and non-owned vehicles
- (iii) Worker's Compensation Insurance covering Contractor and Contractor's employees with not less than the following limits:
 - Worker's Compensation\$1,000,000/500,000/100,000 for coverage
- (iv) Pollution Liability Insurance which will respond to bodily injury, property damage, and environmental damage caused by a pollution incident, with not less than the following limits:

Pollution Liability Insurance: \$1,000,000 per Occurrence/\$2,000,000 Aggregate

If coverage is provided on a claims made basis, an extended claims reporting period for four (4) years will be required.

Insurance Certificates shall contain a provision that coverage afforded under the policy will not be cancelled until at least thirty (30) calendar days prior written notice has been given to the City. In the event the Certificate of Insurance provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the Contractor shall furnish, at least thirty (30) calendar days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal an like coverage for the balance of the period of the Agreement or extension thereunder is in effect.

The City reserves the right to require additional insurance in order to meet the full value of this Agreement.

SUB –CONTRACTORS’ INSURANCE:

Any sub-contractor used by the Contractor shall supply similar insurance required of the Contractor. Such certificates shall name the City as an additional insured.

SECTION 27: PERFORMANCE AND PAYMENT BOND

Before commencing service under this agreement, Contractor shall furnish to the City a performance and payment bond(s) in the penal sum of thirty thousand dollars conditioned upon the Contractors full and faithful performance of all its obligations under this Agreement and payment when due of all administrative charges and other sums due city under or by virtue of this agreement. The Contractor will be held responsible for renewal of the bond for each successive renewal term of the Agreement. The bond(s) must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent. The bond shall be signed by a Florida Licensed Resident Agent who holds a current Power of Attorney from the surety company issuing the bond. The surety company shall have a minimum Best’s policy hold rating of “A” and required financing rating of VIII from Best’s key rating guide. Subject bond(s) will cover the entire contract amount.

SECTION 28: ASSIGNMENT AND/OR SUBCONTRACTING

This Agreement and any permits required for performance of the Agreement may not be assigned, contracted, sub-contracted, conveyed, or otherwise transferred in whole or in part without the written permission of City which may be withheld in the City’s sole discretion for convenience. The transfer of this Agreement by transfer of ownership, transfer of corporate shares, or any other means to effect a change in the ownership structure of the Contractor, or any other transaction that results in the Contractor or its assets being purchased in whole or in part by or merged with another entity shall constitute a transfer of this Agreement, which is subject to the City Council’s approval. No such permitted assignment or subcontracting shall relieve Contractor of its liability under this Agreement or from any prime responsibility of full and complete satisfactory

and acceptable performance under any awarded Agreement. Nonetheless, this Agreement may be collaterally assigned as additional security for financing obtained by Contractor, provided that and the assignment requires that any successor in interest to Contractor's rights and obligations hereunder be acceptable to the City in terms of qualification, experience and financial strength.

In the event that the City's consent to any proposed assignment is denied, Contractor shall continue to provide all of the services required herein for the remainder of the term. If any assignment is approved by the City, the assignee shall fully assume all of the liabilities of the Contractor.

An application to transfer this Agreement shall be submitted jointly by the proposed transferor and transferee, and shall contain the same information that was necessary for the granting of this franchise. The proposed transferee shall verify in writing that (a) it will comply with all of the requirements in this Agreement and (b) it has the financial resources, expertise, equipment and other capabilities necessary to do so.

SECTION 29: TAXES

Contractor shall be responsible for and shall pay all sales, consumer, use, and any other excise or property tax imposed upon the activities and assets associated with the performance of this Agreement.

SECTION 30: FORCE MAJEURE

If City or Contractor through no fault or lack of preparation or foresight of their own is unable to perform, or is delayed in its performance of any of their respective obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which performance is prevented by such event and during such period thereafter as may be reasonably necessary for City or Contractor to correct the adverse effect of such event. An event of "Force Majeure" shall mean:

- (i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except as to Contractor's performance those caused by negligence of Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather; and
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and effects on the party, and shall further be required to use its best efforts to mitigate the effects of the Force Majeure. The parties agree that, as to this Section, time is of the essence.

SECTION 31: RESERVED

SECTION 32: EVENTS OF DEFAULT

The following shall constitute an Event of Default:

- (i) Unsatisfactory progress of the work not caused by condition beyond Contractor's control;
- (ii) Defective work not corrected;
- (iii) Contractor's failure to carry out instructions or orders of City or its representative;
- (iii) Execution of work not in accordance with the Agreement;
- (v) Failure or refusal of Contractor to abide by decision made through the Dispute Resolution Process provided in this Agreement.
- (vi) Failure of Contractor to make payments to any approved subcontractor for material or labor;
- (vii) Damage to another Contractor;
- (viii) Unsafe working conditions allowed to persist by Contractor;
- (ix) Failure of Contractor to provide required reports and other reports as required by City;
- (x) Use of any subcontractors without City's prior written approval.
- (xi) Contractor ceases to perform of Collection Services for a period of three (3) consecutive calendar days unless caused by event of Force Majeure
- (xii) The failure of Contractor to pay any amounts owed to City under the terms of this Agreement or otherwise within fourteen (14) calendar days after such amounts become finally due and payable.
- (xiii) If Contractor shall be not paying its debts when they become due; shall have filed, or consented by answer or otherwise to the following against it of, a petition for relief or reorganization and bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; shall be adjudicated insolvent or shall take corporate action for the purpose of any of the forgoing.
- (xiv) The default by Contractor with respect to any obligation to any third party pertaining to Contractor or to Collection Services, which may permit any third party, either immediately or following notice and/or the passage of time to accelerate the maturity of any obligation of Contractor, to assume control of Contractor or take possession of or to transfer or caused to be transferred to any third party any portion of the assets of Contractor, but

only if such default materially interferes with or prevents Contractor's performance under the terms of this Agreement.

- (xv) If Contractor shall fail to diligently perform its work in accordance with the requirements of this Agreement.
- (xvi) If Contractor shall fail to submit a Performance Bond or a renewal or substitute Performance Bond as required pursuant to this Agreement.
- (xvii) If Contractor shall fail to timely pay any Administrative Charge.

SECTION 33: CITY TERMINATION

In the event there should occur an Event of Default in the performance or observance of any covenant or obligation of Contractor which has not been remedied within thirty (30) days after receipt of written notice from City specifying such Event of Default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within thirty (30) days, provided that Contractor has undertaken the cure within such thirty (30) days and proceeds diligently thereafter to cure in an expeditious manner), City may if such Event of Default is continuing or cannot be cured terminate this Agreement upon written notice to Contractor specifying a date of termination that shall not be sooner than 15 days nor longer than 45 days from the date of the notice.

Upon receipt of notice of termination, Contractor shall discontinue all work on the termination date specified in the notice, deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries, such other information as may have been required under the terms of Agreement whether completed or in process.

All damages, costs and charges incurred in terminating this agreement, including attorneys' fees and costs of investigation and collection, whether suit be filed or not and including appeal, shall be paid by Contractor.

SECTION 34: SECTION 403.70605, FLORIDA STATUTES, NOTICE.

Notice is hereby given by the City that it may provide solid waste collection services in the Service Area on or after January 1, 2022. The City may prohibit one or more private companies from continuing to provide the same solid waste collection services that the private companies are currently providing or which the private companies provide at the time when a final decision is made. The City may decide to: (a) provide solid waste collection services with their own staff; (b) use one or more private contractors to provide solid waste collection services; (c) restrict or deny the issuance of permits, license, franchises, or other approvals required for the collection of solid waste; or (d) take other actions to implement their decision to provide solid waste collection services in the Service Area.

The City's actions may result in the "displacement" of a "private company", as those terms are defined in Sections 403.70605(3)(a) and (4)(b), Florida Statutes (2018),

respectively. Before the City makes a final decision to displace any private company, the City will hold a public hearing (an "Advisability Hearing") pursuant to Section 403.70605(3)(b)1, Florida Statutes. At the public hearing, the City will seek comments concerning the advisability of the City providing solid waste collection service in the incorporated portions of the Service Area. The City intends to provide written notice of the Advisability Hearing to all private companies that are providing solid waste collection services at that time within the incorporated portions of the Service Area. An Advisability Hearing has not yet been scheduled.

Pursuant to Section 403.70605(3)(c), Florida Statutes, the City may be required to pay certain compensation to a private company if the City fails to give appropriate notice before the City displaces the private company. However, no payments are required pursuant to Section 403.70605, Florida Statutes if the City provides notice of its intent at least three years before the City displaces the private company. Accordingly, the City hereby gives notice that: (a) the City currently intends to wait three years before the City displaces your company or any other private company, and (b) the City does not intend to pay any compensation to your company or any other company that is displaced as a result of the City's actions.

SECTION 35: RESERVED

SECTION 36: RESERVED

SECTION 37: RESERVED

SECTION 38: DISPUTE RESOLUTION

38.1 Interpretation of Agreement

Except as provided otherwise in this Agreement and to the extent permitted by law, Contract Administrator shall be responsible for interpreting this Agreement to resolve disputes that may arise hereunder, except an appeal to the City Manager of an administrative charge. The parties agree that any decision rendered by Contract Administrator in connection with such matters shall be final and binding upon Contractor, the customer and City.

38.2 Definition of Claim

A claim by Contractor shall be made in writing and submitted to Contract Administrator.

When a controversy cannot be resolved by mutual agreement, Contractor shall submit a written request for final decision to Contract Administrator. The written request shall set forth all the facts surrounding the controversy.

38.3 Process for Dispute Resolution

In connection with any claim under this clause, Contractor, at the discretion of Contract Administrator, may be afforded an opportunity to be heard and to offer evidence in support of their claim. Contract Administrator shall render a written decision on all claims within thirty (30) Business Days of receipt of Contractor's written claim, unless Contract Administrator determines that a longer period is necessary to resolve the claim. The decision shall be furnished to Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within thirty (30) calendar days, Contract Administrator shall notify Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

Contract Administrator's decision shall be final and conclusive. Pending resolution of a claim, Contractor shall proceed diligently with the performance of the Agreement in accordance with Section below.

38.4 Operations During Dispute

In the event that any dispute arises between City and Contractor relating to this Agreement performance or compensation hereunder, Contractor shall continue to render service and receive compensation in full compliance with all terms and conditions of this Agreement as interpreted, in good faith, by City, regardless of such dispute.

Contractor expressly recognizes the paramount right and duty of City to provide adequate services to its residents and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with City in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute shall present the matter to mediation in the courts of Florida. If mediation fails, Contractor shall present the matter to a court in Florida.

Notwithstanding the other provisions in this Section, City reserves the right to terminate this Agreement at any time whenever the service provided by Contractor fails to meet reasonable standards of the trade, after City provides written notice to Contractor pursuant to Section 33 of this Agreement. Upon termination, City may call the performance bond and apply the cash and surety bond for the cost of service in excess of that charged to City by the firm engaged for the balance of the Agreement period.

SECTION 39: COST SAVINGS

In the event that Contractor and/or City identify method(s) in which a cost savings to the customer is available, Contractor and City may agree to modify this Agreement to provide for such, provided that any such changes do not create an undue hardship on Contractor and are mutually agreed upon by City and Contractor.

SECTION 40: NOTICES

All notices required shall be sent by certified mail, sent receipt required unless stated otherwise in this Agreement. If sent to City, such notices shall be mailed to the following, or such other person or address for which notice is given.

Contract Administrator
City of Panama City Beach
110 South Arnold Road
Panama City Beach, Florida

with a copy to: Amy Myers
City Attorney
amyers@hsmclaw.com

and if sent to Contractor, such notices shall be mailed to::

[name]
[address]

With a copy to:

[name]
[address]

SECTION 41: THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.

SECTION 42: MISCELLANEOUS

42.1 Succession of Agreement

This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective, permitted successors and assigns.

42.3 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

42.4 No Penalties

No provision of this Agreement is to be interpreted as a penalty upon any party to this Agreement. The parties hereby agree that the rights of City in the event Contractor takes or fails to take certain actions pursuant to this Agreement, are reasonable, and that the parties desire such certainty with regard to such matters.

42.5 Relationship

Contractor shall employ its own skills, equipment, means and methods to perform the services contemplated by this Agreement for its own customers. Contractor is expert in the matters addressed herein. The City is not expert. Contractor is an independent contractor authorized by City as a non-exclusive franchisee to provide a service, and nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Contractor and City other than that of franchisor in the public interest and franchisee.

42.6 Further Assurance

Contractor and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

42.7 Time of the Essence

For purposes herein, the parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.

42.8 Captions and Section Headings

Captions and Sections headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

42.9 No Waiver

No course of dealing or failure to insist upon strict compliance with the terms of this agreement shall be deemed a waiver or estoppel to demand strict compliance in the future regardless of reliance upon past actions or omissions. No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

42.10 Entirety of Contractual Agreement

This Agreement, together with the attachments hereto, sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

42.11 Severability

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

42.12 Appendices

All Appendices attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by reference. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

42.13 Remedies

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Bay County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or other wise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise hereof.

42.14 Attorney Fees

In the event of arbitration or litigation between the parties regarding this Agreement, each party shall be responsible for their own attorney's fees and costs, unless expressly stated otherwise.

42.15 Authorization

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the Person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature:

**CITY OF PANAMA CITY BEACH,
Florida, a municipal corporation.**

By:

Mayor

By:

City Manager

Date:_____

Attest: _____
City Clerk

Contractor:

By:

Printed Name:

Its:

Date:_____

Attest: _____
Secretary

[Seal]

APPENDIX A

COLLECTION SERVICES APPROVED VEHICLE TYPES

APPENDIX B
SCENIC CORRIDORS

1. **Front Beach Road (Hwy 98 Alt);**
2. **South Thomas Drive;**
3. **Thomas Drive;**
4. **Hutchison Boulevard (Middle Beach Road);**
5. **Panama City Beach Parkway (Back Beach Road or Highway 98);**
6. **State Road 79;**
7. **Clara Avenue;**
8. **Richard E. Jackson Road;**
9. **Alf Coleman Road;**
10. **Beach Boulevard;**
11. **Surf Drive;**
12. **Joan Avenue;**
13. **Hill Road;**
14. **Powell Adams Road;**
15. **Cobb Road;**
16. **Lyndell Lane;**
17. **Clarence Street;**
18. **N. Thomas Drive;**
19. **Churchwell Road;**
20. **Nautilus Street;**
21. **Deluna Place;**
22. **Kelly Street;**
23. **North Lagoon Drive;**
24. **North Pier Park Drive;**
25. **Bay Parkway; and**
26. **Road extensions of any of the roads listed in this Appendix B.**