

**SOLID WASTE AND RECYCLING  
COLLECTION  
FRANCHISE AGREEMENT**

Between

**LEE COUNTY**

and

**VEOLIA ES SOLID WASTE SOUTHEAST, INC.**

Service Area Number 1

**Contract No. 6319**

Lee County Contract No. 5170

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**SOLID WASTE AND RECYCLING COLLECTION  
FRANCHISE AGREEMENT**

**This Agreement** is hereby made and entered into this 9th day of March, 2010, between LEE COUNTY, FLORIDA (the "County"), a political subdivision of the State of Florida, and Veolia ES Solid Waste Southeast, Inc. (the "Contractor"), a Florida corporation, having its principal place of business and address in Florida and authorized to do business in the State of Florida.

**RECITALS:**

WHEREAS, the County is the governing body of a certain Municipal Service Benefit Unit ("MSBU") for Solid Waste Collection & Disposal in Lee County; and;

WHEREAS, the County issued a joint Request for Qualification/Request for Proposals ("RFQ/RFP") on December 11, 2009 for solid waste collection franchise between the County and private companies; and,

WHEREAS, the Contractor, in response to the RFQ/RFP, submitted qualifications evidencing its experience and interest in being selected to perform such services and a proposal for operating the solid waste collection franchise; and,

WHEREAS, the County has selected the Contractor, pursuant to its RFQ/RFP and the Contractor's response thereto in reliance on the skill, expertise, and past successful experience in operating solid waste and recycling collection services, to operate the solid waste collection franchise, in accordance with the terms, conditions, and provisions of this Agreement; and,

WHEREAS, Veolia ES Solid Waste, LLC ("Guarantor") has executed the Guarantee set forth in Exhibit I guaranteeing the Contractor's performance of its obligations under the Agreement; and,

WHEREAS, the County desires to franchise the services of the Contractor for the operation of the solid waste and recycling collection franchise and the Contractor desires to perform such services as provided herein.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and the terms and conditions hereinafter set forth, the Contractor and the County do hereby agree as follows:

1. **TERM:**

The term of this Agreement shall be for the period beginning on the date first stated above, and unless sooner terminated, this Agreement shall terminate on the fifth (5<sup>th</sup>) anniversary of the Start of Service. The Contractor hereby agrees that the County, at its sole discretion, may unilaterally elect to extend the Term of this Agreement for an additional one or two one year extensions with conditions and pricing that are in effect at the time of such Term extension, to continue until termination of this Agreement.

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 action that is contrary to federal, state or local law.

**Agreement** shall mean this franchise agreement.

**Biohazardous or Biomedical Wastes** 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 of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing and surgical gloves.

**Board** shall mean the Board of County Commissions of Lee County, Florida.

**Bulk Waste** shall mean any non-vegetative (except Christmas Trees) 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 Waste.

**Can or Garbage Can** shall mean any commonly available light gauge steel, plastic, aluminum 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 two handles. 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 forty (40) gallons in nominal 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 County. A suitable cardboard box may also be used as a Garbage Can, provided the contents do not contain a level of moisture as to saturate the box and



weaken its walls.

**Collection** shall mean the process whereby Solid Waste, Garbage, Trash, Bulk Waste, Vegetative Waste, Electronic Devices and/or Recyclable Material is removed and transported to a Designated Facility.

**Commercial Can** shall mean one 65 or 95 gallon (nominal) commercial grade garbage can. These cans to be designed for the purpose of holding or containing Garbage and/or Trash. A Commercial Can shall be provided to the business or institution utilizing Commercial Can Collection service, by the Contractor.

**Commercial Collection Service** means Solid Waste and Recyclables service to include but not be limited to commercial property including hotels, motels, parks containing mobile homes and/or recreational vehicles, commercial (wholesale/retail), manufacturing, industrial and institutional enterprises of all types. Commercial properties shall be all properties, other than those listed under the definition of Curbside Residential Collection Service below, including Multifamily Collection Service, and Multifamily Can Collection Service.

**Commercial Disposal Cost** means the total or per ton cost of disposal for Garbage, Trash, or Vegetative Waste, etc., that is charged by the County, including surcharges, as applicable.

**Commercial Recycling Collection Service** shall mean the Collection of Recyclable Materials by the Contractor for entities within the Service Area that are not serviced by Curbside Residential Collection Service or Multifamily Recycling Collection Service.

**Compactor** shall mean any container which has compaction mechanism(s), whether stationary or mobile, all inclusive.

**Construction and Demolition Debris (C&D)** shall mean materials generally considered to be not water soluble and non hazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, fencing 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 a construction site will not automatically cause it to be classified as other than C&D.

**Container** shall mean and include any container designed or intended to be mechanically dumped into a loader packer type truck or recycling vehicle or be a roll off Container. All Containers except roll off Containers must be maintained so as to be leak proof and rodent resistant. "Dumpster" type containers shall be serviced by a front-end-load truck.

**Contract** shall mean this Agreement.

**Contract Administrator** shall mean the Director of the Lee County Division of Solid Waste or designee, who shall act as the County's representative during the term of this Agreement.

**Contract Date** shall mean the day and year first written above.

**Contractor** shall mean that person or entity set out initially above that has entered into this Agreement to provide the services described herein for the Service Area.

**County** shall mean Lee County, Florida.

**Curbside Residential Collection Service** shall mean the Collection of Solid Waste, Recyclable Materials, Electronic Devices, and Vegetative Waste by the Contractor from all Dwelling Units in the Service Area that are defined as "single family" residential units by the Lee County Property Appraiser and so included on the County's Solid Waste Assessment Roll and other Dwelling Units as are designated by the County. These Dwelling Units generally consist of 1 – 4 residential dwellings in a building or on a defined property. Solid Waste, Recyclables, Electronic Devices, and Vegetative Waste shall be collected at curbside or along the roadway.

**Department** shall mean the Lee County Division of Solid Waste or subsequent organization.

**Designated Facility** shall mean a County owned disposal, processing, recovery, Recycling or transfer facility, or another facility if specifically designated in writing by the Contract Administrator to the Contractor.

**Disposal Facility or County Disposal Facility** shall mean place or places managed or operated by or for the County for the purpose of disposal or processing discarded materials.

**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.

**Electronic Devices Recycling Collection Service** shall mean the curbside collection of electronic devices, i.e. computers, monitors, televisions, cathode ray tubes, vcr and stereo equipment, printers, desktop copiers, scanners, fax machines, microwaves, telephones, and peripherals from curbside residential solid waste customers. Electronic Devices Recycling Collection Service also applies to multi-family dwelling units. However, multi-family dwelling units must have all electronics in a central location. Collection of electronics shall be provided by the contractor and the collected electronics shall be delivered to a Designated Facility.

**Events of Default** shall mean one or more of the events described in Section 30 or defined herein.

**Fiscal Year** shall mean the period between October 1 of a given year and September 30 of the following year during this Contract.

**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. Garbage shall also mean discarded materials and items

from Dwelling Units, businesses and institutions unless otherwise defined. Garbage does not mean corrugated cardboard boxes, unless such boxes are used as a "Can or Garbage Receptacle" or are concealed among other Garbage.

**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.

**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 (2004), or its successor law.

**Materials Recycling Facility (MRF)** shall mean any facilities operated or managed by, for or on behalf of the County for the purpose of receiving, sorting, processing, storing, and/or preparing Recyclable Materials for sale, as specifically designated by the Contract Administrator, in writing.

**Multifamily Dwelling Unit** shall mean any Dwelling Unit defined as "multifamily" by the Lee County Property Appraiser and included as such on the Lee County Solid Waste Assessment Roll and other Dwelling Units as are designated by the County. Multifamily Dwelling Units generally include five (5) or more residential units in a building or on a defined property and may include, but not be limited to, apartments, condominiums, mobile homes, recreational vehicles, and time share units.

**Multifamily Dwelling Unit Electronic Devices Recycling Collection Service** shall mean the collection of Electronic Devices by the Contractor for Multifamily Dwelling Units in the Service Area. Collection of Electronic Devices shall be provided by the Contractor and the collected Electronic Devices shall be delivered to a Designated Facility at no additional cost other than the cost for multifamily solid waste collection service.

**Multifamily Collection Service** shall mean Multifamily Recycling Collection Service and Multifamily Solid Waste Collection Service

**Multifamily Recycling Collection Service** shall mean the Collection of Recyclable Materials by the Contractor from Multifamily Dwelling Units in the Service Area. Containers for the Collection of Recyclable Materials shall be provided by the Contractor and the collected Recyclable Materials shall be delivered to the Materials Recycling Facility at no additional cost other than the cost for Multifamily Solid Waste Collection Service.

**Multifamily Solid Waste Collection Service** shall mean Solid Waste Collection service of all Multifamily Dwelling Units whose Solid Waste or Vegetative Waste is collected by means of a central or shared Container and not by means of a Garbage Can (except for multifamily Can Collection). Vegetative Waste shall not be commingled with Solid Waste.

**Public Awareness Program** shall mean programs developed by the County to inform and encourage residential and commercial Solid Waste Collection customers to properly use all Solid Waste and Recycling Collection services offered by the County through the Contract. It shall also mean information concerning level of service and changes in scope of service.

**Recyclable Materials or Recyclables or Recycling** shall mean any material to be collected by the Contractor for the purpose of Recycling at the County's Materials Recycling Facility. Recyclable Materials include newspapers (including inserts), aluminum cans and clean aluminum foil and pans, plastic containers, glass bottles and jars, corrugated cardboard (6 ft. x 4 ft. x 5 ft. maximum per piece), brown paper bags, magazines, tin and ferrous cans, household dry-cell batteries (no wet-cell batteries), telephone directories, fiberboard, junk mail and office paper and other Solid Waste materials added by the County 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. Note: Also see Section 4.A.1 regarding curbside residential solid waste collection related to cardboard boxes.

**Recycling Container** shall mean a rigid container made of plastic or other suitable substance that is used for the storage of Recyclable Materials prior to Collection.

**Residential Recycling Collection Service** shall mean Curbside Residential Recycling Collection Services and Multifamily Recycling Collection Service.

**Residential Solid Waste Collection Service** shall mean Curbside Residential Solid Waste Collection Service and/or Multifamily Solid Waste Collection Service.

**Roll-off Collection Service** shall mean the Collection of Solid Waste, C&D, Garbage, Vegetative Waste, Bulk Waste, Trash etc., utilizing a Container or Compactor specifically designed for the purpose of leaving the Container on a customers property then rolling or lifting such Container or Compactor onto a truck and transporting it to a Designated Facility.

**Service Area** shall mean that portion of the unincorporated and incorporated area of the County as described in Exhibit IX, for which the Contractor has been granted an exclusive franchise.

**Solid Waste** shall mean Garbage, Trash, Bulk Waste and White Goods discarded as a result from the normal housekeeping activities of a Dwelling Unit, business or institution but shall not include Vegetative Waste or Special Waste.

**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.

**Special Collection** shall mean the Collection of Bulk Waste or White Goods or Vegetative Waste that may require particular or special attention, scheduling, or action by the Contractor.

**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.

**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, land clearing debris, and tree limbs and/or trunks greater than 50 pounds per piece. Special Waste may also include items determined by the Contract Administrator to be reasonably unmanageable or require extraordinary management.

**Start Of Service Date** shall mean October 1, 2010.

**State** shall mean the State of Florida.

**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, which are usual to housekeeping and to the operation of stores, offices, Dwelling Units, institutions, and other business places, but shall not include Vegetative Waste.

**Uncontrollable Forces** 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 non-performing party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**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, fruit, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards. For curbside collection, the following applies: All grass clippings, leaves, pine needles, and similar small loose items must be bagged or containerized; Tree cuttings, bushes, twigs, etc., (except palm fronds) and similar articles shall be in tied bundles, or in cans and shall be less than six feet in length; up to 50 pounds of unbundled or untied palm fronds may be placed neatly at curbside; Vegetative Waste, except palm fronds, must be no more than six (6) 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 such tree must not be more than 8 feet in length and must be under 50 pounds.

**White Goods** shall mean those particular items included as Bulk Waste that are generally referred to as household appliances including but not limited to, stoves, water heaters, air conditioners, heat pumps, refrigerators, ranges and similar items.

**3. SERVICES PROVIDED BY CONTRACTOR:** The Contractor shall provide mandatory Curbside Residential Collection Services, Multifamily Solid Waste Collection

Service and Multifamily Recycling Collection Service in the Service Area. The right to provide such Collection Services in the Service Area shall be exclusive to the Contractor. An unlimited quantity of materials may be placed out for Collection under the Curbside Residential Collection Services programs. The County or its designee will be responsible for the billing and collection of payments for the mandatory Curbside Residential Collection Service.

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, Multifamily Solid Waste Collection Service and commercial and multifamily disposal costs not being billed and collected by the County or its designee.

Roll-off and Compactor Solid Waste Collection Services shall be granted to the Contractor for existing and new commercial accounts. The Contractor does not have an exclusive right for the Collection of Construction and Demolition Debris from new construction, building modifications, renovations, remodeling, re-roofing, or demolition materials from buildings where the building structure itself is being partially or totally demolished.

No other person or entity except the Contractor may offer or provide Curbside Residential Collection Service, Multifamily Solid Waste Collection Service, Multifamily Recycling Collection Service, or Commercial Collection Service other than Commercial Recycling Collection Service, commercial Vegetative Waste collection and collection of Construction and Demolition Debris in the Service Area. The County agrees to assist the Contractor in taking timely action against any entity violating the provisions of this Section 3.

The Contractor shall provide Commercial Recycling Collection Services in the Service Area upon request by the Customer or the County, 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 providing Recycling services to customers in the Service Area.

If the customer requests, the Contractor shall provide additional residential Collection services for Collection of Solid Waste such as collecting from a dwelling's side door, collecting Solid Waste twice a week, collecting unbundled Vegetative Waste, rolling commercial Containers out of storage areas, opening doors or gates for access, etc. The specific arrangements for these additional Collection services are to be determined between the customer and the Contractor and charges for these services shall be in accordance with Exhibit II. These services shall be billed directly to the customer by the Contractor.

In the event that an additional Collection service request is not listed, such charges shall

then be established by the Contractor. In the event that the customer disagrees with the Contractor's cost, the Department shall review the cost, and determine if it is reasonable. The Department may adjust the cost for any such additional service to an amount that it determines is reasonable and appropriate.

Residential customers where all residents are identified as physically handicapped or disabled (a customer disabled through age alone will not qualify) shall be provided side door service for the collection of Solid Wastes and Recyclables at no extra charge upon the written approval of the Department.

#### **4. CURBSIDE RESIDENTIAL COLLECTION SERVICES:**

##### **A. Curbside Residential Solid Waste Collection Service**

- 1. General Conditions and Frequency of Service.** The Contractor shall provide Curbside Residential Collection Service. This service shall be provided once every week and no less than every seven (7) days, on a scheduled route basis, as approved by the Contract Administrator. The Collection service shall include but is not limited to one (1) unlimited quantity Solid Waste Collection each week, including pick-up of two automobile/light truck tires, Bulk Waste, and certain Construction and Demolition Debris. Special Collection of other Bulk Waste and White Goods shall be provided by arrangement.

If a customer has placed discreet cardboard boxes out for Garbage collection and such boxes do not contain Garbage, the Contractor shall not collect such boxes with the Garbage but shall leave a short written notice explaining that the boxes should be flattened and placed out for Recycling Collection.

Multifamily Dwelling Units suitable for and electing multifamily Can Collection service shall be provided such service by the Contractor, in accordance with Section 5.A.2. This service shall require approval by the Contract Administrator.

If the customer has a small amount of commingled residential Solid Waste and Vegetative Waste on a garbage Collection day, the Contractor shall collect all of the material with the Solid Waste. However, if there is a substantial amount of Vegetative Waste commingled with the Solid Waste, the Contractor shall not collect the materials and shall leave a short written notice explaining why the materials were not collected that day. If the customer has placed different materials separately at the curb (e.g., Solid Waste and Vegetative Waste), the Contractor shall collect the appropriate material for that day.

Construction and Demolition Debris (C&D) resulting from minor home

maintenance and repair will be collected at the curb. Collection of C&D shall be limited to no more than 2 cubic yards per Collection per Dwelling Unit provided such C&D is generated from home maintenance or repair projects that do not require a building permit. The C & D material must have been generated from the Dwelling Unit from which it is collected and be placed neatly at the curb in manageable pieces. Small pieces such as tile or roofing material shall be containerized, weighing not more than 50 pounds per container.

The Collection of Solid Waste and Vegetative Waste may be provided on separate days. The Recyclables Collection must be provided on the same day as the Vegetative Waste Collection for approximately 80% of the Curbside Residential Collection Service customers.

2. **Containers.** Cans shall normally be furnished by the residents receiving Curbside Residential Collection Service.

If the Contractor chooses to use automated residential Collection vehicles requiring special containers, the Contractor shall supply any such Containers as approved by the Contract Administrator (or designee) to each Dwelling Unit at no extra charge. The use of an automated residential Collection system shall be approved by the Contract Administrator prior to implementation. Any and all such containers purchased and provided by the Contractor for an automated/semi-automated curbside residential collection system shall become the property of the County on the date such containers are placed into service. Customers currently receiving automated curbside residential collection will continue receiving either automated or semi-automated service. The Contractor shall be responsible for maintenance and repair/replacement of all such existing containers and shall furnish similar new containers to all new residential units within these collection route areas. Reasonable changes in container size will be allowed if requested by customer. Approximately 12,000 containers for automated curbside residential collection existing in Franchise Area #2 at the Start of Service are owned by Lee County and the Contractor shall provide automatic collection service for these units. Any Garbage item that can be collected in a standard rear-end load compactor truck must be collected on the scheduled garbage collection day.

## **B. Curbside Residential Recycling Collection Services**

1. **General Conditions and Frequency of Service.** The Contractor shall provide Residential Recycling Collection Service to all dwelling units receiving Curbside Residential Collection Service (including suitable multi-family residential units electing such service). This service shall be provided once every week and no less than every seven (7) days, on a scheduled route



basis, as approved by the Contract Administrator (or designee). The Recyclables Collection must be provided on the same day as either the Solid Waste or the Vegetative Waste Collection in accordance to Section 4.A.1.

The Contractor shall collect Recyclables from the Recycling Container, replace the Recycling Container at the same location and place any apparent non-recyclables back in the customer's Recycling Container along with a short written notice explaining why the non-recyclables were not collected. Bags containing household batteries shall be kept separately from Recyclable Material.

At the Start of Service Date the Contractor shall provide automated or semi-automated Recycling collection service for approximately 6,000 homes currently receiving such curbside recycling service, utilizing County owned 65 gallon dual compartment recycling containers. Locations of such collection routes in each franchise service area will be provided to Contractor by the County for routing purposes. These existing containers shall be maintained, repaired, and replaced by the Contractor as necessary. Replaced and/or new containers supplied by the Contractor to existing or newly constructed residential units within these collection areas shall be blue, clearly labeled to distinguish acceptable recyclable materials, and have an embossed label stating "Property of Lee County", all as approved by the Contract Administrator. All new containers provided by the Contractor shall become the property of the County on the date that such containers are placed into service.

2. **Recycling Containers and Educational Material.** Recycling Containers and educational materials, i.e. magnets, brochures, etc. will be provided by the Department. The Department will supply the Contractor with a Certificate of Occupancy list monthly of new residents. A copy of this list shall be returned to the County within 15 days of receipt verifying that recycle bins were delivered to the new residents. The Containers and educational material will be supplied to the Contractor for distribution to new residents and to replace the original ones that were stolen, lost or damaged by the occupant of a Dwelling Unit. The Contractor shall promptly deliver (within one week or seven (7) days) replacement Recycling Containers, damaged by its employees, or when notified by the Department, or the occupant of a Dwelling Unit where a Recycling Container is stolen, damaged or missing; informational literature will be delivered with each bin . Contractor shall return damaged recycling containers to the Lee County Materials Recycling Facility. Recycling Containers shall be distributed to customers using plastic bags or unsuitable containers for Recycling. The title to Recycling Containers shall be vested with Lee County.

**Note: Refer to Exhibit X for additional service requirements that apply**

**for Service Areas where 65-Gallon recycling wheeled carts are used throughout the area.**

Customers may use their own or additional Recycling Containers as long as they are similar and suitable for the service (e.g., cardboard boxes, kraft bags). If a cardboard box is used, the Contractor shall also collect the box. Plastic bags are discouraged through public education by the Contractor leaving and providing written notice to the resident, and by the Contractor distributing proper Recycling Containers.

3. **Reports.** The Contractor shall provide digital monthly reports to the Department on Recycling to include tons collected and number of units per route per day. This report shall include Multi-Family Can Service customers. Reports shall be due on the 15<sup>th</sup> day following the reporting period. The Department will provide the format for the reports.
4. **Change in Scope of Residential Recycling Collection Service.** From time to time, and at the sole option of the Department, it may be necessary to modify the type of Recyclable Materials that will be included in the Recycling Collection service. The Contractor shall collect additional types of Recyclable items, which are not included as Recyclables on the Contract Date, provided that major modifications are not required to the Recycling Collection vehicles. If major modifications are required to the Contractor's Collection vehicles, the Department and the Contractor agree to enter into good faith negotiations to amend this Agreement to reflect the financial impact of any such modifications. The Contractor shall not be allowed to make a claim to the County for additional Collection vehicles or personnel due to the addition of any Recyclable Material under this paragraph.
5. **Materials Recycling Facility.** The Contractor shall deliver all Recyclable Materials collected from the Curbside Residential Collection Service area to the Lee County Materials Recycling Facility or the facility designated, in writing, by the Contract Administrator. In the event that a load of Recyclable Materials delivered to the Materials Recycling Facility contains more than the acceptable amount of non-recyclables (residue), as decided by the Materials Recycling Facility (MRF) Operator and the Department, the MRF Operator or the Department has the right to reject the load or to charge the hauling Contractor the full disposal fee for each ton within the load or charge additional processing fees to make portions of the load acceptable to meet the established standards.

**C. Curbside Residential Electronic Devices Collection Service**

1. **General Conditions and Frequency of Service.** The Contractor shall provide curbside residential Electronic Devices Collection Service for all

dwelling units receiving Curbside Residential Collection Service at no additional cost than what is shown in Exhibit II. This service shall be provided on the day following solid waste collection. Whenever possible, notification of Electronic Devices Collection must be made 48 (forty-eight) hours prior to the regular collection day by the customer or the County. Contractor personnel shall note and place a Department approved tag/sticker on all Electronic Devices stating at a minimum for the customer to leave it at the curb and it will be collected the next day. Contractor personnel will log all addresses that have Electronic Devices at the curbside and turn log sheets into the office at the end of the business day to ensure next day routing and collection. The Contractor shall supply the tag/sticker to be placed on the Electronic Devices for next day collection. This service shall be provided once every week and no less than every seven (7) days, on a scheduled route basis, as approved by the Contract Administrator (or designee).

2. **Requirements for Electronic Devices Handling and Disposal.** All materials recognized as Electronic Devices shall be removed from the Right of Way separately from all other solid waste and recyclable materials. The Contractor shall collect Electronic Devices in a non-compacting vehicle equipped with appropriate and ancillary equipment to avoid breakage during collection. The Contractor shall collect and deliver on a daily basis all Electronic Devices collected to the Designated Facility between the hours of 8:00 am and 5:00 pm Mon. through Friday. The Contractor shall unload the Electronic Devices in a location designated by Lee County personnel. Electronic Devices shall be unloaded to minimize breakage (not to be dumped).

#### **D. Curbside Residential Vegetative Waste Collection Service**

1. **General Conditions and Frequency of Service.** The Contractor shall provide curbside residential Vegetative Waste Collection for all dwelling units receiving Curbside Residential Collection Service excluding multifamily dwelling units. This service shall be provided once every week and no less than every seven (7) days, on a scheduled route basis, as approved by the Contract Administrator (or designee). Every effort shall be made to have the Vegetative Waste Collection day on one of the first three Collection days of the week.

Vegetative Waste will be separated from residential Solid Waste, unless otherwise provided in this Agreement. Palm fronds are to be picked up with Vegetative Waste as observed or reported and disposed of with Vegetative Waste. Loose palm fronds, limbs, and trunks, weighing less than fifty (50) pounds per item, are to be picked-up with Vegetative Waste. If the customer has placed an apparent, moderate amount of Solid Waste with the Vegetative Waste, the Contractor shall leave the Residential Solid Waste and collect the

vegetative material scheduled for Collection that day and leave a short written notice explaining why the Solid Waste materials were left.

2. **Containers.** All Vegetative Waste shall be collected separately from residential Solid Waste, commercial Solid Waste and Recyclable materials. All grass clippings, leaves, pine needles or other similar loose waste, which are bagged or containerized, shall be collected. Other Vegetative Waste which is no more than six (6) feet in length and under 50 pounds per item, and placed neatly at the curb in Cans, plastic bags, tied bundles or safely handled pieces, shall be collected. Up to 50 pounds of unbundled palm fronds that are placed neatly at the curb shall be collected at each residential Dwelling Unit per Collection day.
3. **Vegetative Waste Disposal Location.** The County shall make all determinations regarding where the Vegetative Waste from residential properties is delivered. Each franchised hauler or Contractor is required to deliver a minimum of sixty (60) yards per week of mulch made from Vegetative Waste to the County's designated mulch site in their respective franchise Service Area(s).
4. **Non-compliance Vegetative Waste.** When vegetative waste is not prepared properly for Collection, the Contractor shall provide written notification to the occupants of the residence to inform them of the problem(s) as to why the Vegetative Waste was not collected and provide them the information as to how to prepare their materials for Collection. The initial contact shall be by the Collection crew leaving a written notice. If the resident does not respond after the initial contact, a second contact must be made by a Contractor designated Supervisor by mail, telephone or visit. If after the second contact, and no intent has been made to comply, the Contractor shall notify the Department, listing the location(s) that does not meet the requirements for regular Collections. This information will be used by the Department to make contact with the resident.

**E. Residential and Multifamily Bulk Waste Collection**

1. **General Conditions and Frequency of Service.** The Contractor shall provide Collection of Bulk Waste to all residential Dwelling Units including those listed on the County's assessment roll as single family and multifamily residential units. The Bulk Waste shall be picked-up with normal Solid Waste or by a Special Collection pick up at no additional cost. Bulk Waste can be of unlimited quantity, size or weight, however, it should be disassembled and bundled where possible.

Bulk Waste that cannot be collected normally, shall be collected by a Special Collection with suitable equipment for the purpose. Special Collections shall

be provided at no extra charge, and shall be scheduled based on the customer's phone request, Department request, or Contractor personnel's observation or log stating that Bulk Waste was set out and could not be collected normally. Special Collections shall be scheduled and performed no later than the second working day following a request for such pickup or observation of a Bulk Waste item by the Contractor's personnel. For purposes of this paragraph, Saturday is a working day.

2. **Acceptable Materials.** Acceptable Bulk Waste materials shall include but is not limited to, oversize household Solid Waste (except white goods), furniture, mattresses, carpet, and incidental building materials (up to two cubic yards per Dwelling Unit per Collection) from household activities not requiring a building permit. Bulk Waste does not include automotive vehicles or boats, major vehicle components or liquid waste.
3. **Disposal Location.** All Bulk Waste shall be delivered to the appropriate County approved facilities based on the characteristics of each item (e.g., certain Bulk Waste shall be delivered to the County's Waste-to-Energy and/or landfill facility).

**F. Curbside Residential and Multifamily Dwelling White Goods Collection Service**

1. **General Conditions and Frequency of Service.** The Contractor shall provide Collection of White Goods to all residential Dwelling Units including those listed on the County's solid waste assessment roll as "single family" and/or "multifamily" Dwelling Units. The White Goods shall be Collected by a Special Collection at no additional cost. Special Collections shall be scheduled and performed no later than the second working day (including Saturdays) following a request for such pickup or observation of a Bulk Waste or White Good item by the Contractor's personnel. There shall be no weight limit for any White Good item.
2. **Requirements for White Goods Handling and Disposal.** All materials recognized as White Goods shall be removed from the right-of-way separately from all other Solid Waste and Recyclable Materials. White Goods that contain a refrigerant regulated by the U.S. Environmental Protection Agency or the Florida Department of Environmental Protection are to be safely collected to prevent crushing and/or puncturing. In the event a White Good item contains refrigerant or Chloroflorocarbons (CFCs), the Contractor shall collect the item separately, in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to a scrap dealer or recycler that is registered with the Florida Department of Environmental Protection to properly recycle White Goods. White goods are prohibited from landfills. The Contractor is fully responsible for the proper

recycling or disposal of these items in accordance with the U.S. Environmental Protection Agency and the Florida Department of Environmental Protection requirements and guidelines. The Contractor shall notify the Department of the recycling/disposal locations utilized as the initial receiver of the White Goods.

**G. Accessibility for Residential Curbside Collection Service**

All Solid Waste, other than Bulk Waste, Recyclables, and Electronic Devices to be collected shall be in a Can (or an acceptable container) and shall be placed within six (6) feet of the curb, paved surface of the public road, closest accessible public or private right-of-way, or other such location agreed to by the customer and the Contractor that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle. The Contractor must collect as many Garbage Cans, bags or bundles as the customer sets out. If a dwelling unit is located in such a manner as to provide non-accessibility to the Contractor's crew or vehicle, an alternative location will be arranged between the customer and the Contractor. In the cases described above or when there are obstacles to accessibility, the customer shall not be charged an extra cost for Collection services. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall designate the location for Collection.

Bulk Waste, White Goods, and Electronic Devices shall be placed by the residential customer within six (6) feet of the curb; paved surface of the public road, closest accessible public or private right-of-way, or other such location agreed to by the Contractor that will provide a safe and efficient accessibility to the Contractor's Collection crew and vehicle. Bulk Waste, White Goods, and Electronic Devices generated from Multifamily Dwelling Units shall be placed at a location adjacent to their normal Solid Waste Container, in a Container specifically provided for such purpose, or at a location mutually determined by and acceptable to the Contractor and the customer.

When residents (as identified and approved by the Department) are physically unable to deliver Solid Waste and Recyclables to the Collection location, the materials will be placed outside the dwelling, near the garage door or sidedoor, for Collection. A list of such Dwelling Units will be provided to the Contractor two (2) weeks prior to the Start of Service. The Contractor will not receive additional payment for this service. New requests for disability exemptions received by the Contractor shall be referred to the Department for investigation. If approved for this service, the County will notify the Contractor to start the service on the next regularly scheduled Collection day. Once each year of this Agreement, the Department will reconfirm the need for the special service. However, if the Contractor has reason to believe the service is no longer required, the Contractor shall notify the Department. The Department will notify the Contractor of the result of the investigation and whether the service is to be

continued or discontinued.

## **H. Method of Payment**

The County or its designee will be responsible for the billing and collection of payments for Residential Curbside Collection Service except as described in Section 5.A.2. Payment from the County to the Contractor for any undisputed fees and/or charges will be due and paid no later than forty-five days after receipt of an invoice from the Contractor for the Curbside Residential Collection Services. The initial Collection rate per unit per month shall be as set out in Exhibit II. This rate may be adjusted in subsequent years in accordance with Section 6.A or 6.D.

## **I. Hours of Collection**

Scheduled days of Collection are limited to Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday. No regularly scheduled Collection is allowed on Sunday. Curbside Residential Collection Services shall be provided between the hours of 6:30 am and 6:30 pm (6:00 am and 6:30 pm on Fort Myers Beach), Monday through Friday. Dwelling units receiving Multifamily Collection Service, commercial properties and other non-residential Collection sites located adjacent to residential uses (apartments, condominiums, town houses, houses, mobile homes, etc.) shall only be collected between the hours of 6:30 am and 6:30 pm, Monday through Saturday. Businesses and institutions may be collected from 4:00 am until 10:00 pm, subject to approval or denial by the Solid Waste Department. All requests to change the days and times of Curbside Residential Collection Service must be submitted to the Department for approval.

Disposal facilities will be open a maximum of sixty (60) hours per week (e.g., 6:30 am to 5:30 pm Monday through Friday, 7:00 am to 12:00 noon Saturday), except designated holidays. Actual opening and closing times may change from time to time. If the next two Collection days following a designated holiday includes a Saturday, the disposal facility hours for the Saturday will be extended from 6:30 am to 5:00 pm. Current disposal facility hours are 6:30 am to 6:00 pm, Monday, Tuesday and Wednesday; 6:30 am to 5:00 pm Thursday and Friday; and 6:30 am to 12:00 noon on Saturday.

The Contractor shall provide Collection services on all national holidays, except Memorial Day, July Fourth, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When these stated holidays are recognized on a weekday (i.e. Monday through Friday), the schedule for Solid Waste Collection shall be "set back" by one day for the remaining days of the week following the holiday. All scheduled Collection routes shall continue in their normal order with the final day's Collection, for the week, occurring on Saturday instead of Friday.

**J. Routes and Schedules**

The Contractor shall submit detailed route maps (in a County approved format) to the County at least ninety (90) days prior to Start of Service. The routes will be detailed and show the area to be collected, the starting point for Collection and the exact direction of travel and order of travel through streets and alleys to be collected. Routes shall be numbered and the days of Collection specified. Whenever practical, Collection days shall be the same as provided on the Contract Date. The submitted route maps shall indicate any changes to the Collection days from the schedule that existed on the Contract Date. The County will notify the Contractor of any required changes not less than thirty (30) days prior to the Start of Service under this Agreement. Once routes are approved, starting points and direction of travel will remain the same each week unless the County approves changes.

Any subsequent changes of routing, including seasonal changes, after the Start of Service must be submitted to the County thirty (30) days prior to implementation. All such changed routes must be documented in the same detail as the original maps supplied by the Contractor. Not more than two (2) weeks, nor less than one (1) week prior to implementing any changes in routes or Collection schedules which alters the day of Collection, the Contractor must notify each Customer affected. Notice shall be made in writing to each individual Customer.

**5. COMMERCIAL COLLECTION SERVICE**

**A. Multifamily Dwelling Solid Waste and Recycling Collection Services**

**1. General Conditions and Frequency of Service.** The Contractor shall provide commercial Solid Waste Collection, Recycling Collection, Electronic Devices Collection, Bulk and White Goods Collection, and disposal service to all Multifamily Dwelling Unit properties in the Service Area. This service shall be provided at a minimum of once every week and every seven (7) days, unless otherwise specified by the Department, on a scheduled route basis. Multifamily Dwellings utilizing a roll-off compactor for Solid Waste Collection may be allowed less frequent collection service as determined by the Department. With the exception of multifamily Can service, all Containers required for these Collection services shall be provided by the Contractor. Contractor shall secure signed service agreement with multifamily customers including recycling service prior to start of service.

The Contractor shall provide Recycling Collection and Electronic Devices Collection service to all Multifamily Dwelling Units in the Service Area at no additional cost than what is shown in Exhibit II. Recycling Collection Service



shall be provided regardless of whether or not the Dwelling Unit owner owns the property on which the Dwelling Unit resides. This service applies to all types of Multifamily Dwelling Units including but not limited to, apartments, condominium, mobile home parks, time share units and recreational vehicle parks. The Recycling Collection Containers shall be suitable for the location and service and shall approximate the same type of Collection service as is provided for Solid Waste Collection. Generally, 90 gallon (nominal) wheeled carts, as approved by the Department, with proper labels and of sufficient quantity, shall be provided by the Contractor for properties that use central area Solid Waste Collection service (e.g. dumpsters). All such wheeled carts shall become the property of Lee County upon placing such carts into service.

The Contractor shall repair/replace any damaged carts during the Term of this agreement. Other Container types such as dumpsters may also be suitable for some Multifamily Dwelling Unit properties for Recyclable Collection. All Roll Off Containers for Multi-Family dwelling recycling service may be designed for single-stream or dual stream recyclables and used where appropriate and have plastic sliding doors. Any costs to the Contractor for performing these services to multifamily Container service customers shall be included in the fees charged by the Contractor for commercial Container Solid Waste Collection. This service shall be provided at a minimum of once every week and every seven (7) days, unless otherwise specified by the Department, on a scheduled route basis. This service shall be provided for both multifamily Can service customers and multifamily Container service customers. All Recyclable materials collected from Multifamily Dwelling Units by the Contractor shall be delivered to the County designated Recycling Facility. **The County shall not be responsible for any additional or sunk costs to/of the Contractor if Florida law is changed to allow Multifamily Recycling Collection Service to be open market (i.e., non-franchise).**

The Contractor shall collect Electronic Devices from one or more central locations on the customer's property. Contractor may be notified that Electronic Devices are available for collection by the customer, the Department, or by Contractor personnel. The Contractor shall schedule and collect Electronic Devices from Multifamily Dwelling units within seven (7) days of such notification. Such Electronic Devices may be collected along with similar devices from Residential Curbside Collection program. The Contractor shall collect and deliver such devices in accordance with Section 4.C.2.

Certain types of Multifamily Dwelling Unit properties may request additional Recycling Collection services such as curbside Collection in a mobile home park where central Container service is used for Solid Waste. In these cases, the County will provide Recycling Containers to the Dwelling Units and the Contractor shall provide such services at a price, not to exceed 50% of the price for Residential Curbside Recycling Collection Service as shown on

Exhibit II. The Contractor shall invoice the property owner(s) for this type of service on a monthly basis.

The Contractor shall provide a monthly report to the Department that documents recycling for Multi-Family Recycling Collection Service. The report shall include tons collected and number and size of recycling containers per route per day. The Contractor shall provide a monthly report indicating names and addresses of all multifamily entities that do not have a properly executed service agreement as required by County Ordinance 07-25, the Mandatory Business Recycling Ordinance, or have been refused service due to multifamily property non-payment for collection services. These reports shall be due prior to the 15<sup>th</sup> day of the month following the reporting month and shall be in a digital format approved by the Department.

The Contractor shall provide Bulk Waste and White Goods Collection for all Multifamily Dwelling Unit properties on a regular basis at conditions agreed to by the customer and the Contractor. The Contractor shall provide Bulk Waste and White Goods Collection for Multifamily Dwelling Unit properties at no extra charge.

The frequency of Collection of Bulk Waste and White Goods 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 Waste Collection shall be resolved by the Contract Administrator. In the event Bulk Waste contains Chlorofluorocarbons, (CFC's), the Contractor shall collect the White Good item separately, in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to a Florida certified Recycling facility or to a scrap dealer located in Lee County. There shall be no weight limit for any Bulk Waste item.

2. **Multifamily Can Service.** The Contractor shall provide multifamily Can Collection service to Multifamily Dwelling Unit customers selecting Can service. The cost of this service shall not exceed the price in Exhibit II B. Collection services for Bulk Goods, Electronic Devices, and White Goods shall be the same as for Curbside Residential Collection Services as set forth in Sections 4.C, 4.E and 4.F. Garbage shall be collected separately from Curbside Residential Services and delivered separately to the Disposal Facility. Billing of all services, including disposal, shall be included and performed by the Contractor.

- 3. Multifamily Container Service.** The Contractor shall provide multifamily Container service, Recycling Collection service, Electronic Devices Collection service, White goods and Bulk Waste Collection to Multifamily Dwelling Units selecting Container service.

The Collection Container shall be of a type that can be serviced by the Contractor's Collection equipment. The storage capacity and frequency of service of the Container agreed upon by the customer and the Contractor, shall be suitable for the amount of Solid Waste generated by the customer and shall provide that no Solid Waste other than Bulk Waste be placed outside of the Container. The Contractor shall insure that container lids are closed after servicing container. Customers may change Container size and/or Collection frequency as needed or by season. The customer may either purchase the Collection Container from a source or rent such Container from the Contractor at the rental rate included in Exhibit II. The customer may choose to use a 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 the expense of the Contractor. In the event a customer owned or contractor owned compactor is damaged or in need of repair, Contractor shall provide suitable temporary containers within 24 hours of notification, sufficient to provide uninterrupted service to customer until compactor is repaired or replaced. Gates for dumpster enclosures shall be opened and closed by Contractor personnel at no additional charge.

Roll off containers shall be provided or serviced within 24 hours of customer request. The Contractor shall not charge the customer any additional fees for placing an empty, open roll-off Container in the same spot from which a full Container is to be collected. The Contractor shall not charge a customer an additional fee for "round trip" service whereby a roll-off type Compactor or open top Container is removed from the customer's property, emptied at the disposal facility, and returned to the customer's property.

The customer may request that the Contractor perform commercial Vegetative Waste Collection service and the Contractor shall provide such service at the Collection rates shown in Exhibit II. Disposal or processing costs shall be charged at the County's then applicable processing rate and the density factor for the Vegetative Waste shall be established by the Contract Administrator. All charges for Vegetative Waste Collection and disposal shall be billed and collected by the Contractor. 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.

**B. Business and Institution Solid Waste Collection Service**

- 1. General Conditions and Frequency of Service.** The Contractor shall provide commercial Solid Waste Collection and disposal to all commercial properties in the service area. The Contractor shall provide Bulk Waste and White Goods Collection for business and institution customers at terms and conditions agreed to by the customer and the Contractor.

This service shall be provided at a minimum of once every week or every seven (7) days, unless otherwise specified by the Department, on a scheduled route basis. Request for extra service must be accomplished within 24 hours of customer request. Waste from businesses that prepare and serve food shall be collected a minimum of twice per week on a scheduled basis, unless collected in a closed Compactor type Container.

The Contractor shall secure a signed service agreement with commercial customers specifying service requirements, including recycling services, prior to start of service. Contractor shall enter all service agreement information into a database in an acceptable format and provide to the County. This database is to be updated monthly and available to Lee County upon request.

- 2. 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 a source or rent such Container from the Contractor at the rental rate included in the Exhibit II. Containers must be delivered within two (2) business days of receiving a signed service agreement. The storage capacity and frequency of Collection of the Container shall be suitable for the amount of Solid Waste generated by the customer and shall provide that no Solid Waste other than Bulk Waste be placed outside of the Container. The Contractor shall insure that container lids are closed after servicing containers. Customers may change Container size and/or frequency of service as needed or by season. If the customer utilizes a Commercial Can, the Commercial Can(s) must have a maximum capacity of 95 gallons, nominal. The customer may choose to use a 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 and safe condition by the owner of the Container or Compactor. The Contractor shall be responsible for sanitizing the containers or compactors. Damage caused by the Contractor to a customer owned Container or Compactor (other than normal wear) shall be repaired at the expense of the Contractor. In the event a customer owned or contractor owned compactor is damaged or in need of repair, Contractor shall provide suitable, temporary containers within 24 hours of notification, sufficient to provide uninterrupted service to customer until compactor is repaired or replaced. Gates for dumpster enclosures shall be opened and closed by Contractor personnel at no additional charge. All Containers and Compactors

provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number, size of Container, and the Customer's name (where multiple customers containers are in the same proximity).

The Contractor shall have a written procedure, approved by the contract administrator, for dealing with blocked containers.

The Contractor shall not charge the customer any additional fees for placing an empty, Compactor or open type roll-off Container in the same spot from which a full Container is to be collected. The Contractor shall not charge a customer an additional fee for "round trip" service whereby a roll-off Compactor is removed from the customer's property, emptied at the disposal facility, and returned to the customer's property.

**C. Commercial Vegetative Waste Collection Service**

The Contractor shall provide commercial Vegetative Waste Collection services to all commercial entities desiring this service. Collection of Vegetative Waste from commercial entities is optional and shall be established based on the special needs of the commercial customers. Collection of Vegetative Waste from commercial customers shall not be exclusive to the Contractor.

**D. Business and Institution Recycling Collection Service.**

**1. General Conditions.** The Contractor shall provide Commercial Recycling Collection Service to all commercial Customers requesting such service for service fees as shown in Exhibit II. This service shall be a minimum of once every week and every seven (7) days, unless otherwise specified by the Department, on scheduled route basis. All containers required for these collections shall be provided and maintained by the Contractor. Ninety gallon Recycle Containers are to be a different color to help distinguish from solid waste containers. The Contractor shall provide Commercial Recycling Collection Services for all Recyclable Materials that are accepted and processed at the Lee County Recycling Facility.

The contractor must provide appropriate container(s), as requested, such that the Commercial customers may place all fiber products (e.g., cardboard, newspaper, office paper, magazines, etc.) in any single type of Contractor provided fiber recycling container, including front-end-load containers and the Contractor shall collect these materials. A similar provision must be made for co-mingled recyclable containers (e.g. bottles and cans). The Contractor-provided containers are to be appropriately labeled.

Containers used by the Contractor for commercial business recycling shall be clearly designated and labeled separately from equipment used for commercial Solid Waste Collections.

This Agreement does not exclude other private enterprises from conducting commercial recycling collection service in the service area. The Contractor shall not interfere with other private commercial recycling haulers providing recycling services to customers in the service area.

County Ordinance 07-25, the Mandatory Business Recycling Ordinance, requires businesses and institutions to provide a system for the collection of Recyclables. Selection of a Recyclable collection service provider is at the option of the customer. Should the customer select the Contractor for this service, service should be established based on the needs of the commercial customer and the requirements of the Mandatory Business Recycling Ordinance. Within thirty (30) days of establishing a new commercial recycling account, the Contractor will review the Solid Waste Container size and service needed by the Recycling customer. The Department will assist the Contractor and customers in determining the optimum Recycling methods.

This Agreement does not require the Contractor to deliver recyclables collected from businesses or institutions to the County's Material Recycling Facility (MRF). This Agreement does require the Contractor to provide Commercial Recycling Collection Service to businesses and institutions. However, if the Contractor elects to collect and/or mix recyclables from businesses and/or institutions with multi-family or residential curbside recyclables, the Contractor shall deliver the recyclables to the Lee County Materials Recycling Facility. This collections service shall include the collection of all of the same types of recyclables that the County accepts at the County's MRF.

2. **Ownership.** Notwithstanding any other provisions of this Agreement, a business/institutional generator of Recyclable Materials retains ownership of those materials until it donates or sells, or contracts for the donation or sale of those materials to another person or entity. Nothing in this Agreement shall prevent a person or entity engaged in the business of Recycling, whether for profit or nonprofit, from accepting and transporting source separated Recyclable Materials from such generator. Provided however, that such activities are subject to applicable state and local public health and safety laws, and provided that the transporter must report such information to the County as may be necessary for the documentation of state mandated recycling or reduction goals.
3. **Goals.** It is the responsibility of the Contractor to reasonably assist the

County in promoting and facilitating the provisions of County Ordinance 07-25, the County's Mandatory Business Recycling Ordinance.

4. **Reports.** The Contractor shall provide a monthly report to the department that documents all commercial solid waste and recycling activities to include changes in service, i.e. new customers, closed businesses, increases/decreases in services, customer contact information, etc. All changes in service shall be updated by the Contractor in its database each month prior to submitting data to Lee County. Lee County will provide the procedures and format (Excel) for required reporting. Report is due on the 7<sup>th</sup> day of the month following the reporting month. The contractor shall establish a separate billing code to invoice the ADF (Advanced Disposal Fee) to customers not in compliance with the Mandatory Recycling Ordinance. Lee County will provide the Contractor a list of non compliant customers each month to be assessed the ADF.
  5. **Disposal or Processing Cost.** The Contractor shall not collect, from a business or institution any fees or charges for processing or disposal of Recyclable Materials unless such fees are specifically approved, in writing, by the Contract Administrator.
  6. **Advance Disposal Fees (ADF).** The Contract Administrator will routinely notify the Contractor regarding businesses or institutions that are not in compliance with the Mandatory Business Recycling Ordinance. The identified non-compliant businesses or institutions may be invoiced monthly by the Contractor for the Applicable ADF as defined and established by County Ordinance 07-25 and as directed by the Contract Administrator. The Contractor will discontinue invoicing a customer's ADF when it becomes known to the Contractor that a customer is in compliance with County Ordinance 07-25.
- E. **Method of Payment.** Payment for commercial Solid Waste Collection and disposal, Recycling Collection, and Advance Disposal Fees shall be made by the customer directly to the Contractor. The customer shall be billed by the Contractor based on the quantity of waste collected and the frequency and type of service rendered. The rates charged by the Contractor shall be based on the pricing shown in Exhibit II for commercial properties. Charges for all services related to and for the purpose of commercial Recycling Collection shall not exceed rates established and shown in Exhibit II. If the Contractor stops service due to nonpayment, the Container shall be pulled immediately (if owned by the Contractor) and the Department shall be notified. All "stopped service" events shall be investigated and documented by the Contractor, and must include a site visit, prior to the notification to the Department. Commercial containers shall be redelivered within 24 hours of receipt of payment. All charges and payments shall include disposal costs. Disposal costs shall be a "pass-through" to Lee

County and not be considered revenue to the Contractor.

The Contractor shall keep residential and commercial waste separate for purposes of disposal. The Contractor shall pay for all commercial waste disposed separately from residential in accordance with Section 6. Commercial Disposal Costs will be part of the service charge billed by the Contractor and paid by the commercial customer. The Contractor shall pay for all Solid Waste disposal costs incurred for disposing of commercial Solid Waste at the designated disposal facilities. All commercial waste shall remain separated from residential waste in transfer stations and Collection vehicles until after it has been weighed and categorized at an approved scale facility.

**F. Hours of Collection.**

**Refer to Section 4.I.**

**G. Routes and Schedules**

**Refer to Section 4.J.**

**H. Customer Agreement and Disclosure of Rates.** The Contractor shall require a commercial customer to enter into an agreement for Collection, disposal and/or recycling services. Any such agreement shall clearly state the terms and conditions for such services and all terms and conditions shall conform to the requirements of this Agreement. Any agreement for commercial Collection, disposal and/or recycling service shall not have a term that exceeds the Term of this Agreement nor shall any such agreement include charges for services that exceed the charges set forth in Exhibit II (or as adjusted). The document (service agreement) for commercial Collection, disposal and/or recycling services shall be approved by the Contract Administrator at least seventy-five (75) days prior to the Start of Service Date. Service agreements shall have wording for and a customer sign-off space in the event a customer does not elect recycling service with the Contractor. The Recycling collection service provider is to be determined and recorded by the Contractor when executing a service agreement. All such executed agreements shall be available for review by the County throughout the Term of this Agreement. By October 1<sup>st</sup> of each year of this Agreement, the Contractor shall provide each commercial customer an annual disclosure statement, with a copy retained by the Contractor and available for review by the Department, including the following language:

**"REGULATION BY LEE COUNTY"**



The terms and conditions of this Commercial Solid Waste and Recycling Collection Service Agreement is regulated by a franchise granted by Lee County. Should the customer have any questions relating to the terms and conditions of this Service, the customer may call the County Contract Administrator at (239) 533-8000.

#### **"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 County. 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 (other than normal wear) to a customer owned Container or Compactor shall be repaired at the cost of the Contractor.

#### **"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 is fixed by Lee County. A copy of these rates can be obtained from the Contractor or Contract Administrator.

**"RATES FOR SERVICE"**  
 October 1, (year) - September 30, (year)

Name of Contractor

Name and Address of Customer

**The total RATES for this Commercial Solid Waste and Recycling Collection Service are as follows:**

Number of Containers	Size	Frequency	Type	Collection Cost	Disposal Cost	Special Service	Container Rental	Total

Total Monthly Cost:

\*There is no charge for the processing of Recyclable Materials

THESE SERVICES ARE PROVIDED UNDER A FRANCHISE AGREEMENT REGULATED BY LEE COUNTY. SHOULD YOU HAVE ANY QUESTIONS RELATING TO THESE RATES, PLEASE CALL CUSTOMER INFORMATION SERVICES AT (Insert Contractor's phone number).

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 Recycling, 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 distributing to the customer.

**6. CHARGES, RATES, PAYMENTS, DISPUTES, AND INTEREST RATES:**

**A. Solid Waste and Recycling Collection Rate Adjustments:** For all Collection services, the charges shall be initially based on the rates established in Exhibit II, and as subsequently adjusted pursuant to this Agreement. The Contractor may receive an annual adjustment in the Curbside Residential Solid Waste Collection Service, Commercial Recycling Collection Service, Commercial Solid Waste Collection Service and Curbside Residential Recycling Collection Service rates, beginning 12 months after the Start Of Service Date.

The Contractor may request a rate increase from the County equal to the change in certain indices, compared to the previous 12 months as shown below, or another amount. Any request for a rate adjustment by the Contractor shall include substantial proof and justification, as determined by the Department, to support the need for a rate adjustment. Additional information may be required by the Department.

**Standard Rate Adjustment Methodology:**

For the first potential adjustment period:

$$AF = 0.875 \times \frac{CPI\ New}{CPI\ Old} + 0.125 \times \frac{FI\ New}{FI\ Old}$$

Where, AF is the Adjustment Factor, CPI New is the average of the 12 monthly CPI indices (months March 2010 through February 2011), CPI Old is the CPI index for January 2010, FI New is the average of the 12 monthly FI indices (months March 2010 through February 2011), FI Old is the FI index for January 2010.

For the second through fourth potential adjustment periods:

$$AF = 0.875 \times \frac{CPI\ New}{CPI\ Old} + 0.125 \times \frac{FI\ New}{FI\ Old}$$

Where AF is the Adjustment Factor, CPI New is the average of the 12 monthly CPI indices (months March through February recent year), CPI Old is the average of the 12 monthly CPI indices (months March through February, previous annual period), FI New is the average of the 12 monthly FI indices (months March through February most recent year), FI Old is the average of the 12 monthly FI indices (months March through February, previous annual period).

CPI is the Consumer Price Index Urban Wage Earners and Clerical Workers (Series ID CWUR0300SAO, Area: South Urban, Item; All Items) as published by the US Department of Labor.

FI is the Fuel Price Index, "Gulf Coast No. 2 Diesel Ultra Low Sulfur Retail Sales" monthly average (EMD EPD2DXLOPTER30CPG) as published by the Energy Information Administration of the US Department of Energy.

The County will normally provide a notice of approval or denial of all or part of the requested rate adjustment before August. No change in rates or the Payment Schedule shall be made without the approval of the County Board of Commissioners. Annual rate adjustments shall be effective the following October 1, unless otherwise mutually determined by the County and the Contractor.

**B. County's Obligation - Billing, Collection, Payments:**

1. The County will be responsible for the billing and Collection of payments for those units included in the County's mandatory Curbside Residential Solid Waste, Recycling, and Vegetative Waste Collection programs. The County shall make monthly payments in arrears to the Contractor for these Services provided pursuant to this Agreement. The Contractor shall submit its invoice for Residential Solid Waste and Recycling Collection Services to the County for each preceding calendar month no later than the tenth (10th) day of each calendar month. Each element necessary to calculate the service fee and any other payment due to the Contractor pursuant to this Agreement shall be reflected in such invoice. The County shall pay the Contractor all undisputed service fees and any other undisputed payment within thirty (30) days of receipt of such invoice. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the County collects from customers for such service.

On or before October 1, and before commencement of work by the Contractor under the terms of this Agreement, the County shall provide to the Contractor the estimated total number of units to be serviced. Thereafter and for the duration of this Agreement, the County shall 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 County's Fiscal Year will be added to the customer service list and payment will be paid by the County to the Contractor in the Contractor's monthly payment. Payment will begin for the month following the month in which the Certificate of Occupancy was issued, or verification of the beginning of actual service, whichever is later. The payments from the County to the Contractor for units added by Certificate of Occupancy will only be made if the Dwelling Units are included in the Contractor's monthly invoice to the County. After the first partial year, 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 parcels were not included on the annual assessment roll provided by the County, 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 County, 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 the month following the Contractor's notice, or the date service began, whichever is later. If the County 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 County reserves the right to correct any errors of omission or commission per the laws and rules that govern the County. In the event the County 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.

In the event that a new County Designed Facility opens within the Service Area during the term of this Agreement, negotiations will occur to reduce the rates, Exhibit II, to reflect the reduction in hauling distances due to the additional Facility(ies).

- C. **Solid Waste Disposal Costs:** Collection service costs and Solid Waste disposal costs shall be treated separate for the Solid Waste Collection services being provided pursuant to this Agreement. The Contractor's payments for Collection are set out in Exhibit II. Residential disposal costs will be part of the special assessment billed on the Lee County Tax Bill by the Tax Collector's Office, except as otherwise provided in this Agreement. Commercial Disposal Costs will be added to commercial Collection costs billed by the Contractor and paid by the commercial Customer as a "pass-through" to the County. The Contractor shall pay the Department for all commercial Solid Waste disposal costs incurred at the

designated disposal facilities or invoiced to commercial customers. The Contractor will be invoiced by the Department, monthly, for the commercial disposal costs based on the greater of 1) disposal tonnage from commercial Collection vehicles, or 2) all commercial disposal costs invoiced to commercial customers. Within 30 days from the end of each month, the Contractor will submit a monthly "true-up" statement (sample format in Exhibit VI) comparing monthly disposal costs paid to the Department and disposal charges invoiced to commercial customers (refer to Section 6.I). All residential waste shall remain separated from commercial waste at transfer stations and in vehicles until after that waste has been weighed and categorized. Disposal costs shall be payable to the County within thirty (30) days after receiving the County's invoice for such fees. A late charge of 1% of the amount due shall be calculated monthly until payment is received.

- D. Extraordinary Rate Adjustment:** The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary or unusual changes in the cost of operations that could not reasonably be foreseen by a prudent operator such as could result from a change in law. The Contractor's request shall contain substantial evidence and justification, as determined by the Contract Administrator, to support the need for the rate adjustment. The County may request from the Contractor, and the Contractor shall provide, all information as may be reasonably necessary in making its determination. The County Board may approve or deny the request, in whole or in part, after receipt of the request and all supporting information required by the County.
- E. Franchise Fee:** To compensate the County for the cost of administration, supervision and inspection rendered for the effective performance of this Agreement, as well as other costs related to the Collection of Solid Waste and Recycling, the Contractor shall pay to the County a fee of five and one-half percent (5.5%) of the total of all charges invoiced, whether collected or not, arising out of any services or operations conducted in the Service Area pursuant to this Agreement except charges for Commercial Disposal Cost, and Advance Disposal Fees as defined by County Ordinance 07-25.

A statement reporting invoiced amounts for services provided under this Agreement shall be prepared by the Contractor in accordance with Generally Accepted Accounting Principles for each month. This monthly statement shall be submitted no later than thirty days following the last day of the reporting month, and shall be in the format shown in Exhibit VI, or as may be revised by the Department.

Solid Waste disposal costs paid by the Contractor to the County under this Agreement shall be deducted from the gross invoiced charges total prior to applying the 5.5% for calculation of the franchise fee owed to the County. Franchise fees shall be payable within thirty (30) days after receiving the

County's invoice for such fees. A late charge of 1% of the amount due for the Franchise fee shall be calculated monthly until payment is received.

For Service Area One (1), two statements shall be required, one for the incorporated area of the Town of Ft. Myers Beach and one for the incorporated area of the City of Bonita Springs.

- F. Advance Disposal Fees:** An Advance Disposal Fee may be invoiced by the Contractor to all business customers that fail to comply with the requirements of County Ordinance 07-25, the Mandatory Business Recycling Ordinance, as directed by the Contract Administrator. To compensate the Contractor for the cost of administering such invoices, the Contractor will pay the County ninety percent (90%) of all Advance Disposal Fees invoiced, whether collected or not, and retain ten percent (10%).
- G. Interest on Overdue Payments:** All payments to be made by either party under this Agreement that are outstanding after the applicable due date, shall bear simple interest at the maximum rate permitted by State law, if applicable, or at the prime rate of The Chase Manhattan Bank, N.A., whichever rate is lower, unless specifically established elsewhere in this Agreement.
- H. Invoice or Payment Disputes:** If any Party shall dispute an amount owing to the other Party, such Party shall: (i) give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and deliver such notice on or before the due date of the amount disputed; and (ii) pay all undisputed amounts on the due date. Interest at the rate specified in Section 6.G, or as specifically established for such item so disputed, shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount (or any portions of such disputed amounts).
- I. True-Up Statement.** No later than thirty (30) days after the end of each reporting month, the Contractor shall submit a monthly commercial disposal "True-up Statement" report related to franchise services in a format approved by the Department. This report shall indicate and compare monthly disposal amounts paid to the Department and disposal charges invoiced by the Contractor to commercial customers related to franchise services within the reporting month. All disposal charges invoiced by the Contractor and not already paid to the County, as indicated by the report, shall be invoice to the Contractor by the Department and shall be due within 30 days from the date of the invoice. If the "True-up Statement" report is not received as required above, the Department may charge a late fee of 1% per month and an administrative charge as shown in Section 19 herein. Likewise, the "True Up Statement" shall include a similar accounting record of Advanced Disposal Fees (as defined by County Ordinance 07-25) and the County shall invoice the Contractor for any outstanding or unpaid

ADF's owed by the Contractor.

- J. Commercial Customers Statement.** No later than thirty (30) days after the end of each reporting month, the Contractor shall submit a (monthly) commercial customer billing/invoicing data report. This report shall include a listing and summary of the commercial customer's billing/invoicing and services information and shall be in a digital format that can be accessed, read and summarized by the County's software (Microsoft Access or Excel ).
- K. Information and Documents:** The Contractor shall file and keep current with the County 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 County that all required documents such as, but not limited to, certificates of insurance, audits, performance bond or letter of credit, route schedule and maps, drivers license certifications, and list of Collection equipment vehicles, are current and on file with the County. Route maps shall be provided in a format as approved by the County. Failure to file any document or report within five (5) working days of the required filing date, except where granted an extension by the Contract Administrator, may result in the levy of an administrative fine as provided in Section 19.
7. **HOLIDAYS:** The Contractor shall provide Collection services on all national holidays, except Memorial Day, July Fourth, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When these stated holidays occur on a weekday (i.e. Monday through Friday), the schedule for Solid Waste, Vegetative Waste and Recyclables Collection shall be "set back" by one day for the remaining days of the week following the holiday. All scheduled Collection routes shall continue in their normal order with the final day's Collections, for the week, occurring on Saturday instead of Friday. The regular Collection schedule will then commence normally on the Monday following each Holiday week.
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. Rates charged for Special Services are not subject to adjustment for the term of the agreement.
9. **PUBLIC AWARENESS PROGRAM:** It shall be the Contractor's responsibility to provide written information to those customers who do not prepare or set out their Solid Waste or Recycling Materials as specified within this Agreement. All information related to the Solid Waste services shall be approved by the Department prior to the preparation of the documents for distribution. No information regardless of the source shall be provided to the Customers without the prior approval of the Contract Administrator. The



County may distribute literature to all residential customers. Once a year, the Contractor shall reimburse the County for postage, printing, and other distribution costs, not to exceed \$0.42 per customer unit per year

The Contractor shall include in its commercial customer invoices a one page information sheet provided by the County twice per year.

- 10. MANNER OF COLLECTION:** The Contractor shall collect Residential Solid Waste, Vegetative Waste, Electronic Devices, and Recyclable Materials and Commercial Solid Waste, Recycling and Vegetative Waste with as little disturbance as possible and shall leave any receptacle at the same point it was collected. The Contractor shall exercise due care and diligence in the Collection process. Every effort shall be made to prevent spilling, scattering or dropping materials during the Collection process. However, in the event that material is spilled, scattered or dropped, the Contractor shall immediately clean up the material, place it in the Container and then empty the Container. Containers must be replaced in a vertical position. If the Container falls over, the Contractor must immediately reset the Container.

Any Garbage Can, Container or Recycling Container damaged by the Contractor shall be replaced by the Contractor within three (3) business days at no cost to the customer, unless otherwise provided within this Agreement. The replacement must be similar in style, material, quality and capacity and must meet the County's requirements for Garbage Cans or Containers. Throwing of any Garbage Can, Container or Recycling Container is prohibited. The Contractor shall neatly re-place the Container, Recycling Container or Garbage Can to the point of Collection.

**11. PERSONNEL OF THE CONTRACTOR:**

- A. The Contractor shall assign a sufficient number of persons to be in charge of the operations within the service area and shall give the name(s) of the person(s) and contact phone numbers to the Contract Administrator.
- B. The Contractor shall employ separate field supervisors for residential collection services in each service area. The Contractor shall employ one or more field supervisors specifically for commercial collection services. Such supervisors shall maintain a work schedule during all normal workdays, i.e., M-F. New organizational charts shall be supplied when requested or when changes to personnel are made.
- C. The Contractor's Collection employees shall wear a uniform shirt clearly identifying the company's name, during Collection operations.
- D. Each driver of a Collection vehicle shall at all times carry a valid Florida driver's license classification for the type of vehicle that is being driven.

- E. Contractor shall develop and maintain a "Customer Service Manual" summarizing contract requirements related to all collection and business services. A copy of such manual shall be provided to the County for review at least annually.
- F. The Contractor shall provide operating and safety training for all personnel. County staff shall be allowed to train Contractor personnel on Solid Waste programs and work with Contractor's personnel in the field.
- G. The Contractor's employees shall treat all customers in a polite and courteous manner. Threatening of customers or warning customers of fines and penalties is prohibited.
- H. The Contractor shall provide emergency contact phone numbers including office, home, cellular and e-mail addresses for all key personnel.
- I. The Contractor shall employ at least one (1) full-time employee as a sales/business representative exclusively assigned to business and multi-family customers.

The Contractor shall employ at least one full-time customer service representative per 8,000 residential units in the Service Area.

- K. The Contractor shall assign at least one full-time employee for delivering, repairing, and maintaining contractor owned/provided Containers and county owned recycling bins.
12. **SPILLAGE:** The Contractor shall not litter nor cause any spillage to occur upon the premises, roadway, the right-of-way or the receiving facilities wherein the Collections occur and the materials collected are deposited. During hauling, all Solid Waste, Vegetative Waste and Recyclable Material shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. In the event of any spillage or leakage by the Contractor, for any reason or source, the Contractor shall promptly (within 8 hours) clean up all spillage and leakage at no cost to the County or the customer. The County shall be notified of hydraulic spills within two (2) hours of occurrence. If the Contractor can prove that responsibility for the litter or spillage was caused by a third party, and no other recourse for reimbursement exists, the County will reimburse the Contractor for the audited additional clean-up costs.
13. **SOLID WASTE AND MATERIAL RECYCLING FACILITIES:** The County shall make all determinations regarding where Solid Waste, Vegetative Waste and Recyclables are delivered. All Residential Solid Waste, Commercial Solid Waste, Residential Vegetative Waste, Residential Recyclable Material, and Electronic Devices shall be hauled to a site or facility designated to the Contractor by the Contract Administrator.

The Contractor's personnel and subcontractors shall adhere to all rules and regulations at the designated disposal and processing facilities and shall be responsible for any damage due to negligence.

All routing, Collection scheduling, equipment and personnel are to be planned and priced based on delivery/disposal at the following sites and in accordance with County and State Laws:

Recyclables -- Lee County Materials Recycling Facility (MRF) on Buckingham Road. Business and Institution recyclables also accepted.

Electronic Devices – Lee County Solid Waste Division Annex on Topaz Ct., Ft. Myers, Fl.

Vegetative Wastes -- The County's Processing Site on Buckingham Road.

Municipal Solid Waste (non-hazardous, non-infectious) -- Lee County Resource Recovery Facility on Buckingham Road, as directed by the Contract Administrator.

Construction and Demolition Debris – Lee County Resource Recovery Facility on Buckingham Road and/or the Lee/Hendry Landfill. Any licensed, permitted disposal/recycling facility as authorized by the State to provide such services.

Designated Facilities may change from time to time, and the Contractor or County may be compensated for permanent changes in designated Disposal/Recycling Facilities, which significantly lengthen or reduce, respectively, the average travel distance from the Service Area.

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. Upon execution of this Agreement and 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 and Recycling 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. The County has the right to inspect collection equipment during collection routes. Equipment utilized for Collection of Recyclable 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. 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 (i.e., gross vehicle weight not to exceed 10 tons). Service on these substandard roads shall be a minimum of one combined Solid Waste and Vegetative Waste Collection and one separate Recycling Collection per week. In the event that Solid Waste designated to be disposed of at the Resource Recovery Facility has to be disposed of at the a landfill, the Contractor shall make arrangements to keep tires separated from other Solid Waste.

The Contractor's vehicles, roll-off Containers, dumpsters and other equipment must be clearly identified with the name, phone number of the company's local office and equipment number on each side of the equipment and the equipment identification number shall also be on the front and rear of each vehicle. The Contractor shall allow commercial customers to select either top loading or side loading 6 and 8 cu. yd. dumpsters and shall provide the type requested by the commercial customer. All vehicles utilized for the Collection of Recyclable Material shall be clearly identified for that purpose. Letters and numbers shall be at least six (6) inches high and of proportionate width unless otherwise approved by the Department. This identification shall be affixed to each vehicle and piece of equipment. The Contractor shall provide a list of equipment used in the service area, including equipment number. All vehicles shall be kept clean (i.e., washed at least once per week), in sanitary condition, good repair and meet community standards of appearance at all times. The County shall be the sole judge of community standards of appearance. At a minimum, all Compactors, and other Contractor owned Containers are to be cleaned (washed) and sanitized as needed or when requested by the County, or at least twice annually. The noise level for the Collection vehicles during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the Collection vehicle and at an elevation of five (5) feet from the horizontal base plane of such vehicle. All vehicles, Containers (except roll-offs), transfer trailers, etc. shall have enclosed tops and such tops and/or tarps shall remain closed while a vehicle is in motion.

15. **VEGETATIVE WASTE:** All Vegetative Waste shall be collected separately from Solid Waste and Recyclable Materials unless otherwise provided in this Agreement. For Curbside Residential Collection Service, all grass clippings, leaves, pine needles or other similar loose waste shall be bagged or containerized, otherwise, Vegetative Waste must be no more than six (6) feet in length, with the exception of palm fronds and Christmas trees, and under 50 pounds per piece and placed neatly at the curb. Vegetative Waste consisting of limbs, bushes, or other similar items shall be bundled and tied, or containerized. Up to 50 pounds per Dwelling Unit per Collection of unbundled palm fronds may be placed neatly at curbside for Collection.
16. **SPECIAL WASTE, HAZARDOUS WASTE, BIOHAZARDOUS OR BIOMEDICAL WASTE AND SLUDGE:** The Contractor shall not be required to collect and dispose of Special Waste, but may offer such service in the Service Area. All such Collection and disposal for those types of waste in this Section are not regulated or exclusive under this Agreement, but if provided by the Contractor shall be in strict compliance with all federal, state and local laws and regulations.

17. **OFFICE AND EQUIPMENT YARD:** The Contractor shall maintain an office within Lee County where questions and complaints will be received. It shall be equipped with sufficient phone lines (no less than three per service area) and phone equipment, and shall have responsible persons in charge during Collection hours and shall be open during normal business hours, 7:30 a.m. to 5:00 p.m., Monday through Friday and 7:30 am to 12 pm on Saturday. In addition, sufficient personnel shall answer phone calls for customer service beginning at 7:30 a.m. and continuing throughout the day as long as any Collection vehicles are working. The Contractor shall provide a dedicated fax machine to receive complaints from the County, and a computer to communicate with the County. The Contractor shall provide an answering machine during non-office hours for customer requests and questions to be responded to no later than the following business day. The Contractor shall also have a website for the purpose of providing information to residential and commercial customers. The Contractor shall provide a contact person for the County to reach during all non-office hours. The contact person must have the ability to authorize Contractor operation in the case of County direction or situations requiring immediate attention. An equipment yard must be established within Lee County no later than August 30, 2010. Failure to establish an 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, either owned or leased by the contractor for the term of this agreement, 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. The equipment maintenance areas shall be under roof and have a concrete floor. Contractor shall allow County staff to visit the facility for inspections any time the Contractor has personnel on site.
18. **COMPLAINTS:** The Contractor shall resolve all service complaints as soon as possible. For example, each missed Solid Waste/Recyclables/Vegetative Collection must be collected on the same day it is missed. All complaints related to Collection services received by the Department shall be directed to the Contractor for resolution. The Department may issue a "Request for Action" to the Contractor with a reference number. All Requests For Action shall be recorded in a complaint log by the Contractor. The Contractor shall make contact with the complainant within one business day. The complaint must be resolved within one business day after the Contractor receives it. When the complaint has been resolved, the Contractor shall forward a memorandum with the reference number and a brief explanation of the resolution. The memorandum shall also include measures that will be used by the Contractor to minimize any re-occurrence of the same type of complaint. When the complaint cannot be resolved within two business days, an interim explanation will be forwarded to the Department until resolved. In the event the complaint cannot be resolved, the Department shall resolve the problem, which may include charging the Contractor for any and all costs. A listing of all non-compliant and tagged customer set-outs from the previous work day shall be provided to the County each work day morning and will include all salient information. Non-

compliant solid waste, recycling, and vegetative waste not properly tagged by the Contractor shall be collected by the Contractor within 24 hours.

The Contractor shall submit a statistical report to the Department, monthly, summarizing the quantity and type of customer complaints received by the Contractor for the previous month, in a format approved by the Department.

The Contractor shall provide the Department with a full written explanation of the disposition of any incident involving a claim of damage to private or public property as a result of actions of the Contractor's employees, agent, or sub-contractors.

**19. QUALITY OF PERFORMANCE OF CONTRACTOR:** It is the intent of this Agreement to ensure that the Contractor provides a high quality level of Solid Waste and Recycling Collection services. To this end, all complaints received by the Department, 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. The Contract Administrator may levy \$100.00 to \$500.00 per incident administrative charges for improper and insufficient actions related to any service required by this Agreement including, but not limited to:

1. Throwing of Garbage Cans or Recycling Containers.
2. Failure to collect Recyclable Materials, Solid Waste, Electronic Devices, or Vegetative Waste on schedule.
3. Failure to replace Garbage Cans, Containers and Recycling Containers to the point of Collection.
4. Failure to provide the Department, in a timely manner, any reports, documents, or information required by this Agreement.
5. Charging a customer for the disposal of Recyclables, unless the County charges a tipping fee at the Materials Recycling Facility.
6. Failure to collect Bulky Items/White Goods in a timely manner.

The Contract Administrator may also levy administrative charges for all other infractions of this Agreement at \$100.00 per day per incident including, but not limited to:

1. Failure to provide clean, safe, sanitary equipment
2. Failure to maintain office hours as required
3. Operator not licensed
4. Damaged Can or Container not replaced within five business days
5. Failure to clean spillage
6. Failure to repair damage of customer property
7. Failure to cover materials on Collection vehicle(s)
8. Collection employees out of uniform
9. Name and phone number, and if applicable, size and other information not displayed on equipment or Containers

10. Providing exclusively prohibited service in another Contractor's area, without prior authorization by the Contract Administrator.
11. Not providing schedules and route maps
12. Speeding upon conviction
13. Using improper truck to service commercial or residential customer
14. Failure to submit disclosure notice to either customer or Contract Administrator
15. Failure to report Recycling activity monthly, in the format determined by the County, for the purpose of tracking and verifying countywide Recycling activity
16. Failure to respond to customer calls, regarding service, in a timely and appropriate manner
17. Failure to place a written notice in Recycling Containers or on or near the customer's Can or curbside location, as necessary, to inform the customer of a non-compliant 'set-out' action
18. Failure to replace or provide Containers or Recycling Container(s) as specified in this agreement.
19. Failure to repair damage to property, resulting from Contractor's (including agents, employees or subcontractors) equipment failure or negligence, within seven (7) business days.
20. Failure to follow Disposal Facility rules
21. Failure to take precautionary measures to prevent spillage
22. Failure to commence and/or maintain Recycling Collection for Multifamily Dwelling Units or Commercial Properties in a timely manner

Changing routes, including starting point, without proper notification to the Contract Administrator and customer will result in a \$3,000.00 administrative charge per incident.

Commingling Solid Waste, Vegetative Waste, Electronic Devices, and/or Recyclable Materials will result in the following penalties:

- First Offense \$2,000.00 administrative charge.
- Second Offense \$5,000.00 administrative charge.
- Third Offense \$10,000.00 administrative charge.

Failure to deliver any Commercial or Residential Solid Waste, Vegetative Waste, Electronic Devices, or Recyclable Materials to a Designated Facility will result in the following penalties:

- First offense, \$2,500.00 administrative charge.
- Second offense, \$10,000.00 administrative charge.
- Third offense, termination of franchise.

Failure to complete, either partially or totally, a route on the regular scheduled Collection day shall be \$1,000 for each route per day 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 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 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) days after receiving such monthly notice, request in writing an opportunity to be heard by the County and present its defense to such assessment.

The County shall notify the Contractor in writing of any action taken with respect to Contractor's claims and the decision of the County will be final.

20. **NATURAL DISASTERS:** In the event of a hurricane, tornado, major storm or other natural disaster, the Contract Administrator may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such natural disaster, the Contractor shall advise the Contract Administrator when it is anticipated that normal routes and schedules will be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed. The clean up from some natural disasters may require that the Contractor hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster. The Contractor shall receive extra compensation above the normal compensation contained in this Agreement to cover the costs to include rental equipment, additional personnel, overtime hours, and other expenses provided by the Contractor and such additional cost and compensation shall be included in and not exceed the unit price amount as set forth in Exhibit II. The Contractor shall first secure written authorization and approval from the Contract Administrator prior to the work being performed. All such costs may be audited by the County's Contract Administrator.

During the month of March each year, the Contract Administrator will review the County's current disaster preparedness plan to coordinate the activities of the Contractor in the event of a natural disaster. On October 1, 2011, the Contractor is required to provide a disaster preparedness plan to the Contract Administrator for review and approval. This plan shall include provisions for additional manpower and equipment and will provide a reasonable, verifiable rate for Collection in the event of a natural disaster. In the event that excess work resulting from a natural disaster is compensated by the Federal Emergency Management Agency, or any other local, state or federal agency, the extra compensation shall be subject to such agency's approval. The Contractor shall update the natural disaster plan each year during the term of this Agreement for the Contract Administrator's review and approval.



21. **UNCONTROLLABLE CIRCUMSTANCES:** Neither the County nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, 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 an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

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. Any changes to the required licenses or permits shall be reported to the County within ten (10) working days of the change.

23. **PERFORMANCE BOND:** The Contractor shall furnish to the County a performance bond executed by a surety company licensed to do business in the State of Florida and/or a clean irrevocable letter of credit issued by a bank in Lee County to ensure the faithful performance of this Agreement and all obligations arising hereunder in the appropriate amount determined in accordance with Exhibit V, attached. The clean irrevocable letter of credit or bond provided hereunder, each may be substituted for the other upon approval by the County. The form of this bond or letter of credit, and the Surety Company, shall be acceptable to the County Attorney and the Contract Administrator and shall be maintained during the term of this Agreement as provided in Section 1. The value of the performance bond shall be revised each year based on the preceding year's amount of revenue, as indicated in Exhibit V. The bond(s) shall be endorsed to show Lee County, a political subdivision of the State of Florida, to provide that bonds shall not be canceled, limited or non-renewed until after thirty (30) days' written notice has been given to the County. Current performance bonds evidencing required coverage must be on file at all times.

24. **EMPLOYEE WAGES AND BENEFITS:** The Contractor shall comply with all applicable Local, State and Federal laws relating to wages, hours, overtime and all other applicable laws relating to the employment or protection of employees, now or hereinafter in effect. The Contractor shall provide for its full time employees, at a minimum, one week paid vacation leave, one week paid sick leave and paid holiday s recognized in Section 7 herein. Contractor shall recognize employee length of service (seniority), for the purposes of vacation and sick leave, etc., and view such length of service the same as pre-Contract employees, if such employee is hired in good standing during the time of transition (including up to one month after Start of Service) from an existing Lee County Franchise Hauler. The Contractor shall provide, at the Contractor's expense, medical insurance benefits for its full time employees. Company funding shall

be, at a minimum, 80 percent (80%) of all premiums. Conditions of employment shall be published and conspicuously posted so all employees may be informed. The Contractor shall furnish reasonable uniforms, rain gear and safety equipment at its expense.

**25. INSURANCE:**

**A. Insurance Coverage Certificates:** Through and including the Contract Expiration Date and any Extensions, the Contractor shall secure and continuously maintain through the term of this Agreement, the insurance specified in Exhibit VIII to protect the Contractor and the County from claims under Workers' Compensation Acts and from claims for bodily injury, death or property damage which may arise out of or result from the Contractor's obligations and operations under this Agreement or anyone directly or indirectly employed by it for whose acts or omissions it may be liable. The Contractor shall not establish and give, nor shall the County recognize, any notice to the County of the commencement of services unless and until the Contractor shall have provided the County proof (including copies of policies) that the insurance coverage listed in Exhibit VIII and required to be secured by the Contractor have been secured and will be in full force and effect on the commencement of services. All certificates of insurance and policies shall (i) be furnished to the County prior to the commencement of service, (ii) be in a form and coverage satisfactory to the County, (iii) list the various coverage, and (iv) contain, in addition to any provisions otherwise required, sixty (60) days prior written notice of cancellation, non-renewal or material change in the policies given to the County by registered mail, return receipt requested. All such notices shall name the Contractor and identify this Agreement.

**B: Contractor Obligations and Policy Requirements.**

1. The Contractor's insurers shall have no right of recovery or subrogation against the County or the Contractor, it being the intention of the Parties that any insurance policy so affected shall protect both Parties and be the primary coverage for any and all losses covered by the insurance listed in Exhibit VIII.
2. The County shall be named as an additional insured with respect to the Contractor's negligence in the performance of its obligations or operations under this Agreement; ISO Forms CG 20 10 (form B).
3. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums or for assessments under any form of policy.

4. The Contractor, and subcontractor(s) and lower tier contractor(s) that may be retained by the Contractor, if any, shall assume and shall be solely responsible for the satisfaction of any and all deductibles and self insured retention contained in their respective insurance coverage as well as any excluded loss or losses.
5. All insurance required to be secured and maintained under this Agreement shall be procured from insurance companies authorized to do business in the State, and all such insurers shall have a rating of at least A:VI in the latest edition of Alfred M. Best's Insurance Reports.
6. If, at any time during the term of this Agreement, any policy listed in Exhibit VIII shall be or becomes unsatisfactory to the County as to form or substance or if an insurance company issuing any policy in Exhibit VIII shall be or become unsatisfactory to the County, the Contractor, upon notice thereof from the County, shall immediately obtain a new and substitute policy, submit the same to the County for approval, and submit a certificate and copy of the policy to the County as provided in Section 7.01.
7. Failure of the Contractor to secure and/or maintain the insurance listed in Exhibit VIII shall not relieve it from any liability under this Agreement, nor shall the insurance requirements herein be construed or interpreted as conflicting with the indemnification obligations of the Contractor pursuant to Article V.
8. The Contractor's obligation to secure, deliver and maintain the insurance policies and coverage specified in this Agreement shall be considered as "material" for purposes of Section 30.A.

**26. INDEMNIFICATION AND LIMITATION OF LIABILITY:**

- A. **Indemnification.** To the fullest extent provided by applicable law, the Contractor shall protect, defend, indemnify and save the County, its agents, officials, commission members, employees, servants, including volunteers, any firm, company, organization or individual, or their contractors or subcontractors with whom the Contractor may be contracted, harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, including incidental, special, actual, punitive, consequential, indirect and environmental pollution, judgments, losses, costs, expenses, suits, actions, and causes of action of every kind and character, including, but not limited to, claims based on negligence, strict liability, and absolute liability which may arise in favor of any person or persons on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from the Contractor's performance or non-performance of its obligations or operations under this Agreement, regardless whether others may be wholly, concurrently, partially or solely negligent, or

strictly liable, or absolutely liable or otherwise at fault, except damages arising out of injuries or property claims to third parties caused solely by the negligence or willful misconduct of the County, its officials, commissioners, employees or agents. Further, the Contractor hereby agrees to indemnify the County for all reasonable expenses and attorney's fees incurred by or imposed upon the County in connection therewith for any loss, damage, injury or other casualty. The Contractor additionally agrees that the County may employ an attorney of the County's own selection to appear and defend any such action, on behalf of the County, at the expense of the Contractor. The Contractor further agrees to pay all reasonable expenses and attorney's fees incurred by the County in establishing the right to indemnity. The parties recognize and acknowledge that the first \$100 paid under this Agreement is consideration for this indemnification and any other indemnity given by the Contractor pursuant to this Agreement.

**B. Waiver.** The Contractor and the County hereby waive monetary claim(s) arising pursuant to this Agreement for recovery from the other for any and all loss or damage to the other resulting from the performance of this Agreement, which loss or damage is covered by collected insurance policy proceeds; and the Contractor and County will require their respective insurers to waive all rights of recovery and subrogation against the County or the Contractor as the case may be.

**C. County Limitation of Liability.** THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT BECAUSE OF THE UNIQUE NATURE OF THE UNDERTAKINGS CONTEMPLATED BY THIS AGREEMENT, IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY THE COUNTY AS A RESULT OF A BREACH OF THIS AGREEMENT BY THE COUNTY. HOWEVER, IN NO EVENT, BECAUSE OF A BREACH OF THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY, DELAY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE BY THE COUNTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, SUITS BY THIRD PERSONS, SHALL THE COUNTY BE LIABLE FOR OR OBLIGATED IN ANY MANNER, EXCEPT TO THE EXTENT EXPRESSLY AND SPECIFICALLY RECOGNIZED IN THIS AGREEMENT, TO PAY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY NATURE INCURRED BY IT WHETHER OCCURRING DURING OR SUBSEQUENT TO THE PERFORMANCE OF THIS AGREEMENT.

**D. Survival.** This Section 26 shall survive the termination of this Agreement.

**27. ACCESS AND AUDITS:** The Contractor shall maintain within Lee County adequate records of the Collection services during the Fiscal Year and for two years following the

end of each Fiscal Year of the Contract. The County or its designee shall have the right to review all records maintained by the Contractor upon 24 hours written notice.

The Contractor shall provide the County a Certified Financial Statement including, at a minimum, a Balance Sheet and an Income Statement representing the financial position and the results of operations respectively of the Contractor for each Service Area. The report 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 Accounting Principles which include tests and other procedures necessary, that the Financial Statements are fairly presented, in all material aspects, in conformity with Generally Accepted Accounting Procedures. The annual audit shall reflect, at the very least, the format shown in Exhibit IV and the format must be approved by the County. The annual audit shall be delivered to the County within ninety (90) days of the twelve (12) month period ending the Contractor's fiscal year. If the Contractor's fiscal year coincides with the calendar year, the first year's audit shall be for a period of fifteen (15) months. No rate adjustments of any type will be granted to the Contractor unless all required audits and cost statements have been filed in a timely manner. Contractor shall perform commercial solid waste and recycling route audits annually.

28. **POINT OF CONTACT:** All dealings, contacts, notices, and payments between the Contractor and the County shall be directed by the Contractor to the Contract Administrator or designee.
29. **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 County:**

**Lee County Solid Waste Division  
10500 Buckingham Road, Suite 200  
Ft. Myers, Florida 33905**

**Attention: Director**

**As to the Contractor:**

**Veolia ES Solid Waste Southeast, Inc.  
James Suter  
17101 Pine Ridge Road  
Fort Myers Beach, FL 33931**

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.

**30. EVENTS OF DEFAULT:**

**A.** Events of Default by Contractor. The following shall constitute Events of Default by the Contractor:

1. Persistent and repeated failure or refusal of the Contractor to perform timely, any obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of this Agreement, provided, however, insofar as such failure or refusal relates to payment obligations of the Contractor, Section 30.A.2 shall govern.
2. Failure of the Contractor to pay amounts owed to the County under this Agreement within thirty (30) days following the date they become due and owing.
3. The Contractor's or the Guarantor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (b) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Contractor or the Guarantor under the laws of any jurisdiction, which proceeding has not been dismissed within sixty (60) days, or (c) any action or answer by the Contractor or the Guarantor approving of, consenting to, or acquiescing in, any such proceeding, or (d) the levy of any distress, execution or attachment upon the property of the Contractor or the Guarantor which shall substantially interfere with its performance hereunder; provided, however, that with respect to the Contractor only under this Section 30.A.3, an Event of Default on the part of the Contractor under this Section 30.A.3 shall not be deemed to have occurred if caused primarily by an Event of Default on the part of the County under Section 30.B.2
4. The default of the Guarantor under the Guarantee.

**B.** Events of Default by County. The following shall constitute Events of Default on the part of the County:

1. persistent and repeated failure of the County to perform timely any material obligation under this Agreement, except the Event of Default described in Section 30.B.2;
2. failure of the County to pay amounts owed to the Contractor under this Agreement within thirty (30) days following the time they become due and payable; or

3. (a) the County's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (b) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the County under the laws of any jurisdiction, which proceeding has not been dismissed within sixty (60) days, or (c) any action or answer by the County approving of, consenting to, or acquiescing in, any such proceeding, or (d) the levy of any distress, execution or attachment upon the property of the County which shall substantially interfere with its performance hereunder.

**D.** Default Notices. Neither Party may exercise its termination rights pursuant to Sections 31.A or 31.B, as applicable, unless and until such Party shall have given the other Party written notice of its failure or refusal to perform pursuant to, as applicable, Sections 30.A.1, 30.A.2, 30.B.1, or 30.B.2. If an Event of Default specified in a required notice of default is cured within thirty (30) days after such notice, no Event of Default shall occur pursuant to such notice. The occurrence of an Event of Default specified in Sections 30.A.3 or 30.A.4, or 30.B.3 shall not require any notice.

### **31. TERMINATION**

**A.** Contractor Termination for Event of Default.

1. If the County shall have given the Contractor notice that an Event of Default has occurred pursuant to Section 30.A.1 or 30.A.2, the County may terminate this Agreement upon thirty (30) days prior notice to the Contractor.
2. If an Event of Default has occurred pursuant to Section 30.A.3 or 30.A.4, or Section 32, the County may terminate this Agreement forthwith.

**B.** County Termination for Event of Default.

1. If an Event of Default has occurred pursuant to Section 30.B.3, the Contractor may terminate this Agreement forthwith.
2. If the Contractor shall have given the County notice that an Event of Default has occurred pursuant to Section 30.B.1 or 30.B.2, the Contractor may terminate this Agreement upon thirty (30) days prior notice to the County.

C. Termination for Labor Unrest.

If personnel employed by the Contractor and performing services pursuant to the Contractor's obligations under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Contractor from performing its material obligations under this Agreement, the County may, in its sole discretion, by notice to the Contractor, terminate this Agreement forthwith.

D. Termination by Law.

If the exclusive franchise or the County's direction of Solid Waste under this Agreement becomes unenforceable, then the County or the Contractor may terminate this Agreement forthwith. The Contractor hereby agrees not to be a party or participant to any action contesting the enforceability of this Agreement. In the event of such termination neither the County nor the Contractor shall have any legal or equitable remedy against the other for such termination except to the extent provided in Section 31.G, except when the Contractor violates the above agreement Section 31.F shall apply on a County termination.

E. Remedies of the Contractor.

1. If the Contractor terminates this Agreement pursuant to Sections 30.B.1 or 30.B.2, the Contractor shall receive \$200,000 if termination occurs during the first year, \$100,000 if termination occurs during the second year, \$50,000 if termination occurs during the third year, \$10,000 if termination occurs during the fourth year and \$10,000 if termination occurs the fifth year of this Agreement, as liquidated damages.
2. If the Contractor terminates this Agreement pursuant to Section 30.B.3, the Contractor shall have the right to seek legal and equitable remedies provided by law for such Event of Default.

F. Remedies of the County.

If the County shall terminate this Agreement pursuant to Section 31.A or 31.C, the County shall have the right to seek legal and equitable remedies provided by law for such Event of Default and termination right, respectively, and the County shall have the right to call the performance bond or letter of credit and shall be free to negotiate with other contractors or any other person or company for the service of the Service Area.



**G.** Manner of Termination Payment. All performance and payment obligations under this Agreement, including payment of all fees and charges that are due and owing, shall continue pursuant to the terms of this Agreement and any amount accrued but unpaid prior to termination shall, if due and owing, be payable in accordance with this Section 31.G. Except as otherwise specifically provided in this Agreement with respect to the time of payment following termination, within ninety (90) days following termination of this Agreement, the County and the Contractor shall reconcile all amounts then due and payable to each other under the terms of this Agreement. Upon reaching, as a result of such reconciliation, the total amount of the outstanding unpaid balance which the County and the Contractor owe the other, the County and the Contractor shall, within thirty (30) days thereafter, make the final payments in complete discharge of their obligations under this Agreement, except those obligations which survive the termination of this Agreement. Payment obligations under this Section are subject to Sections 6.G and 6.H

**H.** Remedies.

The remedies specifically set forth in this Agreement are exclusive, and the Parties waive any other remedies they may have at law or in equity; provided, however, that either Party may seek judicial enforcement of any remedy provided herein and any amounts payable hereunder. The Parties agree and acknowledge that the damages provided for in this Agreement are to be liquidated damages and shall be the sole and exclusive measure of damages or liability for any breach or non-performance by the Parties under this Agreement and that the provisions for damages set forth herein are intended to measure as accurately as possible the direct damages of the Party entitled to such damages and are not intended to include punitive, special, consequential, incidental or indirect damages.

**I.** Survival.

This Section 31 shall survive the expiration or termination of this Agreement.

**32. CONFLICT OF INTEREST:** The Guarantor and the Contractor confirm that at no time during the term of this Agreement, shall the Contractor, nor any related person, subsidiary, corporation or company, whether by itself or through a relative, its parent(s), subsidiary(s) or holding companies, provide Solid Waste transfer operations, trucking services and/or disposal services for any incorporated City or Town within Lee County, whereby any such transfer and/or disposal services involve the transfer and/or disposal of the City's or Town's Solid Waste to a disposal site not owned by Lee County or under contract to Lee County for the disposal of Solid Waste. If the Contractor, or any related entity, person, subsidiary, parent corporation, etc., provides any such transport/trucking services and/or disposal services for any incorporated City or Town within Lee County, then such action shall be considered an Event of Default.

**33. RIGHT TO REQUIRE PERFORMANCE:** The failure of the County at any time to

require performance by the Contractor of any provisions hereof shall in no way affect the right of the County thereafter to enforce the same. Nor shall waiver by the County 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.

34. **TITLE TO WASTE:** The County shall, at all times hold title and ownership to all Commercial and Residential Solid Waste, Vegetative Waste ,Trash, Recyclable Material (with the exception of Recyclables from Commercial Recycling Collection Service), 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. The Contractor agrees to transport and deliver all such materials to the locations and facilities designated by the County or Contract Administrator.
35. **GOVERNING LAW AND VENUE:** 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 Lee County and the Agreement will be interpreted according to the laws of Florida.
36. **COMPLIANCE WITH LAWS:** The Contractor shall conduct operations under this Agreement in compliance with all applicable laws.
37. **SEVERABILITY:** The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.
38. **ASSIGNMENT AND SUBLETTING:** 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 County. The County 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 County shall be null and void and shall be grounds for the County 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 County under this Agreement to the Contractor shall cease, and County shall have the right to call upon 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 approved by the County, 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) Solid Waste and Recycling Collection Franchise Agreements with the County, when such three (3) Franchise Agreements results from the acquisition of an additional franchise or franchisee.

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 5% stock or financial interest of another person, corporation or company.

For purposes of this section, assignment means: (1) Selling, exchanging, or otherwise transferring to a third party effective control of Contractor management; (2) Selling, exchanging, or otherwise transferring to a third party any of the Contractor's assets dedicated to its performance obligations, herein, unless such assets are promptly replaced with assets of greater or equal value and equivalent function; (3) Issuing stock or selling, exchanging, or otherwise transferring eight (8) percent or more of the then-outstanding common stock of the Contractor or Guarantor to an entity other than the shareholders owning said stock as of the Contract Date; (4) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction that results in a change of ownership or control of the Contractor or the Guarantor; (5) Any combination of the foregoing (whether or not in related or contemporaneous transactions) that effects a change of ownership or control of the Contractor.

**39. 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, unless specifically recognized in this Agreement, shall be in the form of an Amendment executed by both parties.

**40. REPRESENTATIONS:**

**A. Representations of County.** The County represents to the Contractor that:

1. The County 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.
2. As of the Contract Date, the County has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the County (i) have been duly authorized as evidenced

by the certified copies of the pertinent resolutions by the Board, (ii) do not require any other approvals by any other governmental officer or body, other than those permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) do not require any consent or referendum of voters, (iv) will not violate any judgment, order, law or regulation applicable to the County, and (v) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the County under any agreement or instrument to which the County is a party or by which the County or its assets may be bound or affected.

3. This Agreement has been duly entered into by the Board and, as of the Contract Date, constitutes a legal, valid and binding obligation of the County, enforceable in accordance with its terms.
4. To the best of the County's knowledge as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the County in connection with the transaction contemplated hereby.

**B. Representations of Contractor.** The Contractor hereby represents to the County that:

1. The Contractor is qualified to do business in the State and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
2. As of the Contract Date, the Contractor has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental office or body, other than applicable permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) will not violate any judgment, order, law or regulation applicable to the Contractor or any provisions of the Contractor's articles of incorporation and by-laws, and (iv) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Contractor under any agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound or affected.
3. There has been no material adverse change in the Contractor's or the Guarantor's financial condition since January 1, 2005 which would impair the

Contractor's ability to perform its obligations under this Agreement or the Guarantor's ability to fulfill its obligations under the Guarantee.

4. This Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of the Contractor, fully enforceable in accordance with its terms.
5. To the best of Contractor's knowledge, as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Contractor's knowledge, threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Contractor in connection with the transaction contemplated hereby.

41. **ANNEXATIONS AND MUNICIPALITIES:** 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 and this Section.

The annexation of any portion of the unincorporated Service Area by a City or Town (such City or Town having incorporated prior to the Contract Date) may require the Contractor to relinquish any or all exclusivity of its Solid Waste Collection services in that portion of the Service Area and such portion may become exclusive to another entity pursuant to municipal decisions. Any such relinquishment will be made by the Contractor at the sole discretion and decision of the County. Any and all such relinquishment of exclusive Solid Waste Collection services required by the County due to annexation of a portion of the service Area shall have no effect on the Contractor's Collection fees or rates (as adjusted) as established in Exhibit II.

The Franchise Contractor for Franchise Area 1 shall maintain separate revenue statements for revenues collected for the Town of Fort Myers Beach and the City of Bonita Springs, respectively, for the purpose of collecting franchise fees for each municipality.

42. **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.

43. **OTHER RATE ADJUSTMENTS:** The County will strictly enforce all of the provisions of the Franchise Agreement including penalty clauses for any performance quality problems. The Contractor shall not be allowed rate increases on the basis that the Contractor proposed pricing is too low or agreed to do the work for a lower proposer'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 price, shall result in cancellation of all Solid Waste and Recycling Collection service Franchise Agreements for all Service Areas entered into with the Contractor.
44. **EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor shall use its best efforts consistent with applicable law to ensure that minority business enterprises shall have the maximum practicable opportunity to compete for work and, to the extent the Contractor is permitted to subcontract work, with respect to this Agreement, the Contractor is required to comply with all applicable federal, State, County and local directives respecting equal employment opportunity programs.
45. **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.
46. **COMMUNITY SERVICE:** Various community and non-profit groups assist Lee County by conducting volunteer community, beach or wetlands clean-ups to remove accumulation of debris. Lee County encourages residents to manage their Solid Waste appropriately, so that littering is minimized. However, the County also recognizes the benefit of community clean-ups for certain problem areas.

The Contractor shall provide up to 200 cubic yards of Container service per year for Department approved, non-profit group clean-ups in the Service Area. Contractor's service shall include Container or roll-off drop prior to the event, hauling the collected material, and disposal cost. This service shall be provided at no extra charge to the County or Community.

The Contractor shall provide personnel to perform litter Collection on approximately one and one-half miles of Buckingham Rd. at least one time every 5 weeks.

47. **CITIZENS DROP OFF AREA:** Beginning October 1, 2010 with Service Area 1,

and rotating annually each October 1<sup>st</sup>, the Contractor for each service area shall provide a responsible, full time employee to oversee the activity at the Citizen's Drop Off Area (7:30 – 5:00 M-F, 7:00 – 12:00 Sat or 7:00 – 5:00 Sat following a Holiday) of the Lee County Resource Recovery Facility.

Duties of this individual shall include, but not be limited to, insuring the receipt of acceptable materials for disposal, traffic control, and housekeeping. This individual shall further insure that customers weigh in and out at the scales as required, and work closely with the Department to provide a safe, secure, and efficient location for disposal of material brought in by residential and commercial customers.

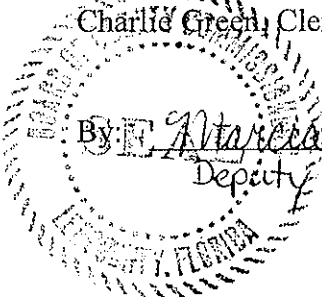
In order to ensure a smooth transition from the Contractor for Service Area 1 to the Contractor from Service Area 2, and each subsequent Contractor, a minimum of two (2) weeks training shall be required prior to taking over Citizen's Drop Off Area responsibility.

48. **PILOT STUDIES:** During the Term of this Service Agreement, the County may conduct pilot studies to evaluate strategies that increase waste reduction, improve collection efficiency, and/or reduce solid waste management costs. The Contractor shall cooperate with the County in conducting such pilot studies, and shall enter into good faith negotiations with the County, if deemed necessary, for additional services provided by the Contractor to carry out pilot studies.
  
49. **CONTRACT PREPARATION AND TRANSITION PLAN:** Prior to the commencement of the term of this franchise Agreement, the Contractor shall prepare for 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 VII, the County has the right to fine and collect \$10,000 for each task deadline missed. Failure to meet the deadline of more than two tasks may lead to loss of the exclusive franchise for each Service Area.

In Witness Whereof, Lee County, at a regular meeting thereof, by action of the Board of County Commissioners authorizing and directing the foregoing be adopted, has caused these presents to be signed by the Chairman of the Lee County Board of County Commissioners, and the County's seal to be hereunto affixed, and Veolia ES Solid Waste Southeast, Inc., has executed this Agreement all as of the day and year first written above.

ATTEST:  
CLERK OF CIRCUIT COURT  
Charlie Green, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS



By: Marcia Wilson  
Deputy Clerk

By: [Signature]  
Chair

DATE: 4/29/10

Approved as to Form and Legal Sufficiency:

By: [Signature]  
Office of the Lee County Attorney

VEOLIA ES SOLID WASTE SOUTHEAST, INC  
Company Name

By: [Signature]  
Authorized Signature

Witness: \_\_\_\_\_ Name: \_\_\_\_\_

1. [Signature]

Name: JAMES L. SUTER

Title: AREA MANAGER

Witness:  
2. [Signature]

(Corporate Seal)



**EXHIBITS**

## EXHIBIT I

### GUARANTEE

This Guarantee made as of the 9<sup>th</sup> day of March, 2010, by Veolia ES Solid Waste Southeast, Inc. ("Guarantor"), having its principal place of business in Florida, to and for the benefit of Lee County, Florida, a political subdivision of the State of Florida, ("County"),

#### WITNESSETH:

WHEREAS, Veolia ES Solid Waste Southeast, Inc., a Florida corporation, (the "Company") having an office at 17101 Pine Ridge Road, Fort Myers Beach, FL 33931, has entered into the Service Agreement (the "Agreement") with the County dated as of March 9, 2010.

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, County would not enter into the Agreement unless the Guarantor provided this Guarantee.

NOW, THEREFORE, as an express inducement to the County to enter into this Agreement, Guarantor agrees and guarantees as follows:

Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Agreement in accordance with the terms and conditions therein.

This Guarantee shall be governed by the laws of the State of Florida exclusive of the choice of law rules thereof, and Guarantor hereby agrees to the service of process in the State of Florida for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

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

This Guarantee may be enforced by the County without first resorting to any legal or administrative actions against Company or exhausting any other remedies that the County may have.

Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate demands may be brought hereunder by the County as each cause of action arises. Guarantor waives presentation to, demand of performance from, and protest to the County of the obligations of the Company under the Agreement.

No failure or delay by the County in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the assets of the Guarantor. Notice of any such assignment shall be given in writing to the County within thirty (30) days of the effective date of any such merger, consolidation or transfer.

The respective obligations of Guarantor to the County set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that County first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Guarantor hereunder, and shall not be subject to any claim of Guarantor against any other Person including the County, other than a claim that the matter giving rise to the County's claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Florida.

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

Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

Guarantor at: VEOLIA E.S.  
If By Mail or By Hand 17101 PINE RIDGE RD  
FT MYERS BEACH, FL 33931

County at: Lee County Solid Waste Division  
10500 Buckingham Road, Suite 200  
Fort Myers FL 33905

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

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

ATTEST: \_\_\_\_\_  
ACCEPTED: BY: James K. Spivey  
Michael F. D...  
V.P.

**EXHIBIT II**  
**RATE SCHEDULE FOR FRANCHISE SERVICE AREA 1**  
**FY 2010-11**

**A. Residential Dwellings Curbside Services \***

A.1. Garbage Waste	22,000	X	\$	1.18	X	52	=	\$	1,349,920
A.2. Recyclables	22,000	X	\$	0.72	X	52	=	\$	823,680
A.3. Vegetative Waste	22,000	X	\$	0.59	X	52	=	\$	674,960
Subtotal			\$	2.49					

Total Annual Residential Dwelling Curbside Collection Rate \$ 2,848,560

Equivalent to 10.79 X 12 = 129.48/year  
per unit

**B. Commercial Multifamily Dwelling Curbside Can Service \***

Estimated Number Of Dwelling Units **	20	X		1.44	X	52	=	\$	1,498
Price Per Dwelling Per Collection ***									
Number Of Collections Per Year									
Total									

\* Includes All Collection And Related Services Required In Accordance With The Agreement.

\*\* Estimated By County For Proposal Purposes. Actual Number Of Units May Vary

\*\*\* Shall not exceed 75% of cost of (A.1 + A.2)

**C. Commercial Properties Container Collection Including Multifamily Dwellings, Businesses and Institutions \***

Garbage Or Vegetative Materials Collection	Number Of Commercial Containers**	Annual Container Rental Price ***	Collection Price Per Pull ***	Estimated Average Number Of Collections Per Year**	Total
Commercial Can	220	X(\$ 0.00	6.93	X 60	) = \$ 91,476
2 CY Dumpster	460	X(\$ 0.00	22.72	X 80	) = \$ 836,096
4 CY Dumpster	270	X(\$ 0.00	22.72	X 75	) = \$ 460,080
6 CY Dumpster	200	X(\$ 0.00	22.72	X 85	) = \$ 386,240
8 CY Dumpster	220	X(\$ 0.00	22.72	X 120	) = \$ 599,808
Vertical Compactor	3	X(\$ 1400.00	22.72	X 70	) = \$ 8,971
20 CY Compactor +/-	3	X(\$ 1900.00	250.00	X 52	) = \$ 44,700
30 CY Compactor +/-	15	X(\$ 2000.00	250.00	X 60	) = \$ 255,000
40 CY Compactor +/-	5	X(\$ 2200.00	250.00	X 52	) = \$ 76,000
10 CY Roll Off Container	5	X(\$ 350.00	176.73	X 17	) = \$ 16,772
20 CY Roll Off Container	22	X(\$ 400.00	176.73	X 50	) = \$ 203,203
30 CY Roll Off Container	9	X(\$ 475.00	176.73	X 52	) = \$ 86,985
40 CY Roll Off Container	4	X(\$ 550.00	176.73	X 15	) = \$ 12,804

Total Annual Commercial Collection Rates \$ 3,078,135

Multifamily Recycling Collection And Contractor Provided Containers At No Extra Charge. Estimated Number Of Multi Dwelling Units \*\* 18,200

**Grand Total Price For Basic Service (A + B + C) \$ 5,951,073**

\* Includes All Collection And Related Services Required In Accordance With The Agreement  
 \*\* Estimated By County For Proposal Purposes. Actual Number Of Units May Vary.  
 \*\*\* Container Rental Price Shown Is For One Year. Contractor Shall Charge Customer Pro Rated On A Weekly Basis  
 \*\*\*\* All Prices Indicated Are "Not-To-Exceed" Prices  
 \*\*\*\*\* 70 - 90 % Of All Compactors Are Customer Owned  
 ("Example" for Form ONLY)

**RATES DETERMINED BY THE COUNTY  
(NOT TO BE ADJUSTED DURING TERM)  
MONTHLY CONTAINER RENTAL RATES**

<b>CONTAINERS</b>	
<b>SIZE (cubic yards)</b>	<b>RATE</b>
90 Gallon Wheel Cart	\$00.00
2 YD	\$00.00
4 YD	\$00.00
6 YD	\$00.00
8 YD	\$00.00
All Vertical Compactors	\$117.00
20 YD Compactor ±	\$158.00
30 YD Compactor ±	\$167.00
40 YD Compactor ±	\$183.00
10 YD Open R.O. Box	\$30.00
20 YD Open R.O. Box	\$33.00
30 YD Open R.O. Box	\$40.00
40 YD Open R.O. Box	\$46.00

Capacities in between these values (of same type) can be obtained by interpolation.  
Capacities outside of these values (of same type) can be obtained by extrapolation.

**SPECIAL SERVICES RATES DETERMINED BY THE COUNTY**  
**UNLESS OTHERWISE INDICATED INCLUDES SOLID AND VEGETATIVE WASTE**  
**AND RECYCLING**  
**(NOT TO BE ADJUSTED DURING TERM)**

Service	Rate per service
Rolling Out Recycling Container, with 25 or more feet per direction	\$1.20 (no charge for less than 25 feet per direction)
Rolling Out Front Load Container (and returning it to original location) ((garbage only))	\$3.00
Second Weekly Curbside Residential Garbage or Trash Collection	\$4.00 per week
Side of House Service (Residential Curbside Only)*	\$2.00
Opening (and closing) Doors or Gates	No Charge
Locks for Containers	\$10.00 (one time) Charge for Replacements based on cost +10%
Unlocking and Locking Containers	\$1.50
Supplying (and retrofitting) locking mechanism on Container***	\$50.00
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)**	\$30.00
Additional Scheduled Pick-ups for Containerized Customers	Same as Applicable Commercial Collection Rates (Plus Disposal Charges)
Additional Unscheduled (Not Including "On-Call") Pick-Ups For Commercial And Multifamily Containerized Customers	2 times Applicable Commercial Rates (Plus Regular Disposal Charges )
Special Service Or Special Equipment Required Because Of Impaired Accessibility	Negotiable
Return Roll Off Container To Same Spot Or Round Trip For Roll Off Container.	No Charge
Return Container After Service Was Stopped	\$40.00
Collection Of Unbundled (Loose) Yard Waste From Curbside Residential Unit.	\$15.00 Per Cubic Yard

\* There will be no charge for those residents medically unable to bring Solid Waste, or Recyclable Materials to curbside as delineated in Section 4.

\*\* The first two change outs are free to the customer

\*\*\* Determination of necessity of locking mechanisms is based on customer requirements.



**NOT-TO-EXCEED RATES FOR COMMERCIAL RECYCLING COLLECTION  
SERVICE  
(MAY BE ADJUSTED DURING TERM)**

Front-End Load Commercial Recycling Collection Service per collection	<b>\$1.50 per cubic yard</b>
Toters (nominal 95 Gal.) per collection	<b>\$2.85 per cubic yard</b>
Roll Off Container (loose or compacted)	<b>Negotiable</b>

**NOT-TO-EXCEED RATES FOR VEGETATIVE STORM DEBRIS COLLECTION  
SERVICE  
(MAY BE ADJUSTED DURING TERM)**

Cost for collecting excess vegetative storm debris after named storm events if and as directed by The Contract Administrator pursuant to Section 20.	\$14.50 per loose cubic yard and \$24.00 per compacted cubic yard
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## **EXHIBIT III**

### **REPORTS**

This list of reports is an attempt to summarize the reports required by this Agreement but may not be all-inclusive. Content requirements of the reports is detailed within the specific sections of the Agreement.

Section 4.B.2. Recycling Container Delivery Verification from Certificate of Occupancy List

Section 4.B.3. Residential Recycling Report

Section 5.A.1. 5<sup>th</sup> Paragraph Multifamily Recycling Report

Section 5.D.4. Commercial Recycling Report

Section 6.E. Franchise Fee (See Exhibit VI)

Section 6.I. True Up Statement Report

Section 6. J. Commercial Customers Statement

Section 6 K. Information and Documents

Section 18. Complaints and Non-Compliance List

Section 23. Performance Bonds (See Exhibit V)

Section 27. Access and Audits (See exhibit IV-1 and IV-2)

**EXHIBIT IV**  
**ANNUAL FINANCIAL REPORTING FORMAT**  
**AND**  
**PAYMENT SCHEDULE ADJUSTMENTS**

The Contractor shall submit to the County a certified comparative operating cost 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 Statements of Income and Expense will need to be submitted; two (2) residential and two (2) commercial.

The Contractor shall disclose all methods of allocations used to distribute costs 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 Contractor shall provide a description of the expenses classified as Other Operating Expense and Other General and Administration.

The Contractor shall submit to the County any adjustments made during the annual audit that have an effect upon the previously submitted monthly revenue statements for the twelve (12) months of the Fiscal Year being audited.

Any allocations made will need to be disclosed in a narrative format, along with the basis for those allocations. Additionally, it is understood that each Contractor shall utilize the accrual basis of accounting for income and expenses. And although the County reserves the right to audit or review the information supplied, the Contractor is not required to provide an audit of the accompanying information.

Attached is the required format for financial statement reporting in accordance with this franchise Agreement.

**(Contractor)**  
**Statement of Income and Expenses**  
**(Residential or Commercial) Service Area (#)**  
**For (month, year) ended (month, year)**

**Revenues:**

(list by type)	\$ _____	
Advance Disposal Fees	\$ _____	
Total Revenue		\$ _____

**Operating Expenses:**

Depreciation - Vehicles	\$ _____	
Disposal fees paid to the County	\$ _____	
Franchise Fees paid to the County	\$ _____	
Advance Disposal Fees paid to the Cty.	\$ _____	
Fuel and Oil	\$ _____	
Labor and Fringe Benefits	\$ _____	
Other Operating	\$ _____	
Truck Maintenance - Labor	\$ _____	
Truck Maintenance - Parts	\$ _____	
Other (explain)	\$ _____	
Total Operating Expenses		\$ _____

**General and Administrative**

Salaries and Wages	\$ _____	
Officer's Salaries	\$ _____	
Other General and Administrative	\$ _____	
Total General and Administrative		\$ _____

**Income before Provision for Income Taxes** \$ \_\_\_\_\_

**Provision for Income Taxes** \$ \_\_\_\_\_

**Net Income** \$ \_\_\_\_\_

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

**EXHIBIT V**

**COLLECTION FRANCHISE AGREEMENT**

**PERFORMANCE BOND REQUIREMENT**

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

The estimated annual total collection service fees as initially accepted by the County for the first year of the Contract Term x 0.5, rounded up to the next \$100,000.00 = Performance Bond Required

Sample Performance Bond Requirement

Total Annual Service Fees	\$2,450,000
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Annual Performance Bond Requirement =  $0.5 \times \$2,450,000 = \$1,300,000$

LEE COUNTY CONSTRUCTION CONTRACT  
PUBLIC PAYMENT AND PERFORMANCE BOND  
AREA 1

BOND # 301057

Veolia ES Solid Waste Southeast, Inc.

1. Know all men by these presents, that 17101 Pine Ridge Road, Fort Myers Beach, FL 33931 hereinafter referred to as the CONTRACTOR, as Principal, and Ohio Indemnity Company, a corporation, licensed to do business in the State of Florida, hereinafter called SURETY, located at: 250 East Broad Street, 7th Floor, Columbus, OH 43215, are held and firmly bound unto the Lee County Board of County Commissioners, P O Box 398, Fort Myers, FL 33901, (239) 533-8883, A Political Subdivision of the State of Florida as "Owner", in the full and just sum of One Million Three Hundred Thousand and (\$1,300,000.00) Dollars, lawful money of the United States of America, to the payment of which sum, will and truly to be made, the CONTRACTOR and SURETY bind themselves, their representatives, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the CONTRACTOR has entered into a certain written Contract with the COUNTY as the OWNER, dated the 9<sup>th</sup> day of March, 2010, for RFP-10-01 Solid Waste & Recycling Collection Services, with conditions and provisions as are further described in the aforementioned Contract, which Contract is by reference made a part hereof in its entirety for the purpose of perfecting this bond.

3. NOW, THEREFORE, the conditions of this obligation are such that if CONTRACTOR shall fully, promptly and faithfully perform said Contract and all obligations thereunder, including all obligations imposed by the Contract Documents (which includes the Notice of Bidders, Instruction to Bidders, Bid Proposal Form, General and Supplementary Conditions, Detail Specifications, Form(s) of Contract Bond (s), Plans and Specifications, Change Orders, and such alterations thereof as may be made as provided for therein), and shall promptly make payments to all claimants for any and all labor and materials used or reasonably required for use or furnished in connections with the performance of said Contract, and shall perform all other covenants and obligations of this bond, then this obligation shall be void; otherwise it shall remain in full force and effect.

3.1 The undersigned shall indemnify and save harmless the OWNER from and against all costs, expenses and damages, including litigation costs and attorneys fees arising out of, or in connection with the neglect, default or want of care or skill, including patent infringement on the part of the said CONTRACTOR, his agents, servants or employees in the execution or performance of said Contract with the OWNER.

3.2 The undersigned shall promptly make payment(s) to all persons supplying services, labor, material or supplies used directly or indirectly by said CONTRACTOR, or any SubContractor or Sub-SubContractor, in the prosecution of the work provided for in said Contract with the OWNER.

CONSTRUCTION CONTRACT  
PUBLIC PAYMENT AND PERFORMANCE BOND (CONTINUED)

3.3 The undersigned agree to promptly pay to the OWNER any difference between the sum to which the CONTRACTOR would be entitled for the completion of the contract including any damages, direct, liquidated or delay, which the OWNER may sustain by reason of failure of the CONTRACTOR to properly and promptly perform and abide by all of the provisions of said

Contract, and any sum which the OWNER may be or was obligated to pay for the completion of said Work by the CONTRACTOR.

3.4 The undersigned SURETY covenants and agrees that change orders, extensions of time, alterations or additions to the terms of the Contract or the Work to be performed thereunder, or the specifications accompanying the same shall in no way effect their obligation on this Bond, and the SURETY does hereby expressly waive notice of any such changes, extensions of time, alterations or additions, so long as the fundamental nature of the work on the Project by the CONTRACTOR is not changed.

3.5 Subject to the OWNER'S priority, claimants covered by Section 713.01, Florida Statutes, shall have a direct right of action against the Principal and Surety under this obligation, after written notice is provided to the OWNER of the performance of labor or delivery of materials or supplies, and non-payment thereof. Any claimant who seeks to recover against the Principal or Surety under this obligation must also satisfy the notice requirements and time limitations of Section 255.05, Florida Statutes, as they may be revised from time to time.

4.1 The CONTRACTOR and the SURETY shall hold the County harmless from any and all damages, expenses and cost, or lawsuits, which may arise by virtue of any defects in said work or materials within the period of one (1) year from the date of OWNER'S express acceptance of the project, providing, however, that upon completion of the work, the amount of this bond shall be reduced to \_\_\_\_\_% of the Contract Price.

5.1 This public payment and performance bond shall be governed by the laws, administrative rules, and regulations of the State of Florida. Any claims or suits instituted under this bond shall be governed solely by the laws of the State of Florida.

SIGNED and sealed this, the 7th day of April, 2010

CONTRACTOR, As Principal:

Veolia ES Solid Waste Southeast, Inc.

Firm Name

WITNESS



Signature

Heidi J. Poth  
Director P. & C Ins. Services

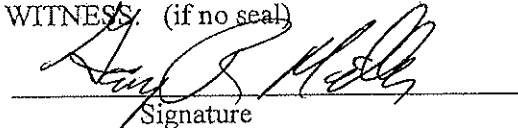
Type Name and Title

By: Henry P. Karius (SEAL) *residual*

Henry P. Karius, Assistant Treasurer

Type Name and Title

WITNESS: (if no seal)



Signature

Gary Miller, Tax Manager

Type Name and Title

Title

STATE OF Ohio )  
COUNTY OF Cuyahoga ) SS  
CITY OF Mayfield Heights )

Ohio Indemnity Company  
Name

250 East Broad Street, 7th Floor  
Address

Columbus, Ohio 43215  
City, State, Zip Code

*Sandra D. Cikraji*  
Power-of-Attorney Signature Sandra D. Cikraji

BEFORE me, a Notary Public, duly commissioned, qualified and acting personally, appeared:

\_\_\_\_\_  
Sandra D. Cikraji

to me well-known, who being by me first duly sworn upon oath says that he is Attorney-in-Fact for Ohio Indemnity Company, as Surety, and that he has been authorized by said Surety to execute the foregoing Public Payment and Performance Bond on behalf of the (CONTRACTOR) Principal named therein in favor of the OWNER.

The foregoing instrument was signed and acknowledged before me this 7th day of April, 2010 by Sandra D. Cikraji  
(Print or Type Name)

who has produced Drivers License #RM764787  
(Type of Identification and Number)

as identification.

*Julie K Bowers*  
Notary Public Signature

Julie K. Bowers  
Printed Name of Notary Public

August 13, 2014  
Notary Commission Number/Expiration



JULIE K BOWERS  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
August 13, 2014  
Recorded in  
Portage County



**OHIO INDEMNITY COMPANY**  
Columbus, Ohio 43215

PRINCIPAL Veolia ES Solid Waste Southeast, Inc. EFFECTIVE DATE October 1, 2010

CONTRACT AMOUNT \_\_\_\_\_ AMOUNT OF BOND \$ 1,300,000.00\*\*\*\*\*

POWER NO. 301057

KNOW ALL MEN BY THESE PRESENTS, that Ohio Indemnity Company, a corporation organized and existing under the laws of the State of Ohio with its principal office at 250 East Broad Street, 10<sup>th</sup> Floor, Columbus Ohio 43215, by and through the undersigned, its President, does hereby nominate, constitute and appoint Kathleen P. Price, Patricia A. Temple, Nicole Skedel, Kathy Goe, Julie Bowers, Maria Jackson, Sandra D. Cikraji, and Daniel J. Clark as its true and lawful Attorneys-in-Fact to make, execute, attest, seal, acknowledge and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed Five Million Dollars (\$5,000,000).

IN WITNESS WHEREOF, Ohio Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officer this 23<sup>rd</sup> day of July, 2008.

(Corporate Seal)

OHIO INDEMNITY COMPANY

By: *John S. Sokol*  
John S. Sokol, President

State of Ohio  
County of Franklin

On this 23<sup>rd</sup> day of July, 2008, before the subscriber, a Notary Public in and for this County and State, personally appeared John S. Sokol, to me personally known to be the individual and officer described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that he is the President of Ohio Indemnity Company, and that the seal affixed to the preceding instrument is the corporate seal of said corporation, and the said corporate seal and signature as said officer were duly affixed and subscribed to the said instrument by the authority and direction of said corporation.



OFFICIAL SEAL  
SHERRY E. BIXLER  
NOTARY PUBLIC, STATE OF OHIO  
RECORDED IN PICKAWAY COUNTY  
MY COMMISSION EXPIRES  
01-06-10

*Sherry E. Bixler*  
Notary Public  
Commission expires: 1/6/2010

I, the undersigned, Secretary of Ohio Indemnity Company, a stock corporation of the State of Ohio, do hereby certify that the foregoing Power of Attorney remains in full force.

Signed and sealed this 7<sup>th</sup> day of April, 2010.

*Matthew C. Nolan*  
Matthew C. Nolan, Secretary

Any reproduction or facsimile of this form is void and invalid.

# OHIO INDEMNITY COMPANY

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

This certificate signifies that the company has satisfied all requirements of Florida Insurance Code for the issuance of a Property And Casualty Insurer Certificate Of Authority and remains subject to the laws of Florida.

Date of Issuance: February 22, 1989

No. 05 - 310620146



**Florida  
Office  
of Insurance  
Regulation**

A handwritten signature in black ink, appearing to read "Kevin M. McCarty".

Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation



# OHIO INDEMNITY COMPANY

OHIO INDEMNITY COMPANY  
Certificate  
2009

The following financial information was excerpted from the Statutory Annual Statement filed by Ohio Indemnity Company with the Ohio Department of Insurance on February 24, 2010:

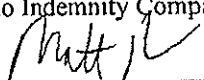
## STATEMENT OF INCOME

Direct Written Premium	68,032,252
Reinsurance Assumed	5,018,514
Reinsurance Ceded	<u>(31,608,265)</u>
Net Written Premium	41,442,501
Change in Unearned	<u>2,247,505</u>
Net Earned Premium	43,690,006
Losses and LAE Incurred	21,230,926
Other Underwriting Expenses	<u>17,517,452</u>
Underwriting Gain	4,941,628
Net Investment Gain	2,286,320
Other Income	<u>163,023</u>
Income Before Federal Income Tax	7,390,971
Federal Income Tax	<u>2,090,010</u>
<b>Net Income</b>	<b><u>\$ 5,300,961</u></b>

## BALANCE SHEET

<u>Assets</u>	
Cash and Invested Assets	\$ 93,018,697
Accrued Investment Income	1,085,096
Uncollected Premium and Agents' Balances	4,264,852
Reinsurance Recoverable	1,446,362
Net Deferred Tax Asset	1,950,735
Other Assets	<u>278,303</u>
<b>Total Assets</b>	<b><u>\$102,044,045</u></b>
<u>Liabilities and Surplus</u>	
Loss and LAE Reserves	\$10,520,543
Reinsurance Payable	4,450,000
Commissions Payable	2,050,439
Unearned Premium	21,467,998
Other Liabilities	<u>18,366,859</u>
<b>Total Liabilities</b>	<b><u>56,855,839</u></b>
Surplus	<u>45,188,206</u>
<b>Total Liabilities and Surplus</b>	<b><u>\$ 102,044,045</u></b>

I hereby certify that the above information is that contained in the Statutory Annual Statement filed by Ohio Indemnity Company with the Ohio Department of Insurance for the year ending December 31, 2009.

  
Matthew C. Nolan, CFO

250 East Broad Street  
Tenth Floor  
Columbus, OH 43215-3708  
(614) 228-2800 • (800) 628-8581  
www.ohioindemnity.com

**EXHIBIT VI**

**MONTHLY FINANCIAL REPORTING FORMAT**

The Contractor shall submit to the County no later than thirty (30) days after the end of each reporting month a revenue statement prepared in accordance with general accepted accounting standards for each curbside 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 as applicable. 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.

**(Contractor)**  
**Statement of Revenues and Disposal Expenses**  
**(Curbside Residential or Commercial) Service Area (#)**  
**For (month, year) ended (date)**

**Revenues:**

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

\$ \_\_\_\_\_

**Total Revenue**

\$ \_\_\_\_\_

**Disposal Expenses:**

Disposal fees paid to the County\*

\$ \_\_\_\_\_

**Net**

\$ \_\_\_\_\_

**Franchise Fees (Net \* .055)**

\$ \_\_\_\_\_

\*Only to the extent that such disposal fees are included in revenue and such inclusion can be demonstrated. The intent is that the Contractor pays its franchise fee to the County based on all of the "Collection Service Revenue" that the Contractor receives (not disposal revenue).

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

**EXHIBIT VII  
CONTRACT PREPARATION AND TRANSITION**

<b>Task</b>	<b>Deadlines</b>	
	<b>Minimum Start Date</b>	<b>Maximum Completion</b>
Provide Transition Report outlining plan to minimize transition problems		5/31/10
Begin Equipment Yard and Office siting	5/28/10	8/30/10
Hire Operations Manager		5/31/10
Begin Residential Curbside Routing	5/10/10	6/25/10
Order/Secure Vehicles	5/31/10	8/30/10
Provide County with truck orders or verification of vehicle source(s)		5/31/10
Begin Commercial and multifamily container Routing	5/31/10	8/6/10
Hire Supervisors		6/28/10
Complete residential curbside routing		6/25/10
Place order or Secure Source for Containers/provide verification to County		7/1/10
Provide Residential Curbside Route Maps to County		6/28/10
Commercial Customer Service Agreement and Disclosure Notice, County Approval		7/12/10
Complete Multifamily Container and Commercial Routing		8/6/10
Provide Commercial and Multifamily Routing to County		8/9/10
Equipment Yard and Office Sited and set up		8/30/10
Office and Accounting Staff in place		8/30/10
Maintenance Staff Hired and in Place		8/30/10
Supervisors and Drivers Run Routes	8/30/10	9/30/10
Provide County with sample door-hanger and mailer for approval		9/1/10
Notification of day changes to Customers -1 door hanger, 1 mailer (first notification no earlier than 9/13/10)	9/13/10	9/24/10
Drivers Hired and in Place		9/13/10
Drivers and Supervisors Run Routes		9/30/10
Disclosure notices and invoices mailed to commercial customers		9/13/10

## **EXHIBIT VIII INSURANCE**

The Company shall submit insurance in compliance with the Request for Proposals.

The Company shall obtain and maintain the following insurance coverage throughout the agreement period:

### WORKERS' COMPENSATION

Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal Laws. In addition, the policy shall include Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$1,000,000.00 for each accident, whichever limit is greater.

### COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy filed by the Insurance Services Office and shall include minimum limits of \$2,500,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS, ITS OFFICERS AND EMPLOYEES SHALL BE INCLUDED AS AN ADDITIONAL INSURED TO THE GENERAL LIABILITY.

### COMMERCIAL AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the comprehensive Automobile Liability Policy filed by the Insurance Services Office and shall include minimum limits of \$5,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include owned vehicles, hired and non-owned vehicles, and employee non-ownership and be based on occurrence basis.

Cancellation - Should any of the described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named.

Certificate Holder - The certificate holder shall be made out to the Lee County Board of County Commissioners, Attn: Department of Public Works, P O Box 398, Fort Myers, FL 33902-0398.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/06/2010

<b>PRODUCER</b> Marsh USA Inc. 1000 Main Street, Suite 3000 Houston, TX 77002 Attn: Specialty.CertRequest@marsh.com; 212-948-0564		THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
010056-Veoli-Prima-09/10	FORTM	****	
<b>INSURED</b> Veolia ES Solid Waste Southeast, Inc. 17101 Pine Ridge Road Fort Myers Beach, FL 33931		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: New Hampshire Insurance Company INSURER B: Insurance Company Of The State Of PA INSURER C: AIG Casualty Company INSURER D: National Union Fire Ins Co Pittsburgh PA INSURER E: Commerce And Industry Ins Co	<b>NAIC #</b> 23841 19429 19402 19445 19410

## COVERAGES

25

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIABILITY GENERAL AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GL4572700	07/01/2009	07/01/2010	EACH OCCURRENCE \$ 2,500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,500,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
B B B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CA4576281 (All Other States) CA4576282 (MA) CA4576283 (VA)	07/01/2009 07/01/2009 07/01/2009	07/01/2010 07/01/2010 07/01/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A C D E	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE Y/N OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	WC4552998 (AOS incl WV) WC4552999 (AZ, MD & VA) WC4553000 (CA) WC4553001 (WI & STOP GAP)	07/01/2009 07/01/2009 07/01/2009 07/01/2009	07/01/2010 07/01/2010 07/01/2010 07/01/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-FB E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B B F	<b>OTHER</b> Workers Compensation and Employers Liability	WC1558356 (FL) WC0623124 (MA) WC4883561 (TX)	07/01/2009 07/01/2009 07/01/2009	07/01/2010 07/01/2010 07/01/2010	See Above Limits

### DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees and public officials are included as additional insured (except as respects all coverage afforded by the workers' compensation policy) as required by written contract, but only for liability arising out of the operations of the named insured.

### CERTIFICATE HOLDER

HOU-001178086-17

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
 of Marsh USA Inc.  
 Barry N. Smith



## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

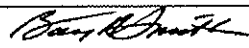
## **DISCLAIMER**

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ADDITIONAL INFORMATION		HOU-001178086-17	DATE (MM/DD/YY) 04/06/2010
<b>PRODUCER</b> Marsh USA Inc. 1000 Main Street, Suite 3000 Houston, TX 77002 Attn: Specialty.CertRequest@marsh.com; 212-948-0564			
010056-Veolia-Prima-09/10	FORTM	****	
<b>INSURED</b> Veolia ES Solid Waste Southeast, Inc. 17101 Pine Ridge Road Fort Myers Beach, FL 33931		<b>INSURERS AFFORDING COVERAGE</b> NAIC #	
		INSURER F: Illinois National Insurance Company	23817
		INSURER G: N/A	N/A
		INSURER H: N/A	N/A
		INSURER I:	

**TEXT**

**CERTIFICATE HOLDER**

Lee County Board of County Commissioners Attn: Department of Public Works PO Box 398 Fort Myers, FL 33902-0398	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Barry N. Smith 
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**EXHIBIT IX**

**(PORTIONS OF UNINCORPORATED AND INCORPORATED LEE COUNTY,  
TOWNSHIP OF FORT MYERS BEACH AND CITY OF BONITA SPRINGS.)**

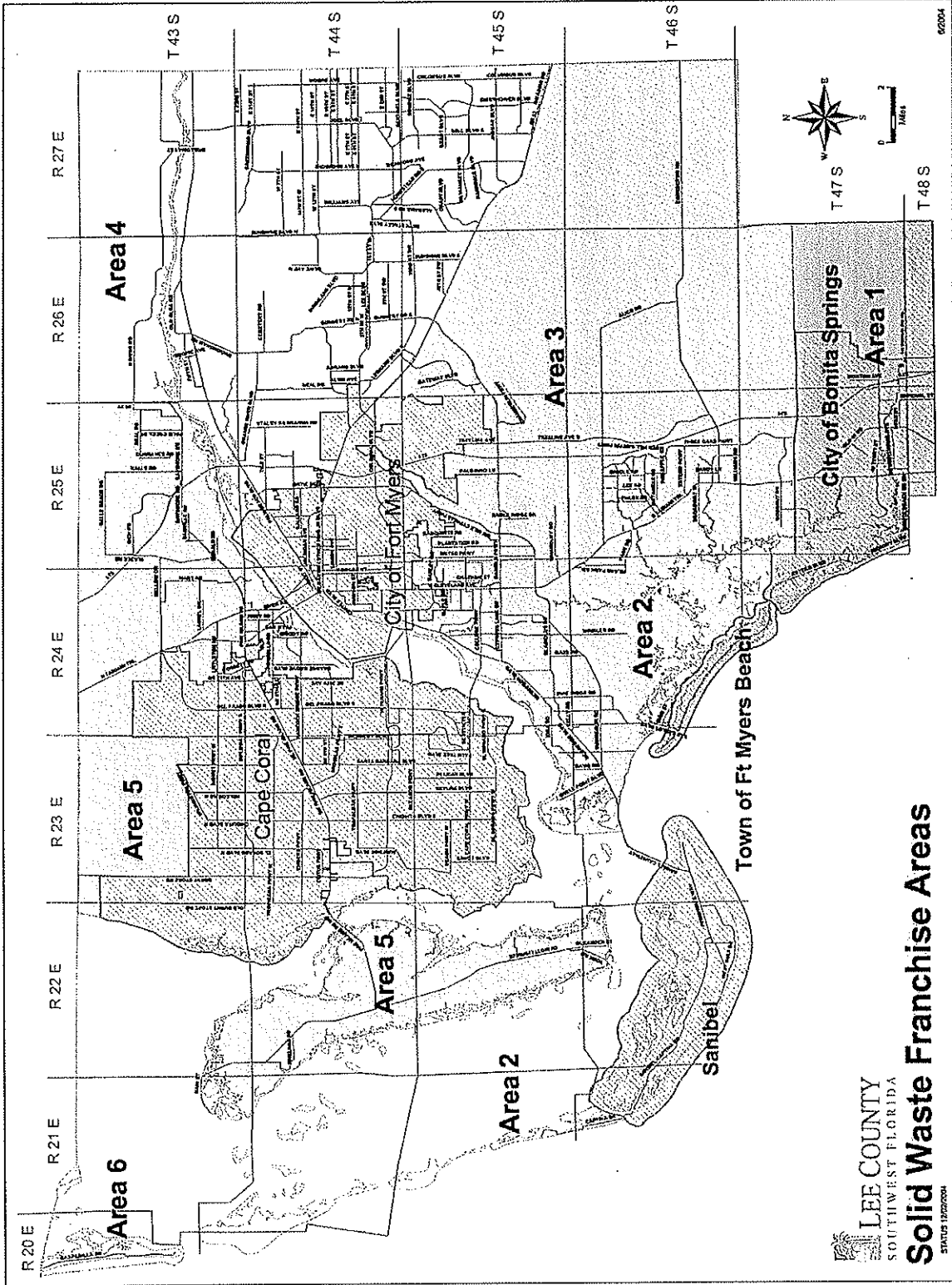
BEGINNING AT THE NORTHEAST CORNER OF SECTION 13, TOWNSHIP 47 SOUTH RANGE 26 EAST, LEE COUNTY FLORIDA; THENCE SOUTH ALONG THE EASTERN LINE OF SECTIONS 13, 24, 25, AND 36, TOWNSHIP 47 SOUTH, RANGE 27 EAST AND SECTION 1 TOWNSHIP 48 SOUTH, RANGE 26 EAST TO THE LEE/COLLIER COUNTY LINE; THENCE WESTERLY ALONG THE LEE/COLLIER COUNTY BOUNDARY TO THE CENTERLINE OF VANDERBILT DRIVE, THENCE NORTHERLY TO THE CENTERLINE OF BONITA BEACH ROAD; THENCE WESTERLY ALONG THE CENTERLINE OF BONITA BEACH ROAD TO A POINT 500 FEET WEST OF THE HIGH TIDE MARK OF THE GULF OF MEXICO; THENCE NORTHWESTERLY ALONG THE SHORELINES OF LITTLE HICKORY ISLAND, BIG HICKORY ISLAND AND LOVERS KEY TO THE WATERS OF BIG SAN CARLOS PASS; THENCE RUN NORTHWEST TO THE SHORELINE OF ESTERO ISLAND; THENCE NORTHWEST ALONG THE SOUTHWEST SHORELINE OF ESTERO ISLAND TO THE WATERS OF ESTERO PASS; THENCE PROCEED SOUTHEASTERLY ALONG THE NORTHEASTERN SHORE OF ESTERO ISLAND TO THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 47 SOUTH, RANGE 24 EAST; THENCE PROCEEDING EASTWARD TO THE WESTERLY SECTION LINE OF SECTION 7 TOWNSHIP 47, SOUTH RANGE 25 EAST; THENCE PROCEED SOUTHWARD ALONG THE WESTERLY BOUNDARY OF SECTION 7, TO THE SOUTHWEST CORNER OF SECTION 7, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE EASTERLY ALONG THE SOUTHERN BOUNDARIES OF SECTIONS 7, 8, 9, 10, 11, AND 12 OF TOWNSHIP 47 SOUTH, RANGE 25 EAST, AND THE SOUTHERN

BOUNDARY LINES OF SECTIONS 7, 8, 9, 10, 11, AND 12 OF TOWNSHIP 47 SOUTH,  
RANGE 26 EAST TO THE POINT OF BEGINNING.

AND TOGETHER WITH:

ALL OF WOODSAGE DRIVE RUNNING NORTH FROM SECTION 16, TOWNSHIP 47  
SOUTH, RANGE 25 EAST, TO SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
AND ALL OF HERON GLEN CT., SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
TO BE EXCLUDED. HERON POINT CT. RUNNING SOUTH FROM SECTION 9,  
TOWNSHIP 47 SOUTH, RANGE 25 EAST, TO SECTION 17, TOWNSHIP 47 SOUTH,  
RANGE 25 EAST. ALSO ADDISON PLACE CT. RUNNING SOUTH FROM SECTION 8,  
TOWNSHIP 47 SOUTH, RANGE 25 EAST TO SECTION 17, TOWNSHIP 47 SOUTH,  
RANGE 25 EAST, AND ALSO TUSCANY CT. AND TUSCANY WAY RUNNING SOUTH  
FROM SECTION 8, TOWNSHIP 47 SOUTH, RANGE 25 EAST TO SECTION 17,  
TOWNSHIP 47 SOUTH, RANGE 25 EAST.

AND ALSO TO BE EXCLUDED VIA CASTELLA DR. RUNNING NORTHWESTERLY  
FROM SECTIONS 17 AND 18, TOWNSHIP 47 SOUTH, RANGE 25 EAST.



**EXHIBIT X**  
**DISTRIBUTION AND COLLECTION OF RESIDENTIAL WHEELED**  
**RECYCLING CARTS**

The requirements and conditions included in this Exhibit X are hereby established for franchise areas 1 and 2 only.

Contractor shall coordinate, receive, inventory, store, direct and supervise assembly, and direct and supervise distribution of one, approx. 65 gallon wheeled cart for each single family residential unit (that does not currently have a wheeled cart). Note: this service does not apply to Commercial Multi-Family Dwelling Curbside Can Service. The County will purchase, from one or more third-party vendors, all of the carts required for the franchise area with such purchase to include distribution by the cart vendor(s) to the residential units. The Contractor will reimburse the County \$22.00 for each cart provided by the County. Such \$22.00 per cart charge will be invoiced to the Contractor on a monthly basis, in equal increments, beginning at the Start of Service Date and continuing for twenty (20) months. Payments shall be payable to Lee County within 30 days of the County's invoice date.

Each franchise area currently has 65 gallon wheeled carts as follow:

- Area 1 - 6,000 units (approx.)
- Area 2 - 6,306 units (approx.)
- Area 3 - 6,326 units (approx.)
- Area 4 - 6,024 units (approx.)
- Area 5 - 6,357 units (approx.)

The existing carts will not be replaced by new carts unless resident demonstrates existing cart is damaged so as not to be useable.

The Contractor shall provide a secure central location in each franchise area at least ten (10) days prior to carts arriving from Container Company. This area is to be utilized by the Container Company for assembly and distribution of carts. Carts will be delivered by area beginning with area 1, then 2.

The delivery schedule is as fallows:

Area 1 Carts to start arriving September 7, 2010. All carts to be on site by September 22, 2010. Cart distribution to begin on September 20, 2010 and be completed by October 4, 2010. (Approximately 16,300 includes Fort Myers Beach.)

Area 2 Carts to start arriving September 23, 2010. All carts to be on site by October 9, 2010. Cart distribution to begin October 5, 2010 and be completed by October 22, 2010. (Includes Sanibel - - Approximately 17,350 or 21,350 includes Sanibel.)

Contractor will also be responsible for collecting existing 18 gallon recycle bins from residential units (may be multiple bins per unit) and delivering same to the designated Lee County facility for the County's disposition.

Contractor shall be responsible to maintain, repair, and replace wheeled carts, as necessary, during the Term of this agreement. Carts will be owned by the County.

Collection service includes collecting an unlimited amount of recyclables, weekly, from each residential unit. Residents may set out additional recyclable material in an eighteen (18) gallon recycling bin (or other similar, suitable container). Large cardboard (OCC) may be placed outside of the cart and will also be collected by the Contractor.

AMENDMENT NUMBER ONE TO THE SOLID WASTE  
AND RECYCLING COLLECTION FRANCHISE AGREEMENT  
FOR LEE COUNTY SERVICE AREA NUMBER ONE

This Amendment No. 1 to that certain Solid Waste and Recycling Collection Franchise Agreement (“Agreement”) made between the parties on March 9, 2010 is now made and entered into this 21 day of Jan, 2013, by and between Lee County (“County”) and Veolia ES Solid Waste Southeast, Inc. (“Contractor”), collectively, “the Parties”.

WITNESSETH

WHEREAS, County, through its Board of County Commissioners, entered into a Solid Waste and Recycling Collection Franchise Agreement dated March 10, 2010 with the Contractor such that the Contractor provides collection and hauling service for franchise service area number 1 in Lee County; and

WHEREAS, the Contractor has been purchased by ADS Waste Holdings, Inc., through one or more wholly owned subsidiaries of ADS Waste Holdings, Inc.; and

WHEREAS, in accordance with Section 38 of the Agreement the Contractor has requested the County’s approval of such purchase and that the County authorizes the transfer or assignment of the Agreement to Advanced Disposal Services Solid Waste Southeast, Inc.; and

WHEREAS, the Contractor, now operating with the name of Advanced Disposal Services Solid Waste Southeast, Inc. desires to continue providing all required collection services in accordance with the terms and conditions of the Agreement.



THEREFORE, in consideration of the foregoing and the mutual obligations and benefits flowing from each to the other, the Parties agree to amend the Solid Waste and Recycling Collection Franchise Agreement as set forth below;

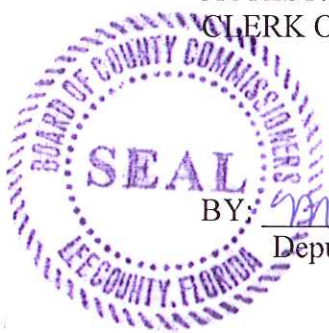
- I. All references to “Veolia ES Solid Waste Southeast, Inc.” in the Agreement are hereby changed to “Advanced Disposal Services Solid Waste Southeast, Inc.”.
- II. EXHIBIT I of the Agreement indicating Veolia ES Solid Waste Southeast, Inc. as the “Guarantor” is replaced in its entirety by the attached EXHIBIT I indicating ADS Waste Holdings, Inc. as the “Guarantor”.
- III. All other provisions of the Agreement remain in full force and effect.

(Remainder of page intentionally left blank.)

In Witness Whereof, Lee county, at a regular meeting thereof, by action of the Board of County Commissioners authorizing and directing the foregoing be adopted, has caused these presents to be signed by the Chairman of the Lee County Board of County Commissioners, and the County's seal to be hereunto affixed, and Veolia ES Solid Waste Southeast, Inc., has executed this Agreement all as of the day and year first written above.

ATTEST: LINDA DOGGETT  
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA



BY: Marcia Nelson  
Deputy Clerk

BY: [Signature]  
Chairman

APPROVED AS TO FORM:

[Signature]  
Office of County Attorney

[Signature]  
Witness

VEOLIA ES SOLID WASTE  
SOUTHEAST, INC.

[Signature]  
Witness

BY: Scott E. [Signature], Vice-President

**EXHIBIT I**  
**GUARANTEE**

This Guarantee made as of the 29th day of January, 2013, by ADS Waste Holdings, Inc. ("Guarantor"), having its principal place of business in Florida, to and for the benefit of Lee County, Florida, a political subdivision of the State of Florida, ("County"),

WITNESSETH:

WHEREAS, Veolia ES Solid Waste Southeast, Inc., a Florida corporation, (the "Company") having an office at 17101 Pine Ridge Rd., Fort Myers, FL 33331, has entered into the Service Agreement (the "Agreement") with the County dated as of March 9, 2010; and

WHEREAS, Veolia ES Solid Waste Southeast, Inc., has been or will be replaced by Advanced Disposal Services Solid Waste Southeast, Inc., a Florida corporation, (also the "Company"), in accordance with Amendment Number 1 to the Agreement; and

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement, as amended; and

WHEREAS, County would not enter into the Agreement unless the Guarantor provided this Guarantee.

NOW, THEREFORE, as an express inducement to the County to enter into this Agreement, as amended, Guarantor agrees and guarantees as follows:

Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Agreement in accordance with the terms and conditions therein.

This Guarantee shall be governed by the laws of the State of Florida exclusive of the choice of law rules thereof, and Guarantor hereby agrees to the service of process in the State of Florida for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

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

This Guarantee may be enforced by the County without first resorting to any legal or administrative actions against Company or exhausting any other remedies that the County may have.



Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate demands may be brought hereunder by the County as each cause of action arises. Guarantor waives presentation to, demand of performance from, and protest to the County of the obligations of the Company under the Agreement.

No failure or delay by the County in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the assets of the Guarantor. Notice of any such assignment shall be given in writing to the County within thirty (30) days of the effective date of any such merger, consolidation or transfer.

The respective obligations of Guarantor to the County set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that County first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Guarantor hereunder, and shall not be subject to any claim of Guarantor against any other Person including the County, other than a claim that the matter giving rise to the County's claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Florida.

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

Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

Guarantor at: ADS Waste Holdings, Inc.  
If By Mail or By Hand 90 Fort Wade Rd.  
Ponte Vedra, Fl. 32081

County at: Lee County Solid Waste Division  
10500 Buckingham Road, Suite 200  
Fort Myers FL 33905

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

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

ATTEST:

  
\_\_\_\_\_

ACCEPTED:

**ADS WASTE HOLDINGS, INC.**

BY:   
\_\_\_\_\_

Scott E. Friedlander, Vice-President  
(Print Name and Title)