

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** October 16, 2007

**To:** Honorable Chairman Bruno A. Barreiro  
And Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager 

**Subject:** Curbside Recycling Program Recommendation for Approval to Award Contract Number 545A for Collection of Recyclable Materials, 545B for Processing of Recyclable Materials, and Contract 8513-0/08 for the Purchase of Recycling Carts – Waiving the requirements of Sections 2-8.3 and 2-8.4 of the Miami-Dade County Code pertaining to bid protests

Agenda Item No. 8(O)(1)(A)

**This recommendation is presented pursuant to the September 11, 2007 Government Operations and Environment Committee discussion regarding the award for the countywide curbside recycling program. Staff was advised to re-evaluate the award, meet with all proposers and come back with a recommendation to the second Board meeting in October 2007.**

## **RECOMMENDATION**

It is recommended that the Board of County Commissioners (Board) approve the following contract awards for a Curbside Recycling Program: a single contract to Waste Pro of Florida, Inc. (Waste Pro) for the collection of recyclable materials; a single contract to Waste Management, Inc. for the processing of recyclable materials; and a single contract to Toter, Inc. for the purchase of 360,000 recycling carts. Additionally, since the Board has previously approved a waiver of the competitive process, it is also recommended that the Board waive the requirements of Sections 2-8.3 and 2-8.4 of the Miami-Dade County Code pertaining to bid protests.

Pursuant to the discussion at the September 11, 2007 Government Operations and Environment Committee (GOE) meeting, staff met with all five proposers to the original Request for Proposals (RFP) and obtained lower prices for the collection of recyclable materials (an improvement of \$368,000 annually) and for the processing of recyclable materials (an improvement of \$47,000 annually). The combination of Waste Pro, Inc. for collection (at \$1.97 per household per month) and Waste Management, Inc. for processing (at \$11.25 per ton reimbursed to the County) presents the best operational and financial alternative.

Staff also issued an Invitation to Bid (ITB) under full and open competition for recycling carts that contained improved specifications and the ability to purchase 360,000 carts instead of the 340,000 carts originally recommended for purchase. The lowest responsive, responsible bidder for these additional carts and the specifications in the ITB resulted in an award recommendation that is \$2.05 higher per 64-gallon cart (\$43.90, which includes delivery, assembly and distribution to residents). The original recommendation to award the 64-gallon recycling containers was for \$41.85 per cart, but these carts did not include the recycling instruction label on each lid and a barcode.

All materials will be placed into one 64-gallon cart with wheels (larger or smaller carts will be available upon request) and will be collected every other week. In addition to the recyclable materials accepted today, the following new materials will also be accepted: mixed paper, aseptic containers (gable-top containers such as orange juice or milk cartons) and additional plastics. Waste Management, Inc. will also provide a program to recycle fluorescent light bulbs, ink jet cartridges, and medical sharps at no cost to the County or its residents. Furthermore, Waste Management, Inc. has agreed to accept all

materials collected within the County-approved containers to minimize disputes between the collection vendor and processing vendor.

Fewer recycling trucks will be on the road (resulting in fewer greenhouse gas emissions and less traffic congestion) due to every other week pick up as well as a result of Waste Management, Inc. providing four geographically dispersed sites to which materials can be taken. These four sites (one Materials Recovery Facility and three transfer stations) will facilitate the implementation of the countywide recycling program by reducing wear and tear on the trucks, improving customer service and maximizing service life.

The penalties for missed pickups will be increased from the current \$25 per household with a \$10,000 maximum, to the proposed \$100 per household with no maximum. Waste Management, Inc. has agreed to give the DSWM \$550,000 up front to launch the Community Education and Outreach Campaign. The County will no longer be subject to the variable recyclable materials market as Waste Management, Inc. will pay a fixed fee of \$11.25 per ton delivered, and will assume the potential risk in the event of weak markets.

CONTRACTS NO: 545A (Collection) and 545B (Processing) and 8513-0/08 (Recycling Carts)

CONTRACT TITLE: Curbside Recycling Program

PROJECT MANAGER: Kathleen Woods-Richardson, Director, Department of Solid Waste Management

APPROVAL TO ADVERTISE: On October 12, 2006, the Board via Resolution R-1209-06, approved a waiver of formal competition and authorized the County Manager to issue an invitation to negotiate and to present a final long-term contract for approval. An ITB was issued on September 25, 2007 for the containers.

TERM: Seven (7) years, with one (1) seven year option to renew, at the County's sole discretion.

CONTRACT AMOUNT: Total for Collection Services: **\$8,038,000** annually  
Total for Recycling Revenues: **\$394,000** annually  
and **\$550,000** up front for outreach and education  
Total for 360,000 Carts: **\$15,824,000** one-time

FUNDING SOURCE: DSWM Proprietary Revenue

METHOD OF AWARD: On October 12, 2006, the Board via Resolution R-1209-06 waived formal competitive bidding pursuant to Section 4.03 (D) of the Home Rule Charter and Section 2-8.1 of the County Code.

CONTRACTORS RECOMMENDED FOR AWARD:

Curbside Collection and Hauling Services  
Waste Pro of Florida, Inc. (non-local)  
2101 W SR 434, Ste 315  
Longwood, FL 32779  
John J. Jennings, President and CEO

Recycling Processing Services (and Transfer Stations)

Waste Management Inc. of Florida, Inc. (non-local)  
1001 Fannin, Ste 4000  
Houston, TX 77002  
David R. Hopkins, President

Residential Recycling Carts

Toter, Inc. (non-local)  
841 Meacham Road  
Statesville, NC 28677  
Mr. John Scott, President and CEO

VENDORS NOT RECOMMENDED  
FOR AWARD:

Collection and Processing

Waste Services of Florida, Inc. (non-local)  
5002 T-Rex Ave, Ste 200  
Boca Raton, FL 33431

Collection only

World Waste Services, Inc. (local)  
4701 NW 35<sup>th</sup> Ave  
Miami, FL 33142

Choice Environmental Services of Broward, Inc. (local)  
3315 NW 46<sup>th</sup> Street  
Miami, FL 33143

Recycling Containers

Puryear, Inc. (local)  
16155 SW 117 Ave  
Miami, FL 33101

OTTO Environmental Systems (NC), LLC (non-local)  
12700 General Drive  
Charlotte, NC 28273

Cascade Engineering (non-local)  
4950 Thirty-Seventh Street SE  
Grand Rapids, MI 49512

Rehrig Pacific Company (non-local)  
1000 Raco Court  
Lawrenceville, GA 30045

USING/MANAGING AGENCY:

Department of Solid Waste Management

CONTRACT MEASURES:

The Review Committee recommended a Small Business Enterprise (SBE) selection factor for the curbside collection

and hauling. A bid preference was included in the Invitation to Bid for the recycling carts.

**LIVING WAGE:**

The curbside collection and hauling services being provided are covered by the Living Wage Ordinance.

**UAP:**

The hauler and rolling carts contracts contain the 2% User Access Program (UAP). The recycler contract does not include the UAP as it is a revenue generating contract.

**LOCAL PREFERENCE:**

Applied in accordance with applicable ordinances.

**ESTIMATED CONTRACT COMMENCEMENT DATE:**

Ten days after date adopted by the Board of County Commissioners, unless vetoed by the Mayor.

**FISCAL IMPACT/FUNDING SOURCE**

Curbside recycling is funded through the Waste Collection Fee, currently at \$439 per household per year. The new cost of recycling with these recommended contracts will cost approximately \$1.9 million less than the current situation as is illustrated below.

Current Situation			Proposed Contracts		
	Annual	Per Household Per Month		Annual	Per Household Per Month
\$2.99 per household per month for Collection (Waste Services, Inc.)	\$12,199,200	\$2.9900	\$1.97 per household per month for Collection (Waste Pro, Inc.)	\$8,037,600	\$1.9700
Payment to the County (from Waste Services for the County's share of recyclable materials)	-\$1,050,000	-\$0.2574	\$11.25 per ton reimbursed to the County (Waste Management)	-\$393,750	-\$0.0965
			\$550,000 contribution to the educational campaign (\$550,000 divided by 7 years) (Waste Management)	-\$78,571	-\$0.0193
			Cost of Carts (annual debt service on 360,000 carts for 10 years at no interest from the Disposal Fund) (Toter, Inc.)	\$1,646,000	\$0.4034
<b>Total</b>	<b>\$11,149,200</b>	<b>\$2.7326</b>	<b>Total</b>	<b>\$9,211,279</b>	<b>\$2.2577</b>
			<b>Total Savings</b>	<b>\$1,937,921</b>	<b>\$0.4750</b>

**SCOPE**

These contracts will allow the residents of the Solid Waste Collection Area and 11 municipalities to participate in an improved residential curbside recycling program. All Commission Districts have households that are provided this service.

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### **TRACK RECORD/MONITOR**

Stricter performance standards are included in the agreements for collection and processing services that are tied to specific administrative charges (as an example the administrative charge for missing a pickup of a household increased from \$25 to \$100 per incident). Reference checks were conducted for Waste Pro, Inc., Waste Management, Inc. of Florida and Toter, Inc. and were found to be satisfactory. All three are contractors in good standing with the State of Florida and Miami-Dade County.

### **BACKGROUND**

The Department of Solid Waste management (DSWM) currently provides curbside recycling services to approximately 319,000 households within the DSWM service area [which includes the unincorporated municipal service area (UMSA) and nine municipalities] and to approximately 21,000 households within 11 municipalities that have entered into agreements for this service. Recyclable materials from households within the UMSA are collected once a week on one of their garbage collection days, while the recyclable materials from households within the municipalities are collected once a week on Wednesdays. Residents can set out recyclable materials including newspaper, metals, plastics and glass in two 18-gallon bins for pickup by a private vendor. Both the vendor and the County share the risks and the profits from the sales of recyclable material, which amounts to slightly more than one million each year in reimbursements to the County. The current contract is with Waste Services, Inc. for both collection and processing of recyclable materials and has been extended by the Board until the new contract is in place.

On October 12, 2006, the Board through Resolution R-1209-06 waived the formal competitive bidding process and authorized the County Manager to issue a solicitation to develop a contract for the County's curbside recycling program. The Board's direction was clear: to improve services, to achieve savings through a flexible, "out of the box" approach in regards to method of service delivery and to increase the residential participation rate (from the approximately 130,000 households currently participating).

### **PROCUREMENT PROCESS**

#### **Collection and Processing**

While the competitive process was waived from the outset, it was the County's intention to foster a measure of competition in order to achieve the best solution at the best price. Input was gained through an Industry Day on October 28, 2006, and a Workshop held by the Board on November 14, 2006. A high-level, professional Selection Committee met multiple times to review responses from six vendors: one proposer referenced another response (and therefore did not require review), one vendor bid only on materials processing and four vendors bid on both collection and processing. The Selection Committee reviewed the written offers and voted to advance four vendors to oral presentations. The Committee heard oral presentations and voted to request further price comparisons from these four vendors. To compare prices, the vendors were asked to present prices on single stream collection, with and without the cost of carts, weekly and bi-weekly collection, by the entire County, and by North and South Zones, using the four facilities proposed by Waste Management, Inc.

The Selection Committee agreed that the collection vendors proposed substantially equivalent processing alternatives. After reviewing the new pricing, the Selection Committee determined the best option would be to recommend a bi-weekly, single stream collection process, utilizing four transfer stations and purchasing the recycling containers separately. The Selection Committee chose Waste Services, Inc. (collection) and Waste Management, Inc. (processing) for negotiations. The Department of Procurement Management (DPM) staff identified the Houston Galveston Cooperative Area agreement and negotiated a price of \$41.85 (including delivery, assembly and distribution to residents) for the 64-gallon containers with Cascade Engineering, Inc. An award recommendation for the three

agreements was presented to the September 11, 2007 GOE Committee. Staff was advised to re-evaluate this proposal and return with a recommendation to the second Board meeting in October 2007.

On October 1, 2007, DSWM and DPM staff met with all five proposers participating in the original RFP for collecting and processing services. Companies were asked to brief staff on their financial positions (including any updated statements and letters of credit), their ability to obtain new trucks (including any letters from truck manufacturers, substantiating this information), their understanding of the scope of services, associated performance standards and whether they wished to submit updated pricing. In the letter sent to the proposers, staff attached a spreadsheet requesting pricing updates for six zones, three zones, two zones and for the entire County. Additionally they were asked to provide pricing for processing recyclable materials, as well as contributing to the educational campaign.

All five proposers presented the requested information along with applicable updated pricing on October 2, 2007. Additionally, staff received a separate proposal from one of the joint venture partners of the original five proposers, who submitted a price for processing recyclable materials only. This company does not have a processing center in Miami-Dade County, yet they submitted a statement indicating they would build a recycling center within a six-month period without specifying a location. Staff eliminated this proposal from consideration, since it did not expect a recycling center to be built within six months considering a location has yet to be determined.

Staff also received an alternate proposal from Waste Services, Inc. who suggested handling both collection and processing services under one contract. Waste Services, Inc. quoted a collection charge of \$2.00 per household per month (PHPM), \$11.00 per ton for recyclable material for the first 32,500 tons, \$13.00 over 32,500 tons and a \$600,000 contribution to the County's Recycling Educational Campaign. The second lowest price proposal was a combination of Waste Pro, Inc. providing collection services for \$1.99 PHPM, and Waste Management, Inc. handling the processing at \$10 per ton contributing \$550,000 to the Educational Campaign. Waste Services was a total of \$6,245 lower than the next closest bid.

In an attempt to secure a better offer, staff met individually and together with all five proposers on October 4, 2007. All proposers, except for Waste Services, Inc., agreed to perform only collection services for \$1.99 PHPM (the amount originally quoted by Waste Pro, Inc. in the new request for pricing). Waste Services, Inc. did not reduce its original \$2.06 offer for collection without including processing. However, when combining both collection and processing, Waste Services, Inc. decreased their offer to \$1.98 PHPM. Additionally, Waste Management Inc. raised the amount it would pay the County per ton for recycled materials from \$10 a ton to \$11.25 per ton.

Along with the pricing information submitted by the proposers, staff also analyzed the updated financial statements, letters of credit, the benefits of having four transfer stations versus one, having two contractors instead of one, using side-loading versus rear-loading trucks, the truck manufacturers and all aspects of the scope of services and performance standards. After careful review and analysis of all information submitted, staff's recommendation includes selecting Waste Pro to perform the collection and Waste Management to perform processing utilizing four transfer stations. This recommendation was made even though the alternative proposal from Waste Services, Inc. (for collecting and processing) was less expensive by approximately \$44,000 per year. From an operational perspective, having four transfer stations is beneficial to the recycling operation and represents the best value alternative. The trucks will have shorter distances to travel to the transfer stations located in the northern, central and southern collection routes, thereby reducing green house gas emissions, reducing wear and tear on the trucks and minimizing traffic congestion. An additional deciding factor was Waste

Services, Inc. would need to modify its recycling center from a dual stream to a single stream process, while Waste Management Material Recovery Facility (MRF) already handles single stream processing.

Waste Management has over 90 material processing and recovery facilities throughout the nation and handles approximately eight million tons of recyclables annually. Waste Management provides recycling services to over 20 million customers, operates over 25,000 collection and transfer vehicles and employs over 51,000 employees.

Waste Pro, Inc. is a financially sound company, with a line of credit over \$100 million dollars (more than enough to cover the cost of 25 new collection vehicles). When staff performed reference checks, Waste Pro, Inc. received excellent recommendations from its clients as it pertains to customer service and collection services. Waste Pro, Inc. provided many letters of recommendation from various municipalities throughout the State of Florida. Recently it was selected as the recycler for the City of Daytona and the City of Jacksonville.

To finalize the contracts, staff met with the selected contractors. During the meeting with Waste Pro, Inc., their representative advised the County it would lower its price from the \$1.99 PHPM charge to \$1.97. Based on the revised pricing, this recommended proposal is now \$37,000 lower than the next best offer, which was received from Waste Services, Inc.

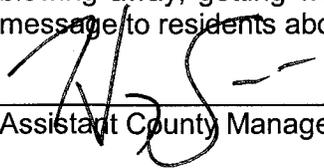
### **Recycling Containers**

To address Board member discussions at the September 11, 2007 GOE Committee meeting, staff issued an Invitation to Bid (ITB), under full and open competition, for 360,000 recycling containers. The total number of containers included a breakdown for the 35-gallon, 65-gallon and 95-gallon containers (5,000, 340,000, and 5,000 respectively). Four bids were received in response to the ITB for recycling containers. The apparent low bidder was Puryear, Inc. However, subsequent to the bid opening, Puryear advised the County that its price sheet contained errors. Puryear transposed its price for the 35-gallon and 65-gallon containers, which had a significant effect on the total bid. During a publicly noted meeting with staff on October 5, 2007, staff advised that corrections to pricing following bid openings are not allowable. Puryear submitted a letter to withdraw its bid to the County on October 5, 2007 and the County accepted the withdrawal. The second low bid was presented by Toter, Inc. Toter's proposal is recommended for award as the lowest responsible, responsive bidder.

As part of the ITB, container manufacturing companies were asked to include a permanent, full color in-molded recycling instruction label that will include text regarding the acceptable recyclable materials and "excluded" materials to avoid contamination. Contact information for the County and the vendor will also be included.

### **CONCLUSION**

This recommendation represents a new direction for the County's residential recycling program with a net lower cost to County residents. Additionally, both Waste Pro, Inc. and Waste Management, Inc. have agreed to make every effort to hire any workers displaced from Waste Services Inc. It is expected that residential participation in the curbside recycling program will increase due to more materials being accepted, materials being collected in a single container with wheels and a lid to keep materials from blowing away, getting wet, or being disturbed by animals and finally a larger container will send the message to residents about the importance of recycling.

  
Assistant County Manager



# MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

DATE: October 16, 2007

FROM:   
R. A. Cuevas, Jr.  
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)(A)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8(O)(1)(A)

Veto \_\_\_\_\_

10-16-07

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING EXECUTION OF AGREEMENTS WITH WASTE PRO OF FLORIDA, INC, WASTE MANAGEMENT INC OF FLORIDA, AND TOTER, INC. TO OBTAIN CURBSIDE COLLECTION AND PROCESSING SERVICES, AND ROLLING CARTS RESPECTIVELY; WAIVING THE REQUIREMENTS OF SECTIONS 2-8.3 AND 2-8.4 OF THE MIAMI-DADE COUNTY CODE PERTAINING TO BID PROTESTS BY A TWO-THIRD VOTE OF THE BOARD MEMBERS PRESENT, AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE ALL NECESSARY AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS AND ALL OTHER RIGHTS CONTAINED THEREIN; CONTRACTS NO. 545A, 545B, AND ITB-8513-0/08

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,**

**Section 1.** This Board finds it is in the best interest of Miami-Dade County to waive the requirements of Sections 2-8.3 and 2-8.4 of the Miami-Dade County Code pertaining to bid protests by a two-third vote of the members present.

**Section 2.** This Board hereby authorizes award of a contract for the purchase of rolling carts to Toter, Inc., the lowest responsive and responsible bidder under ITB-8513-0/08 and authorizes the County Manager to execute a contract substantially in the form attached hereto and to exercise any cancellation and renewal provisions and all other rights contained therein.

**Section 3.** This Board waives competitive bids pursuant to Section 5.03 (D) of the Home Rule Charter by a two-thirds (2/3) vote of the Board Members present and authorizes the County Manager to execute contracts with Waste Pro of Florida, Inc. and Waste Management, Inc. for the purchase of curbside collection and processing services respectively, substantially in the forms attached hereto and to exercise any cancellation and renewal provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

- |                                    |                    |
|------------------------------------|--------------------|
| Bruno A. Barreiro, Chairman        |                    |
| Barbara J. Jordan, Vice-Chairwoman |                    |
| Jose "Pepe" Diaz                   | Audrey M. Edmonson |
| Carlos A. Gimenez                  | Sally A. Heyman    |
| Joe A. Martinez                    | Dennis C. Moss     |
| Dorin D. Rolle                     | Natacha Seijas     |
| Katy Sorenson                      | Rebeca Sosa        |
| Sen. Javier D. Souto               |                    |

The Chairperson thereupon declared the resolution duly passed and adopted this 16<sup>th</sup> day of October, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by the County Attorney as  
to form and legal sufficiency. HS/

Hugo Benitez

By: \_\_\_\_\_  
Deputy Clerk

Contract No. 545A

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ by and between Waste Pro of Florida, Inc., a corporation organized and existing under the laws of the State of Florida having its principal office at 2101 West S.R. 434, Ste 315, Longwood, FL 32779 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide curbside collection and hauling of recyclable items that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 545 and all associated addenda and attachments, and letter to Contractor dated September 27, 2007 and associated attachments incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated February 15, 2007, hereinafter collectively referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such curbside collection and hauling of recyclable materials services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 545 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean Waste Pro of Florida, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Change Order" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

**ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 545 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

**ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a law, or policy change implemented by the County, or a substantial change in the service area. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes. The Contractor and County shall agree to an adjustment in price or a limitation on the scope of the implementation of the change.

**ARTICLE 5. CONTRACT TERM**

The Contract shall become effective (Effective Date) on first day of the month following approval of this Agreement by the Board of County Commissioners. The Effective Date shall initiate the Transition Period during which time the Contractor shall (a) provide any necessary insurance and/or other documentation to the County as may be stated in this Agreement, and (b) take any and all necessary actions to transition into providing Services as stated in Appendix A. This Agreement expires on April 30, 2015.

The County, at its sole discretion, reserves the right to request an option to renew this Contract for one (1) additional seven (7) year period, which shall be mutually agreeable to both parties. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and any option to

renew, and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County  
Department of Solid Waste Management  
2525 NW 62nd Street, 5<sup>th</sup> Floor  
Miami, Florida 33147  
Attention: Director  
Phone: (305) 514-6628  
Fax: (305) 514-6886

and,

b) to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Attention: Director  
Phone: (305) 375-5548  
Fax: (305) 375-2316

**(2) To the Contractor**

Waste Pro of Florida, Inc.  
2101 West S.R. 434, Ste 315  
Longwood, FL 32791  
Attention: Sr. Vice President  
Phone: (407) 869-8800  
Fax: (407) 869-8884  
E-mail: [bhyres@wasteprousa.com](mailto:bhyres@wasteprousa.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

By the final working day of each month, the County shall convey to the Contractor the most recent count of Households (Residential homes) in the Service Area. This Household count shall serve as the basis for the Contractor's invoicing for Services for the next month.

The Contractor shall submit an invoice to the County by the fifteenth calendar day of each month for services provided the previous month. Invoices shall be submitted as stipulated in Article 9 with a copy to the Project Manager.

All invoices shall contain the following information:

I. Contractor Information:

- The name of the business organization as specified on the contract between Miami-Dade County and Contractor
- Date of invoice
- Invoice number
- Contractor's Federal Identification Number on file with Miami-Dade County

II. County Information:

- Miami-Dade County Release Purchase Order or Small Purchase Order Number
- Miami-Dade's release number and the Contract Number

III. Amount Due:

1. Gross Amount Due for Recyclables Collection and Hauling

Number of Households served in the Service Area – from County's monthly count of Households in Service Area

Price per Household for Recyclables Collection – (\$1.97 per Household per month, plus any applicable annual adjustment)

Gross amount due for Recyclables Collection

2. Net Amount Due for Recyclables Collection and Hauling (only applicable during Transition Period and transition after a Force Majeure under Article 46)

Itemized list of Collection Routes not serviced, including Collection Routes not serviced due to Force Majeure under Article 46, number of Households in each Collection Route not serviced, and number of times each listed Collection Route was not serviced during the invoice period

Price per Households for Recyclables Collection – (\$1.97 per Household per month, plus any applicable annual adjustment)

Deduction from invoice for Collection Routes not serviced

The County shall itemize Administrative Charges (Article 30) and deduct those amounts from the amount payable to the Contractor for Services provided. The County shall remit the balance to the Contractor. County agrees to pay Contractor the amount due within 45 days of receipt of each properly submitted and documented invoice. Contractor's failure to submit invoices in the prescribed manner may result in delay of payment by County.

**ARTICLE 8. PRICING**

Prices for collection and hauling shall be \$1.97 per Household, per month and is inclusive of all costs, charges and fees involved in providing Services. Additional charges of any kind added to the invoice will be disallowed. Fuel adjustments, surcharges, or any additional fees, etc., will not



be honored.

Beginning on October 1, 2008 of the Contract and annually thereafter through the final year of the Agreement, the unit price paid by the County to the Contractor for the services to be provided by the Contractor may be increased or decreased for inflation or deflation, relative to increases or decreases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases or decreases shall be capped at three percent (3%) per year for the term of this Agreement. The source of the consumer price indices applied in the annual adjustment to the Collection Payment shall be the U. S. Bureau of Labor Statistics. Each adjustment shall be in effect for the following 12-month period. The amount paid per Household shall be extended to all Households served by the Contractor based on Household counts provided by the County in accordance with provisions of this Agreement.

The Price as stated in this Article 8 will be adjusted upward or downward by the County based on changes in the Living Wage (Article 29) to adjust for the change in the cost of Contractor's labor as a result of changes to the Living Wage. It is incumbent on the Contractor to request the changes in writing not later than October 31 of each Service Year. The first time the Contractor can request such change shall be in October of 2008.

The Price as stated in this Article 8 will be adjusted upward or downward by the County based on any increased costs to the Contractor resulting from a change to the Designated Facilities.

**ARTICLE 9. METHOD AND TIMES OF PAYMENT**

It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
2525 SW 62 Street – 5<sup>th</sup> Floor  
Miami, Florida 33147  
Attention: Accounting Division

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

**ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or

subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1<sup>st</sup> Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required,

within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

**ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages, and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.
- g) In the event that this Agreement causes a reduction of the number of employees of the County's third party collection and hauling contractor, the Contractor agrees to use all reasonable best efforts to provide job opportunities for any displaced staff of the third party contractor.

**ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

**ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County. The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

**ARTICLE 14. RESOLUTION OF DISPUTES**

Any and all disputes or disagreements arising out of this Agreement shall be subject to the decision of the Project Manager, with right of the Contractor to appeal to the Director of the Department or Department's designee. Contractor may further appeal to the County Manager through the Director of the Department of Procurement Management or Director's designee. The decision of the County Manager shall be final and binding. During any dispute, the Contractor shall continue to render full compliance with this Agreement regardless of the nature of the dispute, unless the County specifically notifies the Contractor otherwise.

**ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and

thereafter seek indemnity for costs from the Contractor.

#### **ARTICLE 16. ACCIDENT PREVENTION**

Precautions shall be exercised at all times for the protection of persons and property. The Contractor and any and all subcontractors performing Services under this Agreement shall conform to all relevant OSHA, State and County regulations during the course of such effort. Any fines levied by the above mentioned authorities for failure to comply with these requirements shall be borne solely by the Contractor.

#### **ARTICLE 17. AUDITS**

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, sell its assets, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

#### **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the

satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County

may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
  - i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
  - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) In the event that the County exercises its right to terminate this Agreement for Convenience the Contractor will be compensated for the unamortized value of the vehicles used by the Contract in performance of this Agreement, based on a seven year straight line amortization of the original vehicle cost. The County may select upon notice to the Contractor to take title to the vehicles on payment to the Contractor. The Contractor shall provide clear title to the vehicles.
- g) All compensation pursuant to this Article is subject to Audit.

#### **ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
  - i. the Contractor has not delivered Deliverables on a timely basis.
  - ii. the Contractor has refused or failed repeatedly, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
  - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
  - vii. the Contractor has failed in the representation of any warranties stated herein;
  - viii. the Contractor repeatedly hauls recyclable material to other than a Designated Facility.
  - ix. the Contractor fails to deploy to the equipment yard in Miami-Dade County the Collection vehicles needed to provide collection Services in accordance with the Transition Plan for two consecutive weeks or falls behind the schedule by more than three cumulative weeks.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable materials, products, documentation, reports and data.

**ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs, in the determination of the County, the County shall so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

**ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

**ARTICLE 27. COMPLIANCE WITH FEDERAL STANDARDS**

All Services performed by the Contractor under this Agreement shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).

**ARTICLE 28. LABOR, MATERIALS, AND EQUIPMENT SHALL BE SUPPLIED BY THE CONTRACTOR**

Unless otherwise stated in the Agreement, the Contractor shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the Scope of Services, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the County's Project Manager.

**ARTICLE 29. LIVING WAGE**

The provisions of Miami-Dade County Ordinance 99-44 are applicable to this Agreement and the Contractor acknowledges it is aware of the penalties for non-compliance. A copy of this Ordinance is available upon request from the Program Manager.

This Article is organized with the following sections:

- 1. Definitions
- 2. Minimum Wages and Posting of Information.
- 3. Liability for Unpaid Wages; Liquidated Damages; Withholding
- 4. Payrolls, Basic Records and Reporting
- 5. Subcontracts
- 6. Complaints and Hearings; Contracts Termination and Debarment

1. DEFINITIONS

A. Administrative hearing officer means a qualified arbitrator appointed by the County Manager to resolve disputes arising from the enforcement of Miami-Dade County Ordinance 99-44.

B. Applicable department means the County department(s) using the service contract.

C. Complaint means any written charge/allegation presented to the Compliance Officer alleging a practice prohibited by the Ordinance.

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D. Compliance officer means the County Manager or his/her designee to review compliance with Ordinance 99-44 and this Administrative Order.

E. Contract means an agreement for services covered by Ordinance 99-44 involving the County or Public Health Trust, or approved by the County, the Procurement Director or his/her designee, or the Public Health Trust.

F. Contracting officer means the Department of Procurement Management and Public Health Trust staff or any other County personnel responsible for issuing County service contracts.

G. County means the government of Miami-Dade County or the Public Health Trust.

H. Covered employee means anyone employed by any service contractor, as further defined in Ordinance 99-44, either full or part time, as an employee with or without benefits that is providing covered services pursuant to the service contractor's contract with the County.

I. Covered employer means any and all service contractors and subcontractors of service contractors providing covered services. Service contractor is any individual, business entity, corporation (whether for profit or not-for-profit), partnership, limited liability company, joint venture, or similar business that is conducting business in Miami-Dade County or any immediately adjoining county and meets the following criteria:

(1) the service contractor is paid in whole or in part from the County's general fund, capital projects funds, special revenue funds, or any other funds either directly or indirectly, for contracted covered service whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; and

(2) the service contractor and any subcontractor is engaged in the business to provide covered services either directly or indirectly for the benefit of the County; or

(3) the service contractor is a GASP permittee at Miami International Airport.

J. Covered services are services purchased by the County that are subject to the requirements of the Living Wage Ordinance which are one of the following:

(1) County Service Contracts - Contracts awarded by the County that involve a total contract value of over \$100,000 per year for the following services:

(i) food preparation and/or distribution;

(ii) security services;

(iii) routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing and recycling;

(iv) clerical or other non-supervisory office work, whether temporary or permanent;

(v) transportation and parking services including airport and seaport services;

(vi) printing and reproduction services; and,

(vii) landscaping, lawn and/or agricultural services

(2) GASP Permittee - Any covered service that is provided by a GASP permittee at Miami International Airport without reference to any contract value.

(3) Services Performed by County Employees - Should any services that are being performed by County employees at the time Ordinance 99-44 was enacted be solicited in the future by the County to be performed by a service contractor, such services shall be covered subject to this Ordinance regardless of the value of the contract and language requiring same shall be inserted into any implementing legislation.

K. Debar means to exclude a service contractor, its individual officers, its principal shareholders, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specific period of time, not to exceed five (5) years, pursuant to section 10-38 of the Code of Miami-Dade County.

L. Living wage means the minimum hourly pay rate with or without health benefits health benefits as further described in Ordinance 99-44.

M. Living Wage Commission means a fifteen person commission established by the County Commission for the purpose of reviewing the effectiveness of the Living Wage Ordinance, reviewing certifications submitted by covered employers, reviewing quarterly reports on complaints filed by employees and making recommendations to the County Mayor and Commission.

N. Project manager means the person assigned under a contract, usually a department director of the using agency or his/her designee, who has primary responsibility to manage the contract and enforce contract requirements.

2. MINIMUM WAGES AND POSTING OF INFORMATION

A. All covered employees providing service pursuant to the service contractor's contract with the County shall be paid a living wage of no less than \$10.69 per hour with \$1.55 per hour for health benefits, as described in this section, or otherwise \$12.24 per hour regardless of any contractual relationship which may be alleged to exist between the contractor and such employees. The covered employer may comply with the living wage provision by choosing to pay no less than the specified hourly wage rate when said employer also provides health benefits, such health benefits shall consist of at least \$1.55 per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the applicable department to qualify for the wage rate for employees with health benefits.

B. Covered employees shall be paid by company or cashier's check, not less than bi-weekly, and without subsequent deduction or rebate on any account. The covered employer shall pay wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.

C. Covered employers must post in a visible place on the site where such contract work is being performed, a notice specifying the (1) wages/benefits to be paid; (2) the amount of liquidated damages for any failure to pay such specified combined overall hourly wage rate and benefits; and (3) the name and address of the responsible official in Miami-Dade County to whom written complaints should be sent. Posting requirements will not be required where the employer prints the following statements on the front of the covered employee's paycheck and every six months thereafter: "You are required by Miami-Dade County law to be paid at least [insert applicable rate under this Chapter] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices will be printed in English, Spanish and Creole. Any written complaints of underpayment should be filed with the Director of the Department of Business Development, 175 Northwest First Avenue, 28th Floor, Miami, FL., 33128, (305) 349-5960.

D. Covered employers must refrain from terminating or otherwise retaliating against an employee performing work on the contract even though a complaint of practices prohibited by

Ordinance 99-44 has been filed by the employee or other investigative or enforcement action is being taken regarding such service contractor.

**3. LIABILITY FOR UNPAID WAGES; PENALTIES; WITHHOLDING**

A. In the event of any underpayment of required wage rates, the contractor shall be liable to the underpaid employee for the amount of such underpayment within thirty (30) days of the findings of violation. Covered employers found to be in violation of the requirements of Ordinance 99-44 shall be required to pay liquidated damages of \$500 to the County for each employee of the covered employer, who performs any portion of the contract work for each week, or portion thereof, that is paid less than the specified living wage rate and health benefits. Written request for appeals of violations must be filed with compliance officer within ten (10) days of receipt of the violation.

B. Any wages not collected by underpaid employees shall be remitted, by the employer responsible for paying the wage debt, to the Department of Business Development (DBD) for depository into the DBD Trust Fund. Proceeds from the "Trust Fund" shall be held for one (1) year and if not claimed by the underpaid employee, shall be transferred to the State of Florida.

C. The County may withhold from service contractor any moneys payable on account of work performed under the contract, such sums as may be determined to be necessary to satisfy any liabilities for unpaid wages and penalties as provided herein. In order to preserve the rights of the affected workers under Ord. 99-44, the project manager may withhold or cause to be withheld from the service contractor under this agreement so much of the accrued payments or advances as may be considered necessary to pay employees of the covered employer the full amount of wages required by the contract. In the event of failure to pay any covered employee, employed or working on the project, all or part of the wages required by the contract, the project manager may, after written notice to the service contractor, take such action as may be necessary to cause the suspension of any further payment, until such violations have ceased. The withheld monies shall be remitted to the covered employee only in accordance with the provisions of Section 6, "Complaints and Hearings; Contract Termination and Debarment".

D. In addition to the payment of penalties and backwages, repeat offenders may be debarred from doing business with the County for a period of up to five years and/or have their contracts terminated.

**4. PAYROLL; BASIC RECORDS; REPORTING**

A. Each covered employer shall maintain payrolls for all covered employees and basic records relating thereto and shall preserve them for a period of three (3) years. The records shall contain: the name and address of each covered employee, the job title and classification, the number of hours worked each day, the gross wages earned and deductions made; annual wages paid; a copy of the social security returns and evidence of payment thereof; a record of health benefit payments including contributions to approved plans; and any other data or information the Living Wage Commission or compliance officer should require from time to time.

B. The service contractor shall provide a certificate to the applicable department, with every invoice or requisition for payment, that includes the name, address, and phone number of the covered employer, a local contact person, and the specific project for which the service contract is sought; the amount of the contract and the applicable department the contract will serve; a brief description of the project or service provided; a statement of the wage levels for all employees; and a commitment to pay all employees a living wage as set forth in the contract specifications; and the name and social security number of every employee that provided service for that requisition for payment.

C. The covered employer shall submit the information required hereunder every six (6) months, to the applicable department a complete payroll showing the employer's payroll records for each covered employee working on the contract for covered services for one payroll period.

D. The covered employer shall file with the applicable department, every six months, reports of employment activities to be made publicly available, including: race and gender of employees hired and terminated; zip codes of employees hired and terminated; and wage rates of employees hired and terminated.

E. The covered employer shall make the records required to be kept hereunder available for inspection, copying or transcription by authorized representative of the County, and shall permit such representative to interview employees during working hours on the job. Failure to submit the required reports upon request or to make records available may be grounds for debarment. The service contractor is responsible for the submission of the information required hereunder and for the maintenance of records and provision of access to same by all subcontractors.

**5. SUBCONTRACTS**

The service contractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 6 of this provision and also a clause requiring the subcontractors to include these clauses in any subcontracts. The service contractor shall be responsible for compliance by any subcontractor with the clauses set forth in paragraphs 1 through 6 of this provision.

**6. PROCEDURES FOR APPEAL THROUGH ADMINISTRATIVE HEARING OFFICER PROCESS; CONTRACT TERMINATION AND DEBARMENT**

A. Appeals of findings of violation and imposition of penalties by the compliance officer shall be heard by an administrative hearing officer. Upon the receipt of a written appeal, the compliance officer shall notify the County Manager in writing and the County Manager shall appoint an administrative hearing officer and set a time for an administrative hearing. Failure to appeal within the specified time shall be considered a waiver of the appeal process provided for in Section 3.A.

B. Notification of hearing date shall be served by the compliance officer upon the covered employer against whom the complaint is made within ten (10) working days of the appointment of the administrative hearing officer. Such notice shall be by certified mail, return receipt requested. Such notice shall include:

1) A copy of the written complaint, including reasons and causes for the proposed administrative hearing outlining alleged prohibited practices upon which it is based;

2) The penalties assessed;

3) That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed thirty (30) business days after service of the notice. The notice shall also advise the covered employer that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and,

4) A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.

C. The compliance officer or his/her designee shall, with the assistance of the project manager, present evidence and arguments to the administrative hearing officer.

D. No later than seven (7) days prior to the scheduled hearing date, the covered employer must furnish the compliance officer a list of the defenses the covered employer intends to present at the administrative hearing. If the covered employer fails to submit the list, in writing, at least seven (7) days prior to the administrative hearing, or fails to seek an extension of time within which to do so, the covered employer shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.

E. Hearsay evidence shall be admissible at the administrative hearing, but shall not form the sole basis for finding a violation of Ordinance 99-44. The administrative hearing shall be transcribed, taped or otherwise recorded by a court reporter, at the election of the administrative hearing officer and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party. The cost of such transcription may be assessed, by the hearing officer, against a service contractor that has been found to violate Ordinance 99-44,

F. In addition to the payment of penalties and back wages, the County Manager may debar, for a period not to exceed five (5) years, a service contractor or subcontractor and the principal owners and/or qualifying agents thereof found to have violated the requirements of Ordinance 99-44 a second time. If the County Manager determines a covered employer failed to comply with these provisions a third time, the non-complying covered employer's service contract with the County may be terminated.

G. The County Manager may order the withheld amount equal to any underpayment remitted to the employee. In addition, the County Manager may order payment of a penalty to the County. If the required payment is not made within a reasonable period of time, the County Manager may order debarment as described above.

A breach of the clauses contained in this Supplemental General Condition shall be deemed a breach of this contract and may be grounds for termination of the contract, and for debarment, and any other remedies available to the County.

### **ARTICLE 30. ADMINISTRATIVE CHARGES**

Failure to complete the project in accordance with the Scope of Services and to the satisfaction of the County within the time stated shall cause the Contractor to be subject to administrative charges in the amount listed below for each and every calendar day the Work remains incomplete. As compensation due the County for loss of use and for additional costs incurred by the County due to such non-completion of the Work, the County shall have the right to deduct the said administrative charges from any amount due, or that may become due to the Contractor under this Agreement, or to invoice the Contractor for such charges if the costs incurred exceed the amount due to the Contractor.

#### **Failure to meet schedule**

- A. Failure to establish office and equipment yard in accordance with this Agreement at least 15 days prior to initiation of Services shall result in a charge of \$5,000 per day.
- B. Failure to deploy to the equipment yard in Miami-Dade County the Collection vehicles needed to provide Collection service in accordance with the Transition Plan established by agreement between the County and the Contractor under separate cover, which shall

occur within five business days after the execution of this Agreement, shall result in a charge of \$5,000 per week.

Service Complaints

Service complaints if not remedied pursuant to Article 45 shall result in a charge of \$100 for each house missed.

During the Transition Period only, as stated in the Transition Plan, as defined in Appendix A, the charge for a Service Complaint shall be \$50 if not resolved within 48 hours of the Contractor's receipt of the Service Complaint.

Delivery of Recyclables collected in the Service Area to other than a Designated Facility

First occurrence during Term of Agreement - \$1,000.00 charge

Second and subsequent occurrences during Term of Agreement - \$2,000.00 charge.

Changing Routes without Proper Notification of County

Changing a route without notification of County within 15 days prior to such change will result in a \$1,000.00 charge per incident.

Failure to Clean Up Spillage

Failure by the Contractor to clean up within 24 hours spillage of any material falling from the Contractor's vehicles will result in a \$2,500.00 charge per day, per incident.

Failure to deliver required information and reports by the required date shall result in a charge of \$500 for each incident

Other Infractions

The Contract Manager may also levy charges for all other infractions of this Agreement at \$250.00 per day per incident, beginning with the fifth reported incident, without regard to the percentage of customer complaints including:

1. Failure to provide clean, safe and sanitary vehicles/equipment
2. Failure to maintain office hours as required
3. Operator not licensed
4. Vehicle not licensed
5. Vehicle failure to display required information
6. Failure to submit service change notice to Project Manager
7. Collection employees out of uniform
8. Speeding upon conviction
9. Failure to collect Recyclable Materials for any Household which has been missed more than three times per calendar year
10. Failure to respond to complaints in a timely and appropriate manner
11. Failure to repair damage to property caused by the Contractor, including agents, employees or subcontractors, within one week or to commence within one week
12. Failure to notify the County prior to extending normal work hours to complete a route
13. Failure to notify the County of an accident involving a collection vehicle or a driver

County Repair of Damage

In the event the Contractor fails to repair damages caused by the Contractor within the period of time provided within this Agreement, the Project Manager may arrange for the repairs and impose administrative charges to the Contractor for the cost of the repairs, plus an administrative charge of \$500 for each repair.

**Deduction of Administrative Charges from Payment to Contractor**

The Project Manager will notify the Contractor in writing of the County's intent to deduct any administrative charges from payments due or to become due to the Contractor for services provided under this Agreement. The Project Manager shall provide to Contractor an itemized list of each instance in which Contractor failed to meet the Service Standards specified in this Agreement, including the nature of the failure, date, time, location, and any other available and applicable information. Such itemized list will be provided to the Contractor monthly, and shall include all failures to perform within the standards of this Agreement within forty-five days of the occurrence.

**Due Process – Contractor's Right to Contest Administrative Charges**

In the event the Contractor wishes to contest such Administrative Charge, it shall, within ten calendar days after receiving such notice, request in writing an opportunity to be heard by the Project Manager and present its explanation and any basis on which the Contractor believes any recorded failure to perform within the standards of this Agreement is inaccurate. The Project Manager shall notify the Contractor in writing of any action taken with respect to the Contractor's claim. Contractor may further appeal, in writing, the decision of the Project Manager, to the Director of the Department. Contractor may further appeal the decision of the Director of the Department, through the Director of the Department, to the County Manager, and the decision of the County Manager will be final.

**ARTICLE 31. BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**ARTICLE 32. INSPECTOR GENERAL REVIEWS**

**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or

investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume

discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

**ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

**ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution

No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

### **ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind

which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

- b) Except as may be required or permitted by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

The County reserves the right to terminate this Agreement, if, during the Term of this Agreement, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

**ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 40. COUNTY USER ACCESS PROGRAM (UAP)**

**a) User Access Fee**

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent

(2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

**b) Joint Purchase**

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

**ARTICLE 41. COUNTY'S PROJECT MANAGER**

The County shall appoint a Project Manager who shall be the primary representative of the County for purposes of administering this contract. The County shall also appoint a Deputy Project Manager to act for the Project Manager in her or his absence.

**ARTICLE 42. 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.

**ARTICLE 43. LEGAL REQUIREMENT FOR POLLUTION CONTROL**

It is the intent of these Specifications to comply with the Miami-Dade County Pollution Control Ordinance as stated in Chapter 24 of the Miami-Dade Code. This Ordinance is made a part of these specifications by reference and may be obtained, if necessary, by the Contractor through the Department of Environmental Resources Management (DERM), 33 SW 2nd Ave., Miami, Florida, 33130, Telephone (305) 372-6789.

**ARTICLE 44. SEVERABILITY**

Certain provisions of this Agreement are vital to the relationship of the Contractor and the County. Should any material word, sentence, phrase, or other provision of these sections of the Agreement be stricken by a court of competent jurisdiction, or the occurrence of any court rendering any provision of the Agreement void, the County shall have the right to terminate this Agreement.

For any other provisions of the Agreement, 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 such 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. As to these other provisions, 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.

**ARTICLE 45. PERFORMANCE STANDARDS**

In addition to adhering to the Scope of Services, Appendix A, the Contractor shall provide Services in accordance with the following standards:

Deliver Collection route maps and estimated number of Households in each route to the Project Manager at least 15 days prior to initiation of Services.

Establish office and equipment yard at least 15 days prior to initiation of Services.

Deploy to the equipment yard in Miami-Dade County the Collection vehicles needed to provide Collection Services in accordance with Article 30.

Service Complaints

All complaints received by the Contractor or Project Manager and reported to the Contractor shall be resolved to the satisfaction of the Customer and the Project Manager within 24 hours of the Contractor's receiving the complaint. Customer informational requests or Recycling Container requests shall not constitute complaints. Service complaints may include but are not limited to the following:

Throwing of Recycling Containers

    Damage to Recycling Containers

    Failure to collect Recyclable Materials on schedule

The 24-hour resolution period shall not be used as an extension of the collection day or collection week.

A complaint not resolved in accordance with the terms of this Agreement shall be treated as an infraction for the purposes of Article 30.

Recyclables shall be delivered to a Designated Facility.

Contractor shall not change any route without proper notification to the County.

Contractor shall clean up all spillage required to be cleaned up in accordance with Article 30.

Contractor shall complete each collection route on the regularly scheduled day.

Contractor shall provide the following information and reports to the County in accordance with the

corresponding requirements:

- Information required in Scope of Services
- Vehicle tare weights
- Permits and licenses
- All other information and reports required to be provided to the County

The Contractor must also meet the following requirements:

- Provide clean, safe, sanitary equipment
- Maintain office hours as required
- All vehicles must be licensed
- All vehicles must display required information
- Contractor shall provide documents and reports in a timely and accurate manner
- Contractor must clean any spillage
- Contractor must repair damage of property caused by Contractor
- Contractor must maintain clean vehicles
- Operators may not exceed the speed limit
- Contractor must submit service change notice to Project Manager
- Contractor may not fail to collect Recyclable Materials from any Household more than three times per calendar year
- Contractor must respond to complaints in a timely and appropriate manner
- Contractor must repair damage to property caused by Contractor, including agents, employees or subcontractors, within required period of time.

**ARTICLE 46. FORCE MAJEURE**

Neither party shall be liable in any event that results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, labor actions, and governmental actions that prevent the Contractor from performing for a finite period of time. Labor dispute, including strikes and slowdowns by Contractor's labor force is not a Force Majeure.

**ARTICLE 47. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: [Signature]

By: \_\_\_\_\_

Name: Robert J. Hyres

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

Title: Sr. Vice President

Title: \_\_\_\_\_

Date: October 9, 2007

Date: \_\_\_\_\_

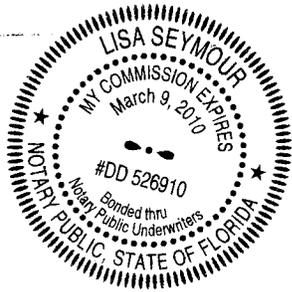
Attest: [Signature]  
Corporate Secretary/Notary Public

Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney



## APPENDIX A

### 1.0 REQUIREMENTS AND SERVICES TO BE PROVIDED

The Contractor shall provide bi-weekly (once every two weeks) single stream curbside recycling collection and hauling services to County residents and municipalities on a County garbage collection day (currently, Monday, Tuesday, Thursday and Friday) and as stated herein. The Contractor shall haul all Recycling Materials collected to transfer stations or recycling center(s) as stipulated in Attachment 1 to this Appendix A and as hereinafter referred to as "Designated Facility". The County will provide Households with one 64 gallon rolling cart or by exception one 95 gallon or one 35 gallon rolling cart. The Contractor shall transition from the current dual stream collection process to the single stream process based upon the schedule stated in the Transition Plan. A Transition Plan in accordance with the requirements of Attachment 1 to Appendix A will be established by agreement between the County and the Contractor under separate cover, which shall occur within five business days after the execution of this Agreement that will determine the schedule of transitioning from the current dual stream process to a single stream process. This Transition Plan will also address Service Complaints during the Transition Period. If the County and Contractor cannot agree on a Transition Plan within the stipulated time, this Agreement will be null and void. The Contractor shall assume total responsibility for the Services the Contractor provides, as outlined herein. The Contractor shall adhere to all directives as mandated by the County.

#### A. Objective

The Contractor's objectives include collection of all Recyclable Materials (as stipulated in Attachment 2 to this Appendix A) or as may be amended by letter to the Contractor, and transporting recyclable materials from the County's Service Area, including municipalities, to Designated Facilities and to provide proper and responsible customer services to the Residents.

#### B. Curbside Collection Requirements – Collection and Hauling

In addition to the approximately 320,000 households in the County Service Area the Contractor shall provide curbside recycling collection services to approximately 23,000 municipal household as follows: El Portal, Florida City, Medley, Miami Beach, Miami Springs, N. Bay Village, Opa-Locka, South Miami, Surfside, Virginia Gardens, and West Miami ("Participating Municipalities"). Households shall be defined as those in the County's Service Area and in the Participating Municipalities. Service Area shall be defined as the County's Service Area and the service area of all Municipalities participating in the County's Recycling Program (Participating Municipalities).

The Contractor shall deliver only material properly collected from Households from County designated containers, limited to one container per Household to the Designated Facilities. Any disputes occurring from the delivery of Recyclable Materials to the Designated Facilities between the Contractor and the County's Third Party Recycler shall be handled by these two parties without intervention from the County. The Contractor shall contact the County's Project Manager only when all reasonable possibilities of a resolution are exhausted.

If there are any additions or deletions to the list of Participating Municipalities the County shall advise the Contractor in written form. The County will advise the Contractor within

30 days of the occurrence.

The Contractor shall:

1. Provide the same level of service to all Households within the Service Area.
2. Transition rapidly and in accordance with the schedule stated in the Transition Plan in order to minimize service disruption and avoid diminishing the quality of service to residents.
3. Place in service all new automatic side loading collection vehicles according to the Transition Plan, which cannot come out of service without the written permission of the Department.
4. Maintain all collection vehicles in good working and aesthetic condition (based on best commercial practices of businesses in the refuse industry).
5. Present on a monthly basis, within ten days of the end of the preceding month, all Weight Tickets collected at the Designated Facilities and an Excel Spreadsheet listing all the transaction occurring in the preceding month to the County's Project Manager.

**C. Deliverables/Reports**

The Contractor shall provide Documents and Reports in the format requested by the Project Manager and such Documents and Reports shall be delivered to the County in an accurate manner. All reports are due to the County within ten (10) days of the last day of the cycle for which the Document/Report is due (monthly or annually). The County shall have final approval authority for all documentation and reports.

1. Annual Curbside Recycling Program Manual.  
Provide a description manual that fully illustrates the program's structure, operation and process. The Contractor shall present a draft manual to the County within 30 days after the Effective Date.
2. Monthly Performance Reports  
Provide monthly performance reports.
3. Annual State of Recycling Reports  
Provide annual reports of the ongoing state, performance, and evolving trend of recycling in the County's service area and the recycling industry in general. This annual "State of Recycling" report must include, but is not limited to:
  - a. Household participation and changes in participation.
  - b. Changes in the service area due to participation of additional cities, and growth in County service area.
  - c. Customer service initiatives, complaint volume, and complaint management.
  - d. Green initiatives, pollution and environmental protection actions undertaken.
  - e. The inventory, condition and age of the vehicle fleet. Specifically, the Contractor shall provide actual mileage of vehicles. Odometers must be kept in good operating order. The Contractor shall make all service

records on all vehicles used to provide Service, available for inspection by the County.

- f. Use of subcontractors, if any. County must previously approve in writing all subcontractors utilized by the Contractor.
- g. Issues for discussions with the County.
- h. Company audits and financial condition.
- i. Report of all Administrative Fees charged and their status (paid or unpaid).

#### **D. Vehicles and Equipment**

The Contractor shall introduce at a minimum 25 new vehicles as it transitions to the single stream process and as per the schedule stated in the Transition Plan (See item K, below) and shall have on hand at all times and in good working order such vehicles and equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Agreement.

##### **1. Recyclable Collection Vehicles**

Each collection vehicle must comply with applicable U.S. Environmental Protection Agency standards, meet industry standards, be licensed and be approved by the Project Manager.

##### **2. Condition of Equipment**

All vehicles and auxiliary equipment shall be kept clean, sanitary, safe, and in good repair at all times of service. During service, vehicles shall not emit excessive odor, shall not discharge fluids, shall not emit visible air emissions, shall comply with all applicable noise ordinances and laws, and paint on vehicles shall be maintained.

##### **3. Spills of Fluids/Damages**

The Contractor shall be responsible for an immediate response to spilled fluids and any damage caused by the Contractor in accordance with Miami-Dade County ordinances.

##### **4. Vehicle Identification**

Vehicles and large equipment (pick-up trucks and similar) utilized by the Contractor to provide Services hereunder shall be clearly identified in a manner approved by the Project Manager with the Contractor's name, phone number of the Contractor's local office, truck number, and tare weight, which shall be determined by the County. At the time the County establishes the tare weight, the vehicle may have no less than one-half tank of fuel as indicated by the fuel gauge.

Should the County exercise the seven year option to renew; the County will require that the Contractor provide all new vehicles, within six months of the renewal period.

#### **E. Recycling Containers**

The County is responsible for providing recycling containers to Households.

**F. Recyclable Collection Routes**

At least 15 days prior to initiation of Service, the Contractor shall provide the Project Manager with a collection route packet, subject to the following specifications:

Route Packet Specifications – A complete set of collection route street maps (one route per map), individually numbered in sequence geographically from north to south, inclusive of the entire area serviced by the Contractor for curbside collection of recyclable materials, participating municipalities included, at a scale not smaller than 1 inch to 0.075 mile.

Each route map shall identify each street, avenue, etc. indicate the day the route is scheduled for collection and the current number of Households on the route. The Contractor shall provide prior notification by mail to the County before any change to the collection route schedule. The Contractor shall also provide revised route maps to the Project Manager within 15 days of any change in the routes, including collection schedule. All changes in routes must be approved by the Project Manager before commencement. A current collection route packet shall be included as an attachment to the annual State of Recycling report.

**G. Contractor Personnel**

The Contractor shall ensure that during operation, collection personnel:

1. Perform in a safe, proper and effective manner, abiding by all applicable regulations.
2. Wear a uniform bearing the company's name/logo and maintain a neat and professional appearance.
3. Each driver of a collection vehicle shall carry a valid Florida driver's license for the type of vehicle that is being driven.
4. Treat all Customers in a polite and courteous manner.
5. Employees shall not accept gratuities for any reason whatsoever from residents, tenants or other persons.

Violation of the above is subject to the removal provision in Article 11 of the base Agreement.

**H. Permits and Licenses**

The Contractor shall possess or be capable of obtaining the necessary licenses required to meet Local, State, and Federal requirements for providing such service in Miami-Dade County, prior to providing any Services.

**I. Service Complaints**

All complaints received by the Contractor or Project Manager and reported to the Contractor shall be responded to in a timely and appropriate manner as stated in the Agreement.

**J. Administrative Charges**

Failure to complete any program tasks and services in accordance with the

specifications and to the satisfaction of the County shall cause the Contractor to be subject to administrative charges, as stated in the base Agreement Article 30.

#### **K. Transition**

The Contractor shall transition from the current dual stream process to the single stream process based on the schedule provided in accordance with the Transition Plan as further detailed in Attachment 1 of this Appendix A. Once rolling carts are in place in a particular zone in accordance with the Transition Plan, the Contractor shall deliver all recyclable material from that particular route to the County's Designated Facility.

#### **L. Additional Services**

Notwithstanding the requirements stated above, Contractor may submit ideas for County consideration which can include any of the additional services described in this Section. The Contractor may enter into partnerships to perform the Services.

1. Implementing an easy-to-use drop-off program,
2. Processing clean yard trash into mulch
3. Increasing multi-residential recycling

##### 1. Implementing an easy-to-use drop-off program

In many communities, residents can bring recyclable materials to neighborhood drop-off centers at no charge. In Miami-Dade County, used white goods are accepted at neighborhood Trash and Recycling Centers across the County.

To achieve the County's recycling goals, the Proposer may submit a proposal to implement a drop-box program to include one or more of the following, keeping in mind that one or more recyclable material types can be collected:

- County Trash and Recycling Centers
- County government buildings
- County parks
- County events
- High density commercial areas
- Partnerships with commercial establishments
- Partnerships with schools, community groups, or non-profits.

##### 2. Processing clean yard trash into mulch

Processing clean yard trash into mulch is considered recycling by State legislation. The Contractor may offer a proposal to collect and process yard waste into mulch and offer a component of this mulch to residents.

##### 3. Increasing multi-residential recycling

County legislation (Exhibit B, County Code Chapter 15) requires that multi-residential units contract with licensed haulers to recycle newspaper, glass, aluminum cans, steel cans, and plastics. Although County enforcement efforts are limited, offering collection services at competitive rates may increase participation and overall recycling levels.

## Attachment 1 to Appendix A

Designated Facilities:

The four transfer/recycling stations (Designated Facility) are as follows:

- (1) Hialeah Transfer Station 5000 NW 37<sup>th</sup> Ave., Hialeah, FL)
- (2) Davie Delta Recycling (3250 Fields Road, Davie, FL)
- (3) Delta Recycling Homestead (11695 SW 328<sup>th</sup> St., Homestead, FL); and,
- (4) Reuter Recycling – (SW Broward – 20701 Pembroke Road, Pembroke Pines, FL).

The County reserves the right to change these locations and if it does the County will advise the Contractor as soon as reasonably possible.

Transition Plan

The Transition Plan shall contain at a minimum the following schedule of events:

	New Vehicles in Service	Processing Sites Available
Approval		
Week 1		
Week 2		
Week 3		
Week 4		
Week 5		
Week 6		
Week 7		
Week 8		
Week 9		
Week 10		
Week 11		
Week 12		
Week 13		
Week 14	2	
Week 15	2	All Available
Week 16	2	
Week 17	2	
Week 18	2	
Week 19	2	
Week 20	2	
Week 21	2	
Week 22	2	
Week 23	2	
Week 24	2	
Week 25	2	
Week 26	1	
	<b>25</b>	

The Contractor shall provide copies of contracts with the vehicle manufacturer(s) along with the Transition Plan.

## Attachment 2 to Appendix A

### List of Recyclable Materials

#### Recyclable Materials:

- Aluminum food and beverage containers
- Glass food and beverage containers - brown, clear, or green
- Ferrous (Iron) cans
- PET plastic containers with the symbol #1 - narrow neck containers only
- HDPE natural plastic containers with the symbol #2 - narrow neck containers only (milk and water bottles)
- HDPE pigmented plastic containers with the symbol #2 - narrow neck containers only (detergent, shampoo, bleach bottles, etc. without caps)
- Aseptic containers (gabled top cartons)
- Plastics with symbols #3, #4, #5, #6, #7-narrow and screw top containers
- Mixed Residential Paper - Mixed residential paper consists of a mixture of various qualities of paper not limited as to type of fiber content - acceptable fibers include:
  - Newsprint
  - Old corrugated cardboard
  - Magazines
  - Catalogs
  - Cereal boxes
  - Telephone books
  - Printer Paper
  - Copier Paper
  - Mail
  - All other office paper without wax liners

Contract No. 545B

THIS AGREEMENT made and entered into as of this \_\_\_ day of \_\_\_\_\_ by and between Waste Management Inc. of Florida, a corporation organized and existing under the laws of the State of Florida, having its principal office at 1001 Fannin, Suite 4000, Houston, TX 77002 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to accept Incoming Materials from the County's Third Party Curbside Recycling Collection and Hauling Contractor ("Third Party Contractor") that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 545 and all associated addenda and attachments, and letter to Contractor dated September 27, 2007 and associated attachments incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated March 9, 2007 hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to utilize the Contractor's Services in connection with the County's Recycling Program, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 545 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean Waste Services of Florida, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all reports, documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words Education and Promotions Program to mean a program established by the County with assistance from the Contractor on how to educate residents on the values of recycling.
- i) The words "Extra Work" or "Change Order" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- j) The words "Incoming Material" to mean all material delivered to the Contractor from County acceptable containers, in accordance with applicable laws pertaining to recyclable materials, by the County and/or the County's third party contractor.
- k) The words "Materials Recovery Facility" (MRF) to mean facility where Incoming Materials are separated and packaged for future use.
- l) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- m) The words "Rejects and Residue" are material collected by the Third Party Contractor that is not recyclable material.
- n) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- o) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or

corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

- p) The words "Transition Period" shall mean the time during which the County is transitioning from its current weekly dual stream process to a bi-weekly single stream process, which time shall end no later than December 31, 2007, unless reasonably extended by the County.
- q) The words "Weight Ticket" to mean a document presented to the driver of a vehicle delivering Incoming Materials to the Contractor, with a copy forwarded to the County, stating the number of tons of Incoming Materials delivered to the Contractor for each delivery to the Designated Facility.
- r) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

**ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 545 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

**ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) The Contractor shall provide the Services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract.

All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a law, or policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes. The Contractor and County shall agree to an adjustment in price or a limitation on the scope of the implementation of the change.

**ARTICLE 5. CONTRACT TERM**

The Contract shall become effective (Effective Date) on first day of the month following approval of this Agreement by the Board of County Commissioners. The Effective Date shall initiate the Transition Period during which time the Contractor shall (a) provide any necessary insurance and/or other documentation to the County as may be stated in this Agreement, and (b) take any and all necessary actions to provide Services as stated in Appendix A. This Agreement expires on December 31, 2014.

The Contractor understands and agrees that during the Transition Period the County's incumbent curbside recycling contractor, while still utilizing the dual stream process, is not required to haul Incoming Material to the Contractor. Upon the termination of the Transition Period all of the County's curbside Incoming Materials shall be delivered by to Contractor.

The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for one (1) additional seven (7) year period. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and any option to renew, and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

- a) to the Project Manager:

Miami-Dade County  
Department of Solid Waste Management  
2525 NW 62nd Street, 5<sup>th</sup> Floor  
Miami, Florida 33147  
Attention: Director  
Phone: (305) 514-6628  
Fax: (305) 514-6886

and,

- b) to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Attention: Director  
Phone: (305) 375-5548  
Fax: (305) 375-2316

**(2) To the Contractor**

Waste Management Inc. of Florida  
2125 NW 10 Court  
Miami, Florida 33127  
Attention: Mr. Alex Gonzalez, Government Affairs Director  
Phone: (305) 525-5953  
Fax: (305) 326-0247  
E-mail: [agonzalez@wm.com](mailto:agonzalez@wm.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. REVENUES TO THE COUNTY FOR INCOMING MATERIALS**

The Contractor shall pay to the County \$11.25 per ton for 95% of all Incoming Materials by weight from County approved recycling containers delivered to the Contractor by the County or the County's Third Party Contractor. The Contractor has the right to advise the County in the instance that an abnormal amount of Incoming Material is non-recyclable. In that event the County will address this matter with the Third Party collections and hauling contractor to attempt to resolve this matter. The County will provide communications information to its Households (Residential Homes) to advise them of what materials are considered recyclable materials, as further defined in Appendix A, as may be amended.

Beginning on October 1, 2008 of this Agreement and annually thereafter through the final year of the Agreement, the unit price paid to the County by the Contractor for Incoming Materials may be increased for inflation, relative to increases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases shall be capped at three percent (3%) per year for the term of this Agreement. Each adjustment shall be in effect for the following 12-month period.

**Credit to Contractor for Disposal of Rejects and Residue Allowance**

Amount of Rejects and Residue in tons – from scale house at Designated Facility(ies) or Materials Recovery Facility and copies of Weight Tickets or other documentation acceptable to the County showing amount of Rejects and Residue delivered to County Disposal Facility(ies)

Rejects and Residue Allowance amount in tons - Up to a maximum of five percent of Incoming Materials delivered to the Contractor by the County or the Third Party Contractor in any given monthly period.

**Contract Tipping Fee**

Amount of credit to Contractor – Rejects and Residue Allowance (not to exceed 5% of Incoming Materials) multiplied by the County's then current tipping fee per ton.

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Note: If copies of Weight Tickets or other documentation showing disposal of Rejects and Residue Allowance at County Disposal Facility is not provided, Contractor will be credited on the basis of a tipping fee of \$15 per ton, up to a maximum of 5% of Incoming Materials delivered to the Contractor by the County or the Third Party Contractor in any given monthly period.

**ARTICLE 8. EDUCATION AND PROMOTION CONTRIBUTION**

The Contractor shall pay a sum of \$550,000.00 dollars as a contribution towards the County's Recycling Education and Promotion Program. This amount is non-refundable, regardless of the length of this Agreement and shall be due within thirty days of the Effective Date of this Agreement. In the event that the County exercises the option to renew this Agreement in accordance with Article 5, above, the County will include an additional lump sum amount (escalated for the completed seven year period) as part of any negotiations that may transpire, for the County's Recycling Education and Promotion Program.

**ARTICLE 9. METHOD AND TIMES OF REMITTING PAYMENT TO COUNTY**

The Contractor shall remit payment to the County for Incoming Materials in accordance with Article 7, above, once per month based on all Weight Tickets issued during the previous month and is due to the County by the fifteenth day of the following month. All payments made to the County shall be taken from the books of account kept by the Contractor, shall be supported by copies of Weight Tickets, shall show the County's contract number, and shall have a unique remittance document number assigned by the Contractor.

Remittance documents and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
2525 SW 62 Street – 5<sup>th</sup> Floor  
Miami, Florida 33147  
Attention: Accounting Division

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

**ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1<sup>st</sup> Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained,

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which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

**ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall accept all Incoming Materials from the County's Third Party Contractor and shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. In the instance that the County or its Third Party Contractor delivers materials to the Contractor that contains more than reasonably acceptable amount of non recyclable material, the Contractor shall attempt to settle such dispute(s) without requesting intervention by the County. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the reasonable request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. In such event, the County will advise the Contractor in writing and the Contractor shall advise the County if it cannot for legal reasons remove such employee, and in that event the County and the Contractor will arrive at a reasonable solution acceptable to both sides. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its reasonable discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner reasonably consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

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- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.
- g) In the event that this Agreement causes a reduction of the number of employees of the County's Third Party collection and recycling contractor, the Contractor agrees to use all reasonable best efforts to provide job opportunities for any displaced staff of that contractor.

**ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees.

**ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

**ARTICLE 14. RESOLUTION OF DISPUTES**

Any and all disputes or disagreements arising out of this Agreement, taking into consideration the requirement on the Contractor as stated in Appendix A (1.0, C), shall be subject to the decision of the Project Manager, with right of the Contractor to appeal to the Director of the Department or Department's designee. Contractor may further appeal to the County Manager through the Director of the Department of Procurement Management or Director's designee. The decision of the County Manager shall be final and binding. During any dispute, the Contractor shall continue to render full compliance with this Agreement regardless of the nature of the dispute, unless the County specifically notifies the Contractor otherwise.

**ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense upon notice to the Contractor defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

**ARTICLE 16. ACCIDENT PREVENTION**

Precautions shall be exercised at all times for the protection of persons and property. All vendors performing services under this contract shall conform to all relevant OSHA, State and County regulations during the course of such effort. Any fines levied by the above mentioned authorities for failure to comply with these requirements shall be borne solely by the responsible vendor.

**ARTICLE 17. AUDITS**

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. If disapproval is not received within such ten (10) day period, such request shall be deemed approved.

**ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the

satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County

may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
  - i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
  - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

**ARTICLE 24. EVENT OF DEFAULT**

- a) An Contractor Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
  - i. the Contractor has not accepted Incoming Materials at Designated Facility during Hours of Operation.
  - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled staff personnel to accept Incoming Materials in a reasonable time period;
  - iii. the Contractor has failed to make prompt payment to the County or any subcontractors or suppliers for any Services;
  - iv. the Contractor fails to pay Administrative Charges, as stipulated in Article 30 below;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or

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- debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
  - vii. the Contractor has failed in the representation of any warranties stated herein;
  - viii. the Contractor has failed to make all Transfer Stations available in accordance with the Transition Plan.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may impose additional administrative charges to those addressed in Article 30 below, for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable materials, products, documentation, reports and data belonging to the County.

**ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If a Contractor Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County shall wherever reasonable in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

**ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If a Contractor's Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for procurement of Services, including

procurement and administrative costs; and,

- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

**ARTICLE 27. COMPLIANCE WITH FEDERAL STANDARDS**

All items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), the Environmental Protection Agency, and the National Fire Protection Association (NFPA).

**ARTICLE 28. LABOR, MATERIALS, AND EQUIPMENT SHALL BE SUPPLIED BY THE CONTRACTOR**

The Contractor shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in this Agreement, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and reasonable approval of the County's Project Manager.

**ARTICLE 29. Not Applicable**

**ARTICLE 30. ADMINISTRATIVE CHARGES**

The Contract Manager may levy charges for infractions of this Agreement at the amounts listed below per day, per incident:

1. Failure to maintain Hours of Operation to accept Incoming Materials as stipulated in the Agreement - \$2,500.
2. Failure to provide documents and reports in a timely and accurate manner - \$250.00.

**Payment of Administrative Charges by Contractor**

The Project Manager will notify the Contractor in writing of the County's intent to apply Administrative Charges as stated in this Article 30 and will attach an invoice for payment to the County. Failure to pay Administrative Charges as stated herein shall be a cause for default.

**Contractor's Right to Contest Administrative Charges**

In the event the Contractor wishes to contest such Administrative Charge, it shall, within ten calendar days after receiving such notice, request in writing an opportunity to be heard by the Project Manager and present its explanation and any basis on which the Contractor believes any recorded failure to perform within the standards of this Agreement is inaccurate. The Project Manager shall notify the Contractor in writing of any action taken with respect to the Contractor's claim. Contractor may further appeal, in writing, the decision of the Project Manager, to the Director of the Department. Contractor may further appeal the decision of the Director of the Department, through the Director of the Department, to the County Manager, and the decision of the County Manager will be final.

**ARTICLE 31. BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the

Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**ARTICLE 32. INSPECTOR GENERAL REVIEWS**  
**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

**ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

**ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

**ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

- ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

**ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

**ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

This provision shall not apply to PHI which may be included in Incoming Material.

**ARTICLE 40. Not applicable**

**ARTICLE 41. COUNTY'S PROJECT MANAGER**

The County shall appoint a Project Manager who shall be the primary representative of the County for purposes of administering this contract. The County shall also appoint a Deputy Project Manager to act for the Project Manager in her or his absence.

**ARTICLE 42. 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.

**ARTICLE 43. LEGAL REQUIREMENT FOR POLLUTION CONTROL**

It is the intent of this Agreement to comply with the Miami-Dade County Pollution Control Ordinance as stated in Chapter 24 of the Miami-Dade Code. This Ordinance is made a part of these specifications by reference and may be obtained, if necessary, by the Contractor through the Department of Environmental Resources Management (DERM), 33 SW 2nd Ave., Miami, Florida, 33130, Telephone (305) 372-6789.

**ARTICLE 44. SEVERABILITY**

Certain provisions of this Agreement are vital to the relationship of the Contractor and the County. Should any material word, sentence, phrase, or other provision of these sections

of the Agreement be stricken by a court of competent jurisdiction, or the occurrence of any court rendering any provision of the Agreement void, the County shall have the right to terminate this Agreement.

For any other provisions of the Agreement, 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 such 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. As to these other provisions, 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.

**ARTICLE 45. FORCE MAJEURE**

Neither party shall be liable in any event that results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions that prevent the Contractor from performing for a finite period of time. Labor dispute, including strikes and slowdowns, is not a Force Majeure.

**ARTICLE 46. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: John Casagrande

By: \_\_\_\_\_

Name: John Casagrande

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

Title: Vice President

Title: \_\_\_\_\_

Date: 10/8/07

Date: \_\_\_\_\_

Attest: Susan Christa Johnson  
Corporate Secretary/Notary Public

Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form  
and legal sufficiency



SUSAN CHRISTA JOHNSON  
MY COMMISSION # DD 477049  
EXPIRES: January 29, 2010  
Bonded Thru Budget Notary Services

\_\_\_\_\_  
Assistant County Attorney

## APPENDIX A

### 1.0 REQUIREMENTS AND SERVICES TO BE PROVIDED

The Contractor shall provide access to its Material Recycling Center ("MRF") and/or Transfer Stations (collectively, "Designated Facilities") and the County shall deliver or cause to deliver and the Contractor shall accept all Incoming Materials from the County and the County's third party curbside recycling collection and hauling contractor (Third Party Contractor). The Contractor is responsible for all Incoming Materials accepted on behalf of the County as further detailed herein. The Contractor shall assist the County in its education and promotions program by providing recommendations and participating in establishing the program. The Contractor shall make its outreach program available as detailed below.

#### A. Objective

Subject to the provisions of this Agreement the Contractor's objectives include acceptance of all Incoming Materials. A list of recyclable material is stated on Attachment 1 of this Appendix A. The Contractor shall provide sufficient space for accepting incoming materials to handle the County account. The Contractor's Designated Facilities shall be capable of accepting single stream Incoming Material wherein all Incoming Materials are mixed together and does not need to be separated for acceptance.

#### B. Drop-off Centers

The four transfer/recycling stations are as follows: (1) Hialeah Transfer Station 5000 NW 37th Ave., Hialeah, FL); (2) Davie Delta Recycling (3250 Fields Road, Davie, FL); (3) - Delta Recycling Homestead (11695 SW 328th St., Homestead, FL); and, (4) Reuter Recycling - (Southwest Broward – 20701 Pembroke Road, Pembroke Pines, FL). The Transfer Station and the Recycling centers shall have a sufficient number of containers/space and shall be capable of accepting the amount of recyclable material the County generates at all times (currently at 35,000 tons per year) and be open during all Hours of Operation as stated below and have a sufficient number of capable personnel and a fully operational scale house. The Contractor shall meet and stay current with all standards and methodologies required and being utilized in the industry.

The Contractor shall present a Weight Ticket to the driver delivering recyclables with a follow up copy to the County. The Hours of Operation for the Designated Facilities are Monday thru Friday from 7am to 6pm. Additionally, Hialeah ("1" above) is open on Saturday from 5 am to 12 noon; Davie ("2" above) is open on Saturday from 6 am to 1 pm; Homestead ("3" above) is open on Saturday from 7 am to 11 am; and Reuters ("4" above) is open on Saturday from 7:30 am to 1 pm. The Hours of Operation can change only with the County's written approval.

#### C. Acceptance of Incoming Materials

The Contractor shall accept all Incoming Material delivered by the County or the County's Third Party Contractor. In any disputes with the Third Party Contractor pertaining to the incoming material delivered to the Designated Facility, the Contractor shall directly handle such disputes. The Contractor shall contact the County's Project

Manager only when all reasonable possibilities of a resolution are exhausted.

In the instance that the Contractor delivers Rejects and Residue to a County landfill facility, the County will only accept up to five percent of the Incoming Materials as a rejects and residue allowance on a monthly period. Any Rejects and Residue tonnage above the five percent will be charged at the County's then current tipping fee.

### **Deliverables/Reports**

The Contractor shall provide Documents and Reports in the format requested by the Project Manager and such Documents and Reports shall be delivered to the County in an accurate manner. All reports are due to the County within ten (10) days of the last day of the cycle for which the Document/Report is due (monthly or annually). The County shall have final approval authority for all documentation and reports.

1. Monthly Performance Reports

Provide monthly performance reports.

2. Quarterly Performance Report

a. "Happy Sheet" as stated in Contractor's proposal.

2. Annual State of Recycling Reports

Provide annual reports of the ongoing state, performance, and evolving trend of recycling in the County's service area and the recycling industry in general. This annual "State of Recycling" report must include, but is not limited to:

- a. Collection and recovery volumes by material type.
- b. Green initiatives, pollution and environmental protection actions undertaken
- c. Use of subcontractors, if any.
- d. Issues for discussions with the County.
- e. Market conditions and factors impacting recycled materials.
- f. Company audits and financial condition.
- g. Status of Material Recovery Facilities and/or other designated facility.
- h. Status of Contractor's attempt to provide Additional Services as stated in paragraph G, below.

### **D. Permits and Licenses**

The Contractor shall possess the necessary licenses required to meet Local, State, and Federal requirements for providing such service in Miami-Dade County, prior to beginning Services.

### **E. Outreach Services**

The Contractor shall make available its Education Center at Reuter Recycling to County Staff, non-profit organizations, schools and other civic groups with an interest in recycling and environmental issues. The County shall give the Contractor at least 36 hours notice prior to attendance. The Contractor shall allow up to three such visits per

week. The class size shall not exceed 20 persons. The Contractor shall provide updates to this program as it continues to develop and shall provide information about the Program for the County's use.

#### **F. Transition**

The Contractor understands and agrees that the County will undergo a transition from the current dual stream process to the single stream process based on the schedule to be provided to the Contractor within thirty (30) days of Contract Execution. During the Transition Period, the Contractor will receive only Incoming Material that is collected in the areas that have been converted to the single stream process. Once rolling carts are in place in a particular area (as defined in Transition Plan), the County and/or the third Party Contractor shall haul all Incoming Material from that particular area to the Designated Facilities.

#### **G. Additional Services**

The Contractor shall develop programs that will accept household batteries, fluorescent light bulbs, sharps, and inkjet cartridges to be recycled within thirty (30) days of the Effective Date of this Agreement. The Contractor shall provide to the County a draft version of these plans within forty-five (45) days after Contract Execution. Such programs shall be implemented by the Contractor within ninety (90) days after written acceptance by the County.

Notwithstanding the requirements stated above, and in addition to the "Additional Recycling Efforts or Services" as stated in item 5d on page 5-2, and in Section 12 "Additional Benefits Partnering with Waste Management" of the Contractor's Proposal and anywhere else in the Contractor's Proposals, Contractor shall submit proposals/ideas with respect to any additional services herein. The Contractor may enter into partnerships to perform the Services.

1. Implementing an easy-to-use drop-off program,
2. Cultivating a vibrant commercial recycling industry
3. Processing clean yard trash into mulch
4. Increasing multi-residential recycling
5. Service level alternatives in low density areas
6. Construction Demolition and Debris.

#### **1. Implementing an easy-to-use drop-off program**

In many communities, residents can bring recyclable materials to neighborhood drop-off centers at no charge. In Miami-Dade County, used white goods are accepted at neighborhood Trash and Recycling Centers across the County.

To achieve the County's recycling goals, the Contractor may submit a proposal to implement a drop-box program to include one or more of the following, keeping in mind that one or more recyclable material types can be collected:

- County Trash and Recycling Centers
- County government buildings
- County parks
- County events
- High density commercial areas
- Partnerships with commercial establishments
- Partnerships with schools, community groups, or non-profits.

2. Cultivating a vibrant commercial recycling industry

The majority of countywide recycling is performed by the commercial sector. Other communities foster commercial efforts to increase recycling; also keeping in mind that one or more of recyclable materials can be collected. While it is not the intention of the County to replace any commercial accounts, the Contractor should submit a proposal to address increasing this commercial sector recycling in the following, or additional, ways: offering recyclable collection services to office complexes, commerce centers, or shopping centers.

3. Processing clean yard trash into mulch

Processing clean yard trash into mulch is considered recycling by State legislation. The Contractor shall provide reports advising its efforts in collecting and processing yard waste into mulch and offering a component of this mulch to residents.

4. Increasing multi-residential recycling

County legislation (County Code Chapter 15) requires that multi-residential units contract with licensed haulers to recycle newspaper, glass, aluminum cans, steel cans, and plastics. Although County enforcement efforts are limited, offering collection services at competitive rates may increase participation and overall recycling levels. The Contractor shall continually monitor this alternative and provide reports on its efforts to the County.

5. Construction Demolition and Debris

Contractor shall address how it would be able to handle construction demolition and debris.

The County's intention through the Educational and Promotional Program is to increase recycling efforts in the County. The Contractor shall continuously review the Additional Services areas as listed above to provide opportunities for the County to expand its Recycling Program.

## Attachment 1 to Appendix A

Designated Facilities:

The four transfer/recycling stations (Designated Facility) are as follows:

- (1) Hialeah Transfer Station 5000 NW 37<sup>th</sup> Ave., Hialeah, FL)
- (2) Davie Delta Recycling (3250 Fields Road, Davie, FL)
- (3) – Delta Recycling Homestead (11695 SW 328<sup>th</sup> St., Homestead, FL); and,
- (4) Reuter Recycling – (Southwest Broward – 20701 Pembroke Road, Pembroke Pines, FL).

The County reserves the right to change these locations and if it does the County will advise the Contractor as soon as reasonably possible.

Transition Plan

The Transition Plan shall contain at a minimum the following schedule of events:

	New Vehicles in Service	Processing Sites Available
Approval		
Week 1		
Week 2		
Week 3		
Week 4		
Week 5		
Week 6		
Week 7		
Week 8		
Week 9		
Week 10		
Week 11		
Week 12		
Week 13		
Week 14	2	
Week 15	2	All Available
Week 16	2	
Week 17	2	
Week 18	2	
Week 19	2	
Week 20	2	
Week 21	2	
Week 22	2	
Week 23	2	
Week 24	2	
Week 25	2	
Week 26	1	
	<b>25</b>	

## Attachment 2 to Appendix A

### List of Recyclable Materials

#### Recyclable Materials:

- Aluminum food and beverage containers
- Glass food and beverage containers - brown, clear, or green
- Ferrous (Iron) cans
- PET plastic containers with the symbol #1 - narrow neck containers only
- HDPE natural plastic containers with the symbol #2 - narrow neck containers only (milk and water bottles)
- HDPE pigmented plastic containers with the symbol #2 - narrow neck containers only (detergent, shampoo, bleach bottles, etc. without caps)
- Aseptic containers (gable top cartons)
- Plastics with symbols #3, #4, #5, #6, #7-narrow and screw top containers
- Mixed Residential Paper - Mixed residential paper consists of a mixture of various qualities of paper not limited as to type of fiber content - acceptable fibers include:
  - Newsprint
  - Old corrugated cardboard
  - Magazines
  - Catalogs
  - Cereal boxes
  - Telephone books
  - Printer Paper
  - Copier Paper
  - Mail
  - All other office paper without wax liners

The County will provide all reasonable efforts in providing the information stated below to all Households as part of its Communications Program:

All glass containers and cans must be empty and free of metal caps and rings and contain less than 5% food debris.

All Aerosol cans must have less than 5% content.

All plastic containers must be empty, have their caps removed and contain less than 5% food debris.

All fiber must be dry and free of food debris or other contamination.

Rejects:

Rejects are all materials not listed above and also include, but are not limited to:

Excluded Materials will include, as may be amended, the following:

- Lead Acid Batteries
- Dry Cell Batteries<sup>1</sup>
- Microwave trays
- Mirrors
- Window or Auto Glass
- Light Bulbs<sup>1</sup>
- Ceramics
- Porcelain
- Unnumbered Plastics
- Plastic Bags
- Coat Hangers
- Glass Cookware or Bakeware
- Household items such as cooking pots, toasters, etc.

<sup>1</sup> these items shall be handled under separate Program provided by the Contractor, as stated in this Agreement.

**Submit Bid To:**  
**CLERK OF THE BOARD**  
Stephen P. Clark Center  
111 NW 1<sup>st</sup> Street  
17<sup>th</sup> Floor, Suite 202  
Miami, Florida 33128-1983



**OPENING: 2:00 P.M.**  
**WEDNESDAY**  
**October 3, 2007**

**INVITATION TO BID**  
**SECTION 4.0**  
**BID SUBMITTAL FORM**

PLEASE QUOTE PRICES F.O.B. DESTINATION, LESS TAXES, DELIVERED IN  
MIAMI-DADE COUNTY, FLORIDA

NOTE: Miami-Dade County is exempt from all taxes (Federal, State and Local). Bid price should be less all taxes. Tax Exemption Certificate furnished upon request.

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Issued by: DPM Date Issued: September 25, 2007 This Bid Submittal Consists  
AZ of Pages 20 through 23

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Sealed bids subject to the Terms and Conditions of this Invitation to Bid and the accompanying Bid Submittal. Such other contract provisions, specifications, drawings or other data as are attached or incorporated by reference in the Bid Submittal, will be received at the office of the Clerk of the Board at the address shown above until the above stated time and date, and at that time, publicly opened for furnishing the supplies or services described in the accompanying Bid Submittal Requirement.

**RECYCLING CONTAINERS FOR AUTOMATED RECYCLING  
COLLECTION FOR A ONE YEAR PERIOD.**

A Bid Deposit in the amount of N/A of the total amount of the bid shall accompany all bids

A Performance Bond in the amount of N/A of the total amount of the bid will be required upon execution of the contract by the successful bidder and Miami-Dade County

<b>DO NOT WRITE IN THIS SPACE</b>	
ACCEPTED _____	HIGHER THAN LOW _____
NON-RESPONSIVE _____	UNRESPONSIBLE _____
DATE B.C.C. _____	NO BID _____
ITEM NOS. ACCEPTED _____	
COMMODITY CODE: 450-65 450-34	
Andrew Zawoyski	*****

FIRM NAME: Toter Incorporated



**RETURN ONE ORIGINAL AND TWO COPIES OF BID SUBMITTAL PAGES AND  
AFFIDAVITS**

**FAILURE TO COMPLETE THE CERTIFICATION REGARDING LOCAL  
PREFERENCE ON PAGE 23 OF SECTION 4, BID SUBMITTAL FORM SHALL  
RENDER THE VENDOR INELIGIBLE FOR LOCAL PREFERENCE**

**FAILURE TO SIGN PAGE 23 OF SECTION 4, BID SUBMITTAL FORM, WILL  
RENDER YOUR BID NON-RESPONSIVE**

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**BID SUBMITTAL FOR:  
RECYCLING CONTAINERS**

FIRM NAME: Toter Incorporated

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
Total Estimated Usage				
1.	5,000 ea	35 gallon carts	\$ <u>35.48*</u> ea	\$ <u>177,400.00</u>
Percent recycled resin used in carts <u>0% to 50</u> % based on availability from supplier and color of carts.				
1b.	5,000 ea	Assembly and distribution cost per cart	\$ <u>3.50**</u> ea	\$ <u>17,500.00</u>
2.	350,000 ea	65 gallon carts	\$ <u>40.65*</u> ea	\$ <u>14,227,500.00</u>
Percent recycled resin used in carts <u>0% to 50</u> % based on availability from supplier and color of carts.				
2b.	350,000 ea	Assembly and distribution cost per cart	\$ <u>3.50**</u> ea	\$ <u>1,225,000.00</u>
3.	5,000 ea	96 gallon carts	\$ <u>49.91*</u> ea	\$ <u>249,550.00</u>
Percent recycled resin used in carts <u>0% to 50</u> % based on availability from supplier and color of carts.				
3b.	5,000 ea	Assembly and distribution cost per cart	\$ <u>3.50**</u> ea	\$ <u>17,500.00</u>
EXTENDED TOTAL				\$ <u>15,914,450.00</u>

Spare parts at 25% % off of the current published manufacturer's parts list.

In any dispute with the numbers the unit price shall prevail.

Please see notes on next page entitled, "Notes to Bid Submittal". Notes apply to both cart and assembly and distribution pricing stated above and marked with "\*" and "\*\*".

PPC CONTRACTOR AMOUNTS FOR ALL THREE SIZE CARTS ARE REDUCED BY .25 per CART.

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**NOTES TO BID SUBMITTAL**  
**for "Recycling Containers – Bid No.: 8513-0/08"**

- \* Add \$1.00 per cart for optional "Quiet Cap" snap-on wheels.
- \* Deduct \$0.90 per cart for optional Standard Sunburst Wheels with Pal Nut Wheel Attachment. This deduction represents significant savings for the City, considering that assembly of all ordered carts will be accomplished by Toter's subcontractor.
- \* Add \$1.25 per cart for Special Granite color body with solid Black lid.
  
- \*\* Assembly and Distribution pricing includes unloading, assembly of carts and distribution to households. Delivery crews will attach a plastic bag with Toter's "Safe Use and Care" brochure upon request, plus City-provided printed information.

BID SUBMITTAL FOR:  
RECYCLING CONTAINERS  
ACKNOWLEDGEMENT OF ADDENDA

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

PART I:

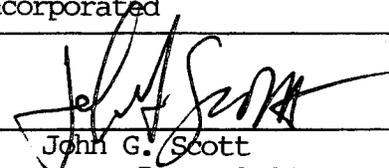
LIST BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS BID

- Addendum #1, Dated September 28, 2007
- Addendum #2, Dated \_\_\_\_\_
- Addendum #3, Dated \_\_\_\_\_
- Addendum #4, Dated \_\_\_\_\_
- Addendum #5, Dated \_\_\_\_\_
- Addendum #6, Dated \_\_\_\_\_
- Addendum #7, Dated \_\_\_\_\_
- Addendum #8, Dated \_\_\_\_\_
- Addendum #9, Dated \_\_\_\_\_

PART II:

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS BID

FIRM NAME: Toter Incorporated

AUTHORIZED SIGNATURE:  DATE: October 1, 2007

TITLE OF OFFICER: John G. Scott  
Pres. & CEO

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BID SUBMITTAL FORM

Bid Title: Recycling Carts

By signing this Bid Submittal Form the Bidder certifies that it satisfies all legal requirements (as an entity) to do business with the County, including all Conflict of Interest and Code of Ethics provisions in Section 2-11 of the Miami-Dade County Code. Any County employee or member of his or her immediate family seeking to contract with the County shall seek a conflict of interest opinion from the Miami-Dade County Ethics Commission prior to submittal of a Bid response or application of any type to contract with the County by the employee or his or her immediate family and file a copy of that request for opinion and any opinion or waiver from the Board of County Commissioners with the Clerk of the Board. The affected employee shall file with the Clerk of the Board a statement in a form satisfactory to the Clerk disclosing the employee's interest or the interest of his or her immediate family in the proposed contract and the nature of the intended contract at the same time as or before submitting a Bid, response, or application of any type to contract with the County. Also a copy of the request for a conflict of interest opinion from the Ethics Commission and any corresponding opinion, or any waiver issued by the Board of County Commissioners, must be submitted with the response to the solicitation.

In accordance with Sec. 2-11.1(s) of the County Code as amended, prior to conducting any lobbying regarding this solicitation, the Bidder must file the appropriate form with the Clerk of the Board stating that a particular lobbyist is authorized to represent the Bidder. Failure to file the appropriate form in relation to each solicitation may be considered as evidence that the Bidder is not a responsible contractor.

The Bidder confirms that this Bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Bid for the same goods and/or services and in all respects is without collusion, and that the Bidder will accept any resultant award. Further, the undersigned acknowledges that award of a contract is contingent upon vendor registration. Failure to register as a vendor within the specified time may result in your firm not being considered for award.

Pursuant to Miami-Dade County Ordinance 94-34, any individual, corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten (10) years shall disclose this information prior to entering into a contract with or receiving funding from the County.

Place a check mark here only if bidder has such conviction to disclose to comply with this requirement.

COUNTY USER ACCESS PROGRAM (UAP): Joint purchase and entity revenue sharing program

For the County's information, the bidder is requested to indicate, at 'A' and 'B' below, its general interest in participating in the Joint Purchase Program of the County User Access Program (UAP) described in Section 2.21 of this contract solicitation, if that section is present in this solicitation document. Vendor participation in the Joint Purchase portion of the UAP is voluntary, and the bidder's expression of general interest at 'A' and 'B' below is for the County's information only and shall not be binding on the bidder.

- A. If awarded this County contract, would you be interested in participating in the Joint Purchase portion of the UAP with respect to other governmental, quasi-governmental or not-for-profit entities located within the geographical boundaries of Miami-Dade County? Yes [X] No
and
B. If awarded this County contract, would you be interested in participating in the Joint Purchase portion of the UAP with respect to other governmental, quasi-governmental or not-for-profit entities located outside the geographical boundaries of Miami-Dade County? Yes [X] No

LOCAL PREFERENCE CERTIFICATION: The responding vendor hereby attests, by checking one of the following blocks, that it is [ ] or is not [ ], a local business. For the purpose of this certification, a "local business" is a business located within the limits of Miami-Dade County (or Broward County in accordance with the Interlocal Agreement between the two counties) that conforms with the provisions of Section 1.10 of the General Terms and Conditions of this solicitation and contributes to the economic development of the community in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities and the support and increase to the County's tax base. Failure to complete this certification at this time (by checking the appropriate box above) shall render the vendor ineligible for Local Preference.

Firm Name: Toter Incorporated

Street Address: 841 Meacham Road, Statesville, NC 28677

Mailing Address (if different): same as above

Telephone No. 704-872-8171 or 800-424-0422 Fax No. 704-878-0734

Email Address: kclark@toter.com FEIN No. 5/61/3/6/2/4/22

Prompt Payment Terms: 0% 30 days net 30 days (Please see paragraph 1.2 H of General Terms and Conditions) \*By signing this document the bidder agrees to all Terms and Conditions of this Solicitation and the resulting Contract\*

Signature: [Handwritten Signature] (Signature of authorized agent)

Print Name: John G. Scott Title: President and CEO

Failure to sign this page shall render your Bid non-responsive.

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Miami Dade Solid Waste Management  
Recycling  
Field Service Repair Cart Form

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Cart # \_\_\_\_\_

Cart Size: 35 \_\_\_\_\_; 64 \_\_\_\_\_; 96 \_\_\_\_\_

Time: \_\_\_\_\_

Check Check following items:

1. Defective Cart

7. Citizen Negligence

2. Wheels//Pins

8. Driver Negligence

3. Lid

9. Handle Broken

4. Bar

10. Cart Cracked

5. Axle

11. Stolen Cart Yes  No

6. Cart Replaced Yes  No

Case # \_\_\_\_\_

New Cart # \_\_\_\_\_

12. Additional Cart/Number \_\_\_\_\_

13. Other

Work Performed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Work Performed By: \_\_\_\_\_ Chief Signature \_\_\_\_\_

Print

\_\_\_\_\_  
Signature/Date

Supervisor Signature: \_\_\_\_\_

Work Order # \_\_\_\_\_



# **APPENDIX**

## **AFFIDAVITS FORMAL BIDS**

**MIAMI-DADE COUNTY BID AFFIDAVITS**

▪ **DISABILITY NONDISCRIMINATION AFFIDAVIT**  
(Resolution R-385-95)

I, being duly first sworn, state that this firm, corporation, or organization is in compliance with and agrees to continue to comply with, and assure that any subcontractor, or third party contractor under this contract complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

The Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 U.S.C. Sections 225 and 611 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private Entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.

The Rehabilitation Act of 1973, 29 U.S.C. Section 794

The Federal Transit Act, as amended 49 U.S.C. Section 1612

The Fair Housing Act as amended, 42 U.S.C. Section 3601-3631

▪ **MIAMI-DADE COUNTY DEBARMENT DISCLOSURE AFFIDAVIT**  
(Ordinance 93-129) See Section 1 (1.3H)

I, being duly first sworn, upon oath deposes and says that the bidder of this contract or his agents, officers, principals, stockholders, subcontractors or their affiliates are not debarred by Miami-Dade County.

▪ **MIAMI-DADE COUNTY COLLECTION OF TAXES,  
FEES AND PARKING TICKETS AFFIDAVIT**  
(Ordinance 95-178) Section 1 (1.3 E)

I, being first duly sworn state that in compliance with the procedures contained in Section 2-8.1(c) of the Code of Miami-Dade County, and as amended by Ordinance 95-178, this firm hereby certifies that the foregoing statements are true and correct.

That all delinquent and currently due fees or taxes (including, but not limited to, real and personal property taxes, convention and tourist development taxes, utility taxes, and occupational license taxes) collected in the normal course by the Miami-Dade County Tax Collector and County issued parking tickets for vehicles registered in the name of the above firm, have been paid.

▪ **AFFIDAVIT RELATING TO INDIVIDUALS AND ENTITIES  
ATTESTING BEING CURRENT IN THEIR OBLIGATIONS TO  
MIAMI-DADE COUNTY** (Ordinance 99-162) See Section 1 (1.3 N)

I, being first duly sworn state that in compliance with County Ordinance 99-162, the bidder is not in arrears in any payment under a contract, promissory note or other loan document with the County, or any of its agencies or instrumentalities, including the Public Health Trust (hereinafter referred to as "County"), either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of the County Code.

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**AFFIRMATIVE ACTION PLAN/PROCUREMENT POLICY AFFIDAVIT**  
(Code of Miami-Dade County Section 2-8.1.5) (Ordinance No. 98-30)

I, being duly first sworn, hereby state that the bidder of this contract:

- has a current Affirmative Action Plan and Procurement Policy, as required by Section 2-8.1.5 of the Code of Miami-Dade County, processed and approved for filing with the Miami-Dade County Department of Business Development (DBD) under the file No. 5710 and the expiration date of October 31, 2007. Please note that Toter has already filed to renew this status (mailed 9-27-07).
- had annual gross revenues in excess of \$5,000,000.00 for the previous year and does not have a current Affirmative Action Plan and Procurement Policy as required by Section 2-8.1.5 of the Code of Miami-Dade County, processed and approved for filing with the Miami-Dade County DBD. I will contact DBD at 305-375-3111 regarding this requirement.
- had annual gross revenues less than \$5,000,000.00 for the previous year, therefore Section 2-8.1.5 of the Code of Miami-Dade County is not applicable. However, I will contact DBD at 305-375-3111 in order to submit the required affidavit and exemption request.

Witness: Kellie K. Clark  
Signature

[Signature]  
Signature

Witness: Ray W. Sutton  
Signature

By: John G. Scott, Pres. & CEO  
Legal Name and Title

The foregoing instrument was acknowledged before me this 1st day of October, 20 07

**FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:**

By: not applicable

**FOR A CORPORATION, PARTNERSHIP OR JOINT VENTURE:**

By: Jeff Gilliam having the title of Asst. Secretary  
with Toter Incorporated

a C corporation       partnership       joint venture

**PLEASE NOTE:**

Section 2-10.4(4)(a) of the Code of Miami-Dade County (Ordinance No. 82-37) requires that all properly licensed architectural, engineering, landscape architectural, and land surveyors have an affirmative action plan on file with the County.

Section 2-8.1.5 of the Code of Miami-Dade County requires that firms that have annual gross revenues in excess of five (5) million dollars have an affirmative action plan and procurement policy on file with the County. Firms that have a Board of Directors that are representative of the population make-up of the nation may be exempt.

For questions regarding these requirements, please contact the Miami-Dade County Department of Business Development at 305-375-3111.

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CODE OF BUSINESS ETHICS

Code of Miami-Dade County Section 2-8.1(i)

I, being duly sworn, hereby state and certify that this firm has adopted a Code of Business Ethics that is fully complaint with the requirements of Section 2-8.1(i) of the Code of Miami-Dade County as amended. I further acknowledge that failure to comply with the adopted Code of Business Ethics shall render any contract with Miami-Dade County voidable, and subject this firm to debarment from County work pursuant to Section 10-38(h)(2) of the Code of Miami-Dade County as amended. I further acknowledge that failure to submit this affidavit shall render this firm ineligible for contract award.

By: [Signature] Signature of Affiant
October 1, 20 07
Date

John G. Scott, Pres. & CEO
Printed Name of Affiant and Title
5 / 6 - 1 / 3 / 6 / 2 / 4 / 2 / 2 /
Federal Employer Identification Number

Toter Incorporated
Printed Name of Firm
841 Meacham Road, Statesville, NC 28677
Address of Firm

SUBSCRIBED AND SWORN TO (or affirmed) before me this 1st day of Oct., 20 07

He/She is personally known to me or has presented personally known as identification.
Type of identification

[Signature] Signature of Notary
not applicable
Serial Number

Laura Parker Gates
Print or Stamp Name of Notary
06/30/2012
Expiration Date

Notary Public - State of North Carolina



Notary Seal

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**FAIR SUBCONTRACTING PRACTICES**  
(Ordinance 97-35)

**In compliance with Miami-Dade County Ordinance 97-35, the Bidder shall submit with the bid proposal a detailed statement of its policies and procedures (use separate sheet if necessary) for awarding subcontractors in accordance with Section 1, Paragraph 1.15**

Toter has subcontractors for Assembly and Distribution that we use  
throughout the United States and Canada for various Assembly and  
Distribution projects. The company that Toter subcontracts with is  
selected based on the size of the contract, A&D subcontractor  
capabilities, amount of equipment and availability at the time of  
project execution. On the next page, we have listed possible  
subcontractors for the Miami-Dade County project. Toter will manage  
any Assembly and Distribution Sub-Contractor. The actual subcontractor(s)  
will be identified prior to project execution and submitted to the City  
for approval.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NO SUBCONTRACTORS WILL BE UTILIZED FOR THIS CONTRACT**



Signature

John G. Scott  
Pres. & CEO

October 1, 2007  
Date

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SUBCONTRACTOR/SUPPLIER LISTING

(Ordinance 97-104)  
Toter Incorporated

Firm Name of Prime Contractor/Respondent:

Bid No.: 8513-0/08 Title: Recycling Containers

This form, or a comparable listing meeting the requirements of Ordinance No. 97-104 MUST be completed, signed and submitted by all bidders and respondents on County contracts for purchases of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all bidders and respondents on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. A bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified, except upon written approval of the County.  
This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, MUST be completed, signed and submitted even though the bidder or proposer will not utilize subcontractors or suppliers on the contract. The bidder or proposer should enter the word "NONE" under the appropriate heading of sub form 100 in those instances where no subcontractors or suppliers will be used on the contract.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	(Principal Owner) Race
Cart Men, 730 S.G. Barker Road, Nauvoo, AL 35578	Carey Barker	Assembly & Distribution	M	W
Universal Refuse Delivery Service, 12188 Central Ave., Ste. 262, Chino, CA 91710-2420	Priscilla Ponce	Assembly & Distribution	F	Hispanic
James Smyre, 801 Eastside Dr., Statesville, NC 28625	James Smyre	Assembly & Distribution	M	B
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	(Principal Owner) Race
NONE				

I certify that the representations contained in this Subcontractor/Supplier Listing are to the best of my knowledge true and accurate

John G. Scott, Pres. & CEO Print Name  
 Pres. & CEO Print Title  
 10/1/07 Date  
 FORM 100  
 (Duplicate if additional space is needed)

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**MIAMI-DADE COUNTY  
 CERTIFICATION OF RECYCLED  
 ENVIRONMENTALLY ACCEPTABLE PACKAGING  
 PRODUCT CONTENT  
 RESOLUTION (R-738-92)**



MINIMUM CERTIFIED CONTENT						
Bid Item Number	RECYCLED PRODUCTS		RECOVERED MATERIALS		RECYCABLE PRODUCTS	
	% Composition	Type of Material	% Composition	Type of Material	% Composition	Type of Material
8513-0/08	10%	corrugated wooden pallet	N/A	N/A	100%	corrugated wooden pallet
<b>DEFINITIONS</b>						

“Recycled Material” shall be defined as any waste material or by-products that have been recovered or diverted from solid waste.

“Recycled Product” shall be defined as any product which is in whole or in part composed of recovered materials.

“Recyclable Product” shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.

“Waste Reducing Product” shall be defined as any product which will result in less waste generated due to its use rather than another product designed to serve the same function with a greater waste generation rate. This shall include, but not limited to those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

I have the knowledge to certify and do so by certify that the Minimum Materials Content in our product(s) are as specified on this form and conform with the definitions as shown above.

<b>NAME</b> Toter Incorporated		
<b>ADDRESS</b> 841 Meacham Road		
<b>CITY</b> Statesville	<b>STATE</b> NC	<b>ZIP</b> 28677
<b>SIGNATURE</b> 		<b>TITLE</b> Pres. & CEO

John G. Scott