

RESIDENTIAL SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION
FRANCHISE AGREEMENT

(Service Area 1)

THIS RESIDENTIAL SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION FRANCHISE AGREEMENT (“Agreement”) is made and entered into this 6th day of December, 2016 by and between Polk County, Florida (“County”), a political subdivision of the State of Florida, and Fomento de Construcciones y Contratas, S.A. (“Contractor”).

R E C I T A L S

WHEREAS, in conjunction with its adoption of County Ordinance 13-069 the County’s Board of County Commissioners determined that regulating the collection and disposal of Solid Waste generated within the unincorporated areas of Polk County promotes the health, safety, and welfare of the citizens of Polk County; and

WHEREAS, pursuant to Section 125.01, Florida Statutes, and the Ordinance, the County may award franchises for the collection of Residential Solid Waste and Recyclable Materials generated on Assessed Parcels located within Polk County and its transportation for disposal at a Designated Facility; and

WHEREAS, the County has determined the most efficient and cost effective method of maintaining the cleanliness of the unincorporated areas of Polk County and its citizens’ health, safety, and welfare is to provide owners and occupants of residential real property within these areas reliable Curbside Residential Collection Services; and

WHEREAS, reliable Curbside Residential Collection Services is a key element of the County’s objective to promote citizens’ health, safety, and welfare by establishing clean communities throughout the unincorporated areas of Polk County; and

WHEREAS, in accordance with the Ordinance the County solicited proposals for providing such Residential Collection Services via an advertised request for proposals (RFP 16-366), the terms of which are incorporated herein by this reference; and

WHEREAS, the Contractor submitted a proposal, which is incorporated herein by this reference, to the County in response to RFP 16-366; and

WHEREAS, after review and consideration of all responsive proposals received to RFP 16-366, the County intends to engage the Contractor to provide Residential Collection Service within Service Area 1 in accordance with the terms and conditions of this Agreement, RFP 16-366, and the Contractor’s responsive proposal thereto; and

WHEREAS, the Contractor remains agreeable to providing Residential Collection Service within the designated Service Area and represents that it is competent, qualified, capable and prepared to do so according to the terms and conditions stated herein;

NOW, THEREFORE, in consideration of the mutual promises, and covenants stated herein, the County and the Contractor hereby agree as follows:

1. **Recitals and Exhibits**. The recitals stated above are true, correct and incorporated herein by this reference. Exhibits “A” through “H” attached hereto are also incorporated into and made a part of the Agreement.
2. **Definitions**. The definitions contained in this Section 2 shall apply to the following terms and phrases used in this Agreement unless otherwise specifically stated herein. If a capitalized word or phrase is used, but not defined in the Agreement, then the applicable word or phrase shall be defined as stated in the Ordinance. If the Agreement defines a word or phrase in a manner that conflicts with how it is defined in any federal, state or local law, then the definition stated in this Agreement shall apply.
 - a. **Administrator** shall mean the Person or designee appointed as the public official responsible for the administration of this Agreement by the County.
 - b. **Advertising** shall mean any written communication for the purpose of promoting a product or service. The Contractor’s name and telephone number, and other information provided in the manner specified in this Agreement are not Advertising.
 - c. **Affiliate** shall mean (i) any Person who, directly or indirectly, alone or through one or more subsidiaries, controls, is controlled by, or who is under common control with another Person; (ii) any Person owning, holding, or controlling, directly or indirectly, ten percent (10%) or more of the outstanding voting interest or voting securities of another Person; (iii) any Person, ten percent (10%) or more of whose outstanding voting interests are directly or indirectly owned, controlled, or held with power to vote, by another Person; and (iv) any officer, director, shareholder, partner, copartner, trustee, manager, member or managing member, not an institutional investor, of any Person described in (i), (ii) and (iii), above.
 - d. **Agreement** shall mean this Residential Solid Waste and Recyclable Materials Collection Franchise Agreement.
 - e. **Agreement Year** shall mean twelve (12) consecutive months, beginning on October 1, 2017 and continuing through September 30, 2018, and each twelve (12) month period thereafter, during the Term of the Agreement.
 - f. **Annual Assessment Roll** shall mean the Annual Residential Waste Program Services Assessment Roll defined in the Ordinance which is a list adopted by the Commission for a specific fiscal year that identifies all the Assessment Property that, among other services, will receive the Residential Collection Service described herein.
 - g. **Applicable Law** shall mean any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy,

standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the Term of this Agreement, and relate in any manner to the performance of the County or Contractor under this Agreement.

- h. **Assessed Parcel(s)** shall mean the parcels of Assessment Property listed on the Annual Assessment Roll, together with those parcels subject to an interim Residential Waste Program Services Assessment pursuant to the Ordinance.
- i. **Assessment Property** shall have the meaning defined in the Ordinance.
- j. **Back Door Service** shall mean the Collection of Solid Waste and Recyclable Materials on a Resident's property at a location that is not Curbside.
- k. **Bulk Waste** shall mean any large discarded item that cannot be placed in a Garbage Can or Roll Cart because of its size, volume, shape or weight. Bulk Waste includes, without limitation White Goods, sofas, tables, fixtures, furniture, ladders, and carpet.
- l. **Change in Law** shall mean the adoption, promulgation, or modification of any Applicable Law after the Effective Date, which directly and substantially affects the Contractor's or County's performance under this Agreement. A Change in Law does not include a change in any tax law or workers' compensation law.
- m. **Collection** shall mean the process of collecting, transporting, and delivering Residential Solid Waste and/or Recyclable Materials to a Designated Facility.
- n. **Collection Container** shall mean either a Roll Cart or a Garbage Can.
- o. **Collection Event** shall mean the act of collecting Residential Solid Waste and Recyclable Materials at which time the physical address, date, time, truck number, Route number and latitude/longitude of a Point of Collection, Ignition Status, and Truck Movement Status (i.e., moving, idle, etc.) shall be recorded by Radio Frequency Identification Device ("RFID"), Global Positioning System/Automatic Vehicle Location System ("GPS"), or other mechanism.
- p. **Collection Plan** shall mean the Contractor's written plan for providing Residential Collection Services in accordance with the provisions of this Agreement.
- q. **Commercial Solid Waste** shall have the meaning defined in the Ordinance; Commercial Solid Waste is not Residential Solid Waste.
- r. **Commission** shall mean the Board of County Commissioners of Polk County, Florida.
- s. **Contingency Plan** shall mean the Contractor's plan for avoiding an interruption in Residential Collection Service if an emergency or other situation renders the Contractor's operations yard or equipment unusable.

- t. **Contractor** shall mean the Person that has entered into this Agreement to provide Residential Collection Service within the assigned Service Area for the County.
- u. **County** shall mean the government of Polk County, a political subdivision of the State of Florida; the County is the Contractor's "Customer."
- v. **County Manager** shall mean the County's chief administrative officer or that officer's designee.
- w. **Curbside** shall mean a location on an Assessed Parcel that is within three (3) feet of the curb, pavement, or edge of the nearest street. If this location is in a drainage ditch, Curbside shall mean a location adjacent to the driveway on the Assessed Parcel, as close as possible to the nearest roadway.
- x. **Day** shall mean a calendar day, except Saturdays, Sundays, and Holidays.
- y. **Designated Disposal Facility** shall mean the landfill at the County's North Central Landfill, which is located at 10 Environmental Loop South, Winter Haven, Florida 33880.
- z. **Designated Facility** shall mean, as applicable, a Designated Disposal Facility, a Designated Horticultural Trash Facility, or a Designated Recycling Facility which collectively may be referred to as "Designated Facilities."
- aa. **Designated Horticultural Trash Facility** shall mean the horticultural trash facility at the County's North Central Landfill, which is located at 10 Environmental Loop South, Winter Haven, Florida 33880, or an alternate processing facility located at 851 East Park Road, Haines City, Florida 33884.
- bb. **Designated Recycling Facility** shall mean the materials recovery facility at the County's North Central Landfill, which is located at 10 Environmental Loop South, Winter Haven, Florida 33880.
- cc. **Dwelling Unit** shall mean a room or rooms constituting a separate, independent living area with cooking facilities or kitchen, a separate entrance, and bathroom facilities that are physically separated from any other rooms or Dwelling Unit located in the same structure or in separate structures on an Assessed Parcel.
- dd. **Effective Date** shall mean the date when this Agreement is signed and duly executed by the County which shall occur after the Agreement is signed and duly executed by the Contractor.
- ee. **Electronic Equipment** shall mean electronic devices that have been discarded including without limitation computers, monitors, televisions, cathode ray tubes, printers, scanners, and copying machines.
- ff. **Essential Duties** shall mean those fundamental Agreement duties and obligations of the Contractor that must be performed to a defined standard for the County to achieve

its objective of establishing clean communities throughout the unincorporated areas of Polk County through reliable Curbside Residential Collection Service.

- gg. **Event of Force Majeure** shall mean the occurrence of an extraordinary event such as fire, flood, earthquake, storm, epidemic, war, riot, and civil disturbance, the control of which is beyond the reasonable control of a party and which could not be avoided by the exercise of due care, that prevents or delays a party from performing its Agreement duties and obligations.
- hh. **Garbage** shall mean all Residential Solid Waste that is not Bulk Waste, Recyclable Materials or Horticultural Trash.
- ii. **Garbage Can** shall, as applicable, mean either (i) a metal or heavy-duty plastic container used for Curbside Collection of Horticultural Trash that has a tight fitting lid, handles on the sides, with or without wheels, and a capacity of not less than thirty-two (32) gallons and not more than fifty (50) gallons; or (ii) a heavy duty, securely tied, Plastic Bag designed for use as a Garbage receptacle.
- jj. **Gross Revenues** shall mean the total revenue of any kind whatsoever the Contactor receives from any Person based on, arising from, attributable to, or in any way derived from the services the Contractor provides pursuant to this Agreement, before any deductions or allowances therefrom to include without limitation rent, taxes, or any other expense or cost.
- kk. **Hazardous Waste** shall mean Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Waste includes any material or substance identified as a hazardous waste or hazardous substance in the Florida Administrative Code, Florida Statutes, or other Applicable Law. The term does not include human remains that are disposed of by a Person licensed under Chapter 497, Florida Statutes.
- ll. **Holiday** shall mean any Day when the Designated Facilities are closed for business and the Contractor is not required to provide Residential Collection Service under this Agreement. The Designated Facilities shall be closed a minimum of the following days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- mm. **Horticultural Trash** shall mean vegetative matter resulting from Assessed Property lawn and landscaping maintenance, including without limitation shrub and tree trimmings, grass clippings, palm fronds, and branches.

- mn. **Hours** shall mean operating hours of 6:00 a.m. to 6:00 p.m. each Scheduled Collection Day.
- oo. **Initial Waste Generation Factors** shall mean the Waste Generation Factors established by the County at the execution of the Agreement.
- pp. **Initial Period** shall mean the period from October 1, 2017 through January 31, 2018.
- qq. **Litter** shall mean any Solid Waste and Recyclable Materials left behind at the Point of Collection and/or released into the environment during transit to a Designated Facility.
- rr. **Missed Collection** shall mean any occasion when the Contractor does not provide Residential Collection Service to a Resident on a Scheduled Collection Day in accordance with the provisions of this Agreement.
- ss. **Non-Collection Notice** shall mean the communication method deployed by the Contractor to notify a Resident of the reason(s) why materials set out for Collection were not collected by the Contractor.
- tt. **Non-Organic** shall mean any inert objects or material including Plastic Bags.
- uu. **Ordinance** shall mean County Ordinance 13-069, as the same may from time to time be subsequently amended.
- vv. **OSHA** shall mean the Occupational Safety and Health Act and all implementing regulations.
- ww. **Performance Bond** shall mean the financial security furnished by the Contractor as a guarantee that the Contractor will perform its work and pay all lawful claims in accordance with the terms of this Agreement.
- xx. **Performance Criteria** shall mean the defined standards for the Contractor's performance of its Essential Duties. The Essential Duties and associated Performance Criteria are stated on the attached Exhibit "F," Monthly Performance Evaluation Form.
- yy. **Performance Incentive** shall mean the amount paid to the Contractor for exceeding the Performance Criteria of the Essential Duties.
- zz. **Person** shall mean any and all persons, natural or artificial, including any individual, firm, corporation, partnership (whether general, limited, or other), limited liability company, trust, business trust, cooperative, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any county or municipality; and any governmental agency of any state or the federal government.
- aaa. **Plastic Bag** shall mean a heavy-duty Non-Organic material that is designed to be used for the disposal of Solid Waste.

- bbb. **Point of Collection** shall mean a geographical point on an Assessed Parcel where Roll Carts are placed to receive Residential Collection Service.
- ccc. **Polk County** shall mean the geographic areas that collectively comprise all the unincorporated real property located within Polk County, Florida.
- ddd. **Quality of Service** means the degree to which all services under this Agreement meet customer requirements and expectations.
- eee. **Rate(s)** shall mean the fees and charges approved by the County for the Contractor's Residential Collection Services.
- fff. **Recyclable Materials** shall mean materials designated by the County to be separated from other Residential Solid Waste by the Resident and that is actually separated by the Resident and put out to be separately collected by the Contractor.
- ggg. **Recycling** shall mean any process by which materials that would otherwise have been Residential Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
- hhh. **Resident** shall mean the rate payer or end-user of the Residential Collection Service.
- iii. **Residential Collection Service** shall mean the Collection of Residential Solid Waste and Resident separated Recyclable Materials from Assessed Parcels on Scheduled Collection Days pursuant to this Agreement.
- jjj. **Residential Solid Waste** shall mean Class I waste (inclusive of Bulk Waste, as defined above), and White Goods, both as defined in Rule 62-701.200 of the Florida Administrative Code, and Horticultural Trash as defined above, that is generated by the occupants of Assessed Parcels.
- kkk. **Retainage** shall mean the amount the County withholds from its monthly Residential Collection Service payment to the Contractor pending completion of the County's Monthly Performance Evaluation of the Contractor's performance as described in Section 21 d., below.
- lll. **Roll Cart** shall mean a County provided container that is made with heavy-duty hard plastic or other impervious material, equipped with RFID technology, hot-stamped or stenciled with the County logo, mounted on two wheels, equipped with a tight-fitting hinged lid, not less than thirty (30) gallons nor more than one hundred (100) gallons in rated capacity, and designed or intended to be used for automated or semi-automated Residential Collection Service for Garbage and Recyclable Materials.
- mmm. **Route** shall mean the process which physically defines the sequence a Collection vehicle follows as it goes stop-by-stop collecting Residential Solid Waste and Recyclable Materials from Assessed Parcels until disposal at a Designated Facility.

- nnn. **Route Map** shall mean an ArcGIS map depicting the area of each assigned Collection route.
- ooo. **Scheduled Collection Day** shall mean a Day (but including any Saturday which becomes a Collection day pursuant to Section 6. c., below) when the Contractor is scheduled to provide Residential Collection Service to Residents within the Service Area.
- ppp. **Senior Manager** shall mean the senior employee of the Contractor responsible for the Contractor's timely performance of its Agreement duties and obligations.
- qqq. **Service Area** shall mean the particular area within the unincorporated area of Polk County as depicted and described in Exhibit "A" to this Agreement for which the Contractor has been granted an exclusive franchise to provide Residential Collection Service.
- rrr. **Service Commencement Date** shall mean October 2, 2017, the date when the Contractor shall begin providing Residential Collection Service to the County pursuant to the requirements of this Agreement.
- sss. **Solid Waste** shall have the meaning defined in the Ordinance.
- ttt. **Spillage** shall mean the discharge of petroleum, hydraulic or any synthetic based fluid or products, or leachate from any Collection vehicle while on Route.
- uuu. **Term** shall mean the duration of this Agreement, beginning on the Effective Date and ending on September 30, 2024, or the end of all exercised renewal terms, or upon an earlier termination of this Agreement, whichever circumstance is applicable.
- vvv. **Tipping Fee** shall mean the fee or charge that must be paid at a Designated Facility based on a weight unit measure for the disposal of the applicable waste material.
- www. **Tires** shall mean discarded automotive, motor vehicle, and trailer tires. Tires may be on or off the rim.
- xxx. **Transition Plan** shall mean a document describing in detail the activities the Contractor shall undertake and the schedule it will follow to fully, successfully, and timely implement the Contractor's Residential Collection Services under this Agreement beginning on the Service Commencement Date.
- yyy. **Waste Generation Factor(s)** shall mean the average tonnage per year of Garbage and Horticultural Trash generated by each Dwelling Unit.
- zzz. **White Goods** shall mean large discarded appliances including without limitation refrigerators, ranges, washing machines, clothes dryers, water heaters, freezers, microwave ovens, and air conditioners. White Goods must be generated by the Resident at the Assessed Parcel where the White Goods are collected.

3. **OBJECTIVE AND INTENT.** THE CONTRACTOR ACKNOWLEDGES THE COUNTY'S OBJECTIVE IN ENTERING INTO THIS AGREEMENT IS TO PROMOTE CITIZENS' HEALTH, SAFETY, AND WELFARE BY ESTABLISHING CLEAN COMMUNITIES WITHIN THE UNINCORPORATED AREAS OF POLK COUNTY AND WITHIN THOSE MUNICIPALITIES, IF ANY, WHICH HAVE ELECTED TO RECEIVE RESIDENTIAL COLLECTION SERVICE FROM THE COUNTY. THE CONTRACTOR FURTHER ACKNOWLEDGES THE COUNTY'S INTENT TO ESTABLISH THESE CLEAN COMMUNITIES BY PROVIDING RELIABLE CURBSIDE RESIDENTIAL COLLECTION SERVICE TO RESIDENTS. TO ACCOMPLISH THE COUNTY'S OBJECTIVE AND INTENT THE CONTRACTOR SHALL PERFORM ALL ITS AGREEMENT DUTIES AND OBLIGATIONS SO IT DELIVERS A HIGH QUALITY OF SERVICE TO RESIDENTS, IS FULLY ACCOUNTABLE TO THE COUNTY FOR ITS PERFORMANCE, AND TRANSPARENT IN ALL ITS ACTIONS, ALL WHILE STRICTLY ADHERING TO THE HIGHEST PROFESSIONAL AND ETHICAL PRACTICES AND ALL TERMS AND CONDITIONS OF THE AGREEMENT.

4. **Term.**

- a. **Initial Term.** The initial term of the Agreement shall commence on the Effective Date. However, the Contractor's exclusive right to provide Residential Collection Service shall not commence until 12:01 a.m. October 2, 2017, the Service Commencement Date. Unless sooner terminated or extended by renewal as provided herein, the initial term shall continue through and until 11:59 p.m. on September 30, 2024.
- b. **Renewal.** The parties may mutually agree and elect to renew this Agreement for an additional term, the duration of which may be no less than one (1) year and no more than three (3) years. Any such renewal must be evidenced by a written amendment to the Agreement approved by the County's Board of County Commissioners and fully executed by both parties on or before April 3, 2024.

5. **Exclusive Franchise.**

- a. **Grant.** Subject to the conditions and limitations contained in this Agreement, the Contractor is hereby granted an exclusive franchise to provide Residential Collection Service within Service Area 1 commencing 12:01 a.m., October 2, 2017. To maintain its franchise throughout the Term, the Contractor must provide the Residential Collection Services in accordance with all Agreement requirements.
- b. **Scope.** The scope of the exclusive franchise granted hereunder is limited to the right to collect Residential Solid Waste and Recyclable Materials in accordance with the terms and conditions of this Agreement.

- c. Limitation. The Agreement does not grant Contractor the right to collect any other type of Solid Waste or other material within Polk County.

6. **Residential Collection Service.**

- a. Contractor Responsibilities. The Contractor shall be solely responsible to furnish all labor, vehicles, fuel, tools, equipment, and any other resources necessary to provide the Residential Collection Service within Service Area 1 to the satisfaction of the County in a manner consistent with professional ethical practices and in strict accordance with all terms and condition of this Agreement.
- b. Service Hours. The Contractor shall provide Residential Collection Service only between the hours of 6:00 a.m. and 6:00 p.m. on each Scheduled Collection Day.
- c. Holidays. If a Holiday occurs during what would otherwise be a Scheduled Collection Day, then during that week the Contractor shall provide Residential Collection Service to all parcels whose Scheduled Collection Day is or after such Holiday on the day (to include Saturdays) following each such parcel's Scheduled Collection Day.
- d. Garbage. At least one (1) time each week on the Scheduled Collection Day the Contractor shall collect Garbage set out in Garbage Roll Carts for Collection at the Curbside of each Assessed Parcel. Additionally, if set out at Curbside for Collection with a Garbage Roll Cart, then four (4) times each year the Contractor shall also collect up to five (5) Plastic Bags of Garbage from each Assessed Parcel.
- e. Recyclable Materials. At least one (1) time each week on the Scheduled Collection Day, the Contractor shall collect Recyclable Materials set out in Recyclable Roll Carts for Collection at the Curbside of each Assessed Parcel. The Contractor shall not introduce, mingle, or expose the collected Recyclable Materials to any contaminant that will devalue the quality or marketability thereof.
- f. Horticultural Trash. At least one (1) time each week on the Scheduled Collection Day, the Contractor shall collect Horticultural Trash meeting the criteria stated below that is set out for Collection at the Curbside of each Assessed Parcel. The Contractor shall collect any Horticultural Trash set out for Collection outside of a Garbage Can or other container if the individual piece is six feet (6') or less in length and six inches (6") or less in diameter. Bundles, bags or containers of Horticultural Trash shall weigh fifty (50) pounds or less. If Horticultural Trash meeting the foregoing criteria is set out for Collection in a Garbage Can or other container, then the Contractor shall remove the Horticultural Trash from the container and shall separate any Non-Organic objects or matter, to include any Plastic Bags, from the Horticultural Trash. In accordance with Section 6 j., below, before leaving the Assessed Parcel the Contractor shall tag any material set out for Collection outside of the criteria stated in this subparagraph which it does not collect.

- g. Bulk Waste. Within three (3) Days (but including any Saturday which becomes a Collection day pursuant to Section 6.c., above) after the date the Contractor receives notice from the County or the date the Contractor discovers (or should have reasonably discovered) Bulk Waste items that have been set out at Curbside of Assessed Parcels for Collection, the Contractor shall collect such items. However, the Contractor is only required to collect a maximum of two (2) Bulk Waste items from each Dwelling Unit during each Bulk Waste Collection.
- h. Back Door Service. Immediately upon receipt of notice from the County, the Contractor shall commence providing Back Door Service to an Assessed Parcel in lieu of the Curbside Collection described in Section 6 a. and Section 6 b., above. The point of Collection for Back Door Service shall be the back yard, side yard or other location on the Assessed Parcel as determined by the Administrator.
- i. Quality Service Indicators. The Contractor shall provide Residential Collection Service in a manner that satisfies the County and the Residents while promoting the health, safety, and welfare of all citizens by establishing clean communities within unincorporated Polk County, and within those municipalities, if any, that may from time to time elect to receive Residential Collection Service from the County. Accordingly, when providing Residential Collection Service to an Assessed Parcel the Contractor shall:
- (i) instruct drivers and staff to act professionally at all times, i.e. proper language, no inappropriate gesturing, driving at excessive speeds, etc.
 - (ii) Completely empty all Roll Carts and return them in an upright position to the Point of Collection;
 - (iii) Remove all material and debris from the Point of Collection;
 - (iv) Not damage Roll Carts;
 - (v) Prevent the release of freon, coolants, and other similar materials from White Goods;
 - (vi) Avoid disturbance to Residents and other Persons; and
 - (vii) Prevent Spillage, Litter and other adverse effects on the environment.
- j. Non-Collections. When the Contractor identifies any materials outside the specifications contained herein that have been set out for Collection, then on the scheduled Collection Day the Contractor shall firmly affix a Non-Collection Notice on the Collection Container or on the applicable materials to inform the Resident. If the Contractor does not timely affix a Non-Collection Notice, then its failure to do so shall be considered a Missed Collection, regardless of the content or composition of such materials.

- k. Missed Collection Recovery. If after a Scheduled Collection Day the Administrator or a Resident notifies the Contractor about a Missed Collection, then on or before 3:00 p.m. the following Day, the Contractor shall collect all Residential Solid Waste set out for Collection at the Assessed Parcel. The Contractor's failure to timely recover a Missed Collection as stated above shall result in the assessment of an additional Missed Collection event.
- l. Spillage and Litter Control. The Contractor shall not cause or allow any Spillage or Litter to occur as a result of its activities; the Contractor shall not release any Litter or other material in violation of the Florida Litter Law (Section 403.413, Florida Statutes). The Contractor shall immediately clean up any Spillage or Litter resulting from the performance of its duties and obligations pursuant to this Agreement. Within four (4) hours after receipt of notice from the County or a Resident of any Spillage or Litter or after the Contractor discovers (or should have reasonably discovered) such Spillage or Litter, the Contractor shall clean all Spillage and Litter from the affected area. The Contractor shall notify the Administrator immediately upon completing the required clean-up. Notwithstanding the foregoing four (4) hour clean-up time requirement, if the extent of a Spillage or Litter incident is such that it is not reasonably possible for a similar contractor to clean-up the incident within a four (4) hour time period, then the Contractor shall not be in default of this Section 6.1. if it immediately responds to any such incident, notifies the County within two (2) hours after notice or discovery that the incident cannot be cleaned-up with the four (4) hour time period, commences clean-up operations within four (4) hours, and thereafter diligently and continuously works to clean up the incident until the affected area is completely clean. However, in no event shall any extended Spillage and Litter clean-up time period exceed ten (10) days.
- m. Disposal Requirements. After a Collection vehicle has completed its Route on a Scheduled Collection Day, the Contractor shall immediately deliver all of the Residential Solid Waste and Recyclable Materials it collects pursuant to this Agreement to the applicable Designated Facility. In the event the Contractor's equipment experiences mechanical issues that will prohibit immediate delivery of the collected materials to the Designated Facility, the Contractor shall immediately notify the Administrator. The Contractor shall also deliver all of the Commercial Solid Waste it collects within unincorporated Polk County to a Designated Disposal Facility and timely file all monthly reports for such waste as required by the Ordinance.
- n. Collection Restrictions.
- (i) The Contractor shall not mix, combine, or comingle Residential Solid Waste or Recyclable Materials collected within the Service Area pursuant

to this Agreement with any other Residential Solid Waste, Recyclable Materials or any other materials collected from any other source.

(ii) The Contractor shall not mix, combine or comingle any Residential Solid Waste or Recyclable Materials collected pursuant to this Agreement with any Commercial Solid Waste or other non-Residential Solid Waste.

(iii) The Contractor shall not mix, combine or comingle Garbage, Horticultural Trash, and Recyclable Materials in any manner whatsoever.

(iv) The Contractor shall not collect Recyclable Materials with non-Recyclable Materials in any manner that will impair the quality or marketability of the collected Recyclable Materials.

7. Service Area.

- a. Description. The general boundaries of Service Area 1 are depicted on the Exhibit "A," Service Area that is originally attached to the Agreement. On or before September 30, 2017, the County shall provide the Contractor a more detailed description of the Service Area, together with an updated depiction thereof, which shall without need of further action by either party amend and restate the original Exhibit "A" attached hereto.
- b. Adjustment. During the Term, the County may adjust the Service Area boundaries if lands are added to or removed from the unincorporated areas of Polk County pursuant to an annexation, interlocal agreement, or other change. In such cases, the rights of the Contractor may be revised in accordance with Section 171.062, Florida Statutes, or other Applicable Law.
- c. Annexation. The annexation of lands after the Effective Date may require the Contractor to provide Residential Collection Services within the annexed area or, alternatively, Residential Collection Service within such area(s) may be exclusively provided by another Person. If the County elects to have the Contractor provide Residential Collection Services within the annexed area, the Contractor shall continue to do so at the Rates established in this Agreement for the applicable adjoining Service Area. If Residential Collection Service within the newly annexed area is provided by another Person, the County's monthly payment to the Contractor shall be adjusted based upon the decrease in the number of Dwelling Units served within the Service Area and the Rates payable to the Contractor shall not change.
- d. Additions to the Service Area; Rate Adjustment.
 - (i) If after the Effective Date the County must engage a contractor to provide Residential Collection Service to all or to a part of another service area (either, an "Additional Area") depicted on the attached Exhibit "A" for the remaining duration of the Term, then the County in its sole

discretion may meet and confer with the Contractor to determine whether and when the Contractor could commence Residential Collection Service to such Additional Area and thereafter continue to do so until the expiration or earlier termination of this Agreement. When conferring the parties will consider whether the Contractor could timely meet the County's need for that service without unreasonably assuming an undue financial or economic hardship. Factors to be considered when balancing the parties' respective interests with respect to providing service to the Additional Area include, without limitation, the number of Dwelling Units, the geographic size and the location of the Additional Area; the length of time reasonably necessary given the existing circumstances for the Contractor to acquire the necessary personnel and equipment to provide service to the Additional Area; the start-up costs the Contractor would necessarily incur to provide the service; the remaining duration of the Term; any potential change to the Contractor's current Service Area; and the time period by which the Contractor should reasonably be expected to meet the Performance Criteria for the Essential Duties performed within the Additional Area.

(ii) If the parties mutually agree the Contractor could provide Residential Collection Service to the Additional Area for the remainder of the Term, then the County, in its sole discretion, may then notify the Contractor to do so. Upon receipt of the County's notice, the Contractor shall immediately begin the work necessary to undertake Residential Collection Service to the Additional Area in a manner consistent with the parties' conferences on the matter. Within thirty (30) days after the date the County delivers the notice, the parties shall amend the Agreement to evidence their agreement regarding service to the Additional Area. Except as otherwise agreed in the amendment, the Contractor shall provide Residential Collection Service to the Additional Area in the same manner and pursuant to the same terms, conditions, and requirements as it does to the Service Area. When the Contractor is able to provide full Residential Collection Service to all Dwelling Units within the entire Additional Area, then the exclusive franchise granted to it pursuant to Section 5, above, shall be extended to include the Additional Area.

(iii) The Contractor shall provide Residential Collection Service to the Additional Area for a Rate not to exceed the best and final rate the Contractor submitted to the County for the service area where the Additional Area is located. If the Contractor's actual total cost to provide Collection service to the combined Service Area-Additional Area is less than the total cost to separately provide Collection service to the Service

Area and the Additional Area as reflected in the respective Rate for each area, then the Contractor shall adjust its Rate for providing Residential Collection Service to the combined Service Area–Additional Area to reflect the lower Collection service costs.

(iv) Nothing stated in this Section 7. d. requires or otherwise obligates the County to engage or to offer to engage the Contractor to provide Residential Collection Service to any Additional Area. The County, in its sole and absolute discretion, may during the Term utilize any permissible method available to it for the selection of one or more contractors it may require to provide Residential Collection Service to all or to a part of another service area.

8. **Service Transition.**

- a. **No Interruption.** In the time period between the Effective Date and the Service Commencement Date, the Contractor shall not interrupt or otherwise disrupt the Residential Collection Service being provided to Residents by the party providing such service through September 30, 2017.
- b. **Transition Plan.** On or before May 31, 2017, the Contractor shall deliver a written Transition Plan to the Administrator detailing how the Contractor will achieve the Performance Criteria established for the Essential Duties of this Agreement. The Transition Plan must be acceptable to the County. If any portion of the Transition Plan is not acceptable, then on or before June 30, 2017, the Administrator shall deliver written notice to the Contractor specifically stating the deficiencies within the Transition Plan that must be corrected. The Contractor must correct all deficiencies in the Transition Plan on or before July 31, 2017.
- c. **Roll Carts.** On or before January 2, 2018, the Contractor shall identify all County Garbage Roll Carts within the Service Area(s), confirm the physical address and location of those Garbage Roll Carts, and assign those Garbage Roll Carts to the correct Assessed Parcel receiving Residential Collection Service. No later than January 2, 2018, the Contractor shall deliver to the Administrator a list in Microsoft Excel format stating all Garbage Roll Cart serial numbers, RFID numbers, and Assessed Parcel numbers, together with a map depicting the specific location of the Garbage Roll Carts in ArcGIS format.
- d. **Tasks and Services.** The Contractor shall fully and timely complete the tasks and services described on the attached Exhibit “B,” Transition Tasks and Services.
- e. **Plan Submittal.** The Contractor shall timely submit the initial Collection Plan and Contingency Plan to the Administrator in accordance with Section 9 and Section 16, respectively, below.

9. **Collection Plan.**

- a. **Compliance.** The Contractor shall only provide Residential Collection Service in accordance with a Collection Plan the Administrator has approved.
- b. **Content.** On or before June 1, 2017, the Contractor shall prepare a Collection Plan that describes in detail how the Contractor will provide Residential Collection Services within the Service Area. At a minimum, the Collection Plan shall identify and describe the vehicles, equipment, personnel, Routes, and schedules the Contractor will use for each type of Residential Collection Service. The Collection Plan shall include a legible Route Map for each Collection Route, identifying the Days when Collection Service will be provided, the starting and ending points for the Route, and the type of Residential Collection Service that will be provided on the Route on each Scheduled Collection Day.
- c. **Designated Facility.** The Collection Plan shall identify each Designated Facility that will receive the materials collected by the Contractor pursuant to this Agreement.
- d. **Updates.** On or before each September 1st during the Term, the Contractor shall submit an updated Collection Plan to the Administrator for the following Agreement Year.
- e. **Changes.** The Contractor shall submit an updated Collection Plan to the Administrator whenever the Contractor proposes changes to the then-existing Collection Plan.
- f. **Approval.** The Collection Plan and all revisions to the plan are subject to the Administrator's prior written approval before the Contractor may implement the plan or any revisions thereto.

10. **Disaster Variation to Collection Plan.**

- a. **Disaster.** If a hurricane, tornado, major storm, or other natural or manmade disaster (any such event, a "Disaster") affects all or a portion of Polk County, then upon receipt of a written request from the Contractor, the Administrator may grant the Contractor a temporary variance from performing the Residential Collection Services in accordance with the approved Collection Plan. As a condition to receiving approval of the request, the Contractor shall furnish the Administrator the written revised Route schedules, together with a map depicting the revised Routes. Upon receipt of approval, the Contractor shall contact the Administrator on a daily basis describing the status of its efforts to provide Residential Collection Services in accordance with the temporarily revised Routes and its estimated time to resume use of its normal Routes and schedules. The Contractor shall provide the Administrator with any requested information so that the Administrator and Contractor can evaluate and respond to the Disaster.

- b. Post-Disaster. The Contractor shall reestablish regular Routes and schedules for the Collection of Residential Solid Waste and Recyclable Materials as soon as practicable after the Disaster. The Contractor shall not be responsible for the collection and disposal of any debris that is produced or generated by a Disaster and placed Curbside on an Assessed Parcel.
- c. Preparedness. Contractor shall attend the County's emergency management/disaster preparedness meetings, and shall provide the County with any materials that may be useful to the County's efforts including, without limitation, Collection schedules and Routes, and security codes to private community gates. The Administrator shall notify the Contractor of the date, time and location of the meetings, and any necessary materials to be provided by the Contractor.

11. **Access to Streets and Collection Containers.**

- a. Right. Except as otherwise provided herein, the Contractor shall have the right to use the public roadways within Polk County to provide the Residential Collection Service.
- b. Suitable Vehicles and Equipment. The Contractor shall use suitable vehicles and equipment, as necessary, to provide Residential Collection Service on dead-end streets, narrow streets, unpaved streets, and other areas where access is limited.
- c. Private Drives. The Contractor's vehicles shall not enter or drive upon any private driveways or property to turn around or for any other purpose, unless the Contractor has received the property owner's prior written permission to do so.
- d. No Interference. Contractor's vehicles shall not unreasonably interfere with vehicular or pedestrian traffic.
- e. Unattended Vehicles. Contractor shall not leave its vehicles unattended on streets and alleys.
- f. Denial of Access. The County reserves the right to deny the Contractor's vehicles access to certain streets, alleys, bridges and roadways when the County determines it is in the public's best interest. The County shall provide the Contractor with reasonable notice of such denial so that the County's action does not unduly interfere with the Contractor's Residential Collection Service.
- g. No Access. If the Contractor's access to a street, alley, bridge, or public or private roadway becomes impassable or if access to Assessed Parcels is denied for any reason, the Contractor shall work with the affected Resident(s) to determine a mutually acceptable location for the Collection of the Residents' Residential Solid Waste. If a mutual agreement cannot be reached, the Contractor shall provide Residential Collection Services from the nearest public roadway that is accessible by

the Contractor's Collection vehicle, or at such other location specified by the Administrator.

- h. Obstructions. If the Contractor encounters a situation (e.g., electrical wires, downed trees, or other road obstructions) that prevents its access to streets or other roadways needed to access Assessed Parcels, then the Contractor shall immediately notify the Administrator. If it is reasonable to conclude the obstruction will continue more than twenty-four (24) hours, then by 3:00 p.m. the Day after the situation is encountered, the Contractor shall provide the Administrator its plan to provide Residential Collection Service to the affected area until the situation is resolved.

12. Protecting Private and Public Property.

- a. Trespass. The Contractor's employees shall not trespass on private property for any reason unless the occupant or owner of the property has given the Contractor permission to enter. The Contractor's employees shall follow the pedestrian sidewalk and shall not cross a Resident's property to an adjoining property, unless the occupants or owners of both properties have given permission. The Contractor's employees shall not loiter on or meddle with any property of any other Person.
- b. Damage. The Contractor's employees shall not damage any public or private property, including without limitation roads, mail boxes, driveways, sidewalks, flowers, shrubs, grass, and Collection Containers.
- c. Liability. The Contractor shall be solely responsible for all damages, costs, and liabilities associated with the repair, restoration, or replacement of any property that has been damaged by the Contractor's equipment, employees, or agents. Any disputes concerning the Contractor's obligations for the repair of property damages shall be resolved by the Administrator. In all cases, the Contractor shall be required to restore the public or private property to a condition equal to or better than the condition that existed before the damage occurred.
- d. Repair. Within two (2) days after receipt of notice from the County or from a Resident that the Contractor has damaged property, or within two (2) days after the Contractor discovers (or should have reasonably discovered) it has caused any such damage, the Contractor shall complete its repair, restoration or replacement of the damaged property. Notwithstanding the foregoing damage repair time requirement, if the reasonable time period for a similar contractor to repair, restore or replace the damaged property exceeds two (2) days, then the Contractor shall not be in default of this Section 12.d. if it immediately responds to a claim, notifies the County within one (1) day after notice or discovery of the damage that it cannot be repaired, restored or replaced within the two (2) day time period, commences work to repair, restore, or replace the damaged property within the two (2) day time period, and thereafter diligently and continuously works to complete the same. However, in no event shall

any extended damage repair time period exceed thirty (30) days after the date the Contractor damaged the property.

13. Collection Vehicles and Equipment.

- a. **Condition.** The Contractor shall keep and maintain all Collection vehicles and equipment in a service-ready condition.
- b. **GPS.** The Contractor shall equip all its Collection vehicles with operational Global Positioning System based Automatic Vehicle Location system (“GPS”) and routing software capable of monitoring the Collection vehicles’ movements and accurately capturing Collection Events as those events occur. If a Collection vehicle does not contain a fully operational GPS system (hardware and supporting software), then the Contractor shall not utilize that vehicle to provide Residential Collection Service until the GPS system is fully operational. The GPS system software shall meet or exceed the functional requirements stated on Exhibit “C,” GPS/AVL System Functional Requirements. The Contractor shall have the supporting software configured to allow the Administrator to obtain current information about the location of each Collection vehicle while the Administrator monitors the Collection vehicles from the County’s offices. The supporting software shall not provide the Contractor administrative or other control right to block or filter the County’s access to Collection vehicle location and movement or to Collection Event information. The Contractor shall provide for an independent third party to archive all resulting data in a manner whereby the Contractor has no ability to alter the data in any manner whatsoever and the County has separate, unfettered and immediate access to such data at any time. Further, within three (3) days after receipt of the County’s request, the Contractor shall make its GPS logs and records available to the Administrator, or the Administrator’s designee(s) which may include third party contractors of the County or the Polk County Clerk of Court, Department of Inspector General, for inspection, copying, and auditing.
- c. **RFID.** The Contractor shall equip all Collection vehicles with operational Radio Frequency Identification (RFID) reading equipment that is compatible with the RFID tags in all Roll Carts. If a Collection vehicle that provides Garbage or Recyclable Materials Collection service does not contain a fully operational RFID system (hardware and supporting software), then the Contractor shall not utilize that vehicle to provide those services until the RFID system is fully operational. The RFID system software shall meet or exceed the functional requirements stated on Exhibit “D,” RFID System Functional Requirements.
- d. **Maintenance.** The Contractor shall keep and maintain all Collection vehicles and equipment cleaned and painted to minimize the potential for odors and nuisance conditions and to present a pleasing appearance at all times. The body of all Collection vehicles used to fulfill the Contractor’s obligations under this Agreement

shall be white with the County's name, logo (minimum dimensions 4' x 4'), and telephone number prominently displayed at all times in letters at least eight inches (8") high on each side of the truck body. The cab of all Collection vehicles must display the Contractor's colors or company name in letters at least four inches (4") high on both side doors of the vehicles. The vehicle identification number shall be displayed at all times in letters at least four inches (4") high on all the sides of all Collection vehicles. Notwithstanding the foregoing, the Administrator may in the exercise of reasonable discretion authorize the Contractor to utilize, for a limited time period, Collection vehicles not listed in the approved Collection Plan and which do not comply with the Collection vehicle body color and display information requirements stated above, in the following circumstances:

- (i) the Senior Manager notifies the Administrator of an extraordinary occurrence prior to the Contractor's deployment of temporary auxiliary reserve vehicles to replace fleet authorized in the Collection Plan so the Contractor can timely complete regular Residential Collection Services; and
 - (ii) while being utilized as authorized Collection vehicles the temporary auxiliary reserve vehicles shall comply with all other requirements stated in this Agreement including without limitation the GPS and RFID requirements, including full viewing capabilities and data collection, as stated in Sections 13. b. and 13. c., above, and the Section 13. f., dedication requirement.
- e. No Advertising. The Contractor shall not place or maintain any Advertising on the Collection vehicles, Roll Carts or any other equipment used to provide Residential Collection Service pursuant to this Agreement.
- f. **DEDICATION. THE COLLECTION VEHICLES AND EQUIPMENT THE CONTRACTOR USES TO PROVIDE RESIDENTIAL COLLECTION SERVICE PURSUANT TO THIS AGREEMENT SHALL BE SOLELY DEDICATED TO AND USED EXCLUSIVELY FOR THE BENEFIT OF THE COUNTY AND FOR NO OTHER PERSON OR PURPOSE WHATSOEVER.**

14. Roll Carts.

- a. Ownership. All Recycling Roll Carts and Garbage Roll Carts used in providing the Residential Collection Service are and shall remain the sole property of the County.
- b. Recycling. The County will procure Recycling Roll Carts for use by Residents who elect to set out Recyclable Materials for separate Curbside Collection. On or before September 29, 2017, the Contractor shall deliver one new Recycling Roll Cart to those Assessed Parcels where Residents have elected to participate in Curbside Recyclable Materials Collection. Thereafter, throughout the Agreement Term, the

Administrator will notify the Contractor of those additional Assessed Parcels where Residents have elected to commence Curbside Recyclable Materials Collection. The Contractor shall deliver Recycling Roll Carts to all such parcels within two (2) Days after receipt of the Administrator's notice.

- c. Garbage. The County has previously procured Garbage Roll Carts which have been distributed to Assessed Parcels or are held in inventory. Other than those Roll Carts the Contractor must replace pursuant to Section 14 e., below, the County shall procure new Recycling Roll Carts and new Garbage Roll Carts needed to provide Residential Collection Service to the Assessed Parcels. During the Term, the County will keep and maintain an inventory of both types of Roll Carts and a database of all Roll Carts the County procures listing the serial number, size, RFID tag, and geographic location of each Roll Cart. When needed, the County will issue Roll Carts to the Contractor for further distribution to Residents. With the Administrator's prior approval, the Contractor may obtain and "pre-position" a limited number of Roll Carts at the Contractor's operations yard to facilitate such distribution. The Contractor shall immediately report to the Administrator any and all changes in the location of any pre-positioned Roll Carts.
- d. Distribution. The Contractor shall distribute and deliver Garbage Roll Carts to Assessed Parcels within two (2) Days after receipt of the Administrator's notice identifying parcels requiring an initial or supplemental delivery of such carts.
- e. Repairs; Replacement. Within two (2) Days after being notified by the Administrator or Resident that a Resident's Roll Cart was damaged or needs to be exchanged for any reason, the Contractor shall either (i) deliver an equivalent replacement Roll Cart to the Resident's Assessed Parcel, collecting the damaged Roll Cart for repair offsite and return to the County's inventory; or (ii) if practicable, repair the damaged Roll Cart onsite. The Contractor will maintain an inventory of spare parts so it may repair damaged Roll Carts onsite and offsite. The Contractor shall be responsible for the cost of replacement Roll Carts damaged by the Contractor. The County will provide the Contractor an invoice stating the applicable cost and will deduct the amount due the County from the monthly Residential Collection Services payment to the Contractor.
- f. Compensation. Among other matters, the payment the Contractor receives pursuant to Section 21, below, includes compensation for the services described in this Section 14.

15. Ownership of Residential Solid Waste and Recyclable Materials. When Residents set out Residential Solid Waste and Recyclable Materials for Collection within Polk County, the materials become the sole property of the County. Except and unless specifically authorized pursuant to this Agreement, the Contractor and its employees have no right to

take, keep, process, alter, remove, sell, or dispose of any Residential Solid Waste or Recyclable Materials set out at Curbside or collected without the prior written approval of the Administrator, which approval may be withheld in the exercise of reasonable discretion. The County shall retain ownership of all Residential Solid Waste and Recyclable Materials until they are delivered to and accepted by a Designated Facility, when title to the same shall pass to the operator of such facility.

16. **Contingency Plan.** The Contractor shall develop a Contingency Plan which shall describe the Contractor's plan of action in the event that an emergency or other situation renders the Contractor's operations yard or equipment unusable. The Contingency Plan shall describe the steps that the Contractor shall take to avoid interruptions or reductions in Residential Collection Service. The Contingency Plan shall be submitted to the Administrator on or before August 1, 2017. Thereafter, the Contingency Plan shall be updated and resubmitted to the Administrator with the Contractor's annual report, and also within two (2) Days whenever the Contractor revises the plan. The Contingency Plan and all revisions to the plan are subject to the Administrator's approval.

17. **Operational Requirements.**

- a. **Senior Manager.** The Contractor shall appoint a Senior Manager who will be the primary point of official contact on behalf of the Contractor for all operational, technical and administrative matters pertaining to this Agreement. At all times during the term of this Agreement, the Administrator shall have immediate access to the Senior Manager via telephone and electronic mail.
- b. **Meetings.** During the Initial Period, the Senior Manager shall meet with the Administrator or the Administrator's designee a minimum of once per week. After the Initial Period, the Senior Manager and Administrator (or designee) shall meet monthly to review the Contractor's operational performance.
- c. **Office.** The Contractor shall establish and maintain an office within Polk County which at a minimum shall be open for business between 7:00 a.m. and 6:00 p.m. each Scheduled Collection Day.
- d. **Personnel.** The Contractor shall keep and maintain sufficient personnel within Polk County to meet its Agreement duties and obligations.
- e. **Qualifications.** The Contractor shall employ competent, qualified, sober personnel to provide the services required by this Agreement. The Contractor shall devote sufficient personnel, time and attention to ensure it fully and timely complies with all its Agreement duties and obligations.
- f. **Identification.** The Contractor shall furnish each employee with an appropriate means of identification as an employee of the Contractor (e.g., a uniform with a name tag

and company logo). The Contractor's employees shall wear the identification at all times while on duty.

- g. No County Benefits. No Contractor employee shall have a right or claim to any pension, workers' compensation, unemployment compensation, civil service or other employee right or privilege granted to the County's officers and employees. The Contractor shall have the sole responsibility for paying any wages and providing any employment benefits to such Person.

18. Resident Communications.

- a. County. The County shall be responsible for receiving and documenting all Resident communications regarding the Residential Collection Service.
- b. Contractor. If the Contractor receives any type of communication from a Resident, the Contractor shall log the Resident's issue, instruct the Resident that all future calls should be directed to the County, notify the Administrator, and respond appropriately to the Resident's issue.

19. Records, Reports; Inspection and Audit Rights.

- a. Record Keeping. The Contractor shall be solely responsible for keeping all records and documents necessary to demonstrate that the Contractor has performed its duties and obligations in compliance with the Agreement requirements. The Contractor's records shall be accurate, chronologically organized and up-to-date at all times. The Contractor's records associated with the Agreement shall be readily available and maintained in the Contractor's office or storage facility within Polk County for at least five (5) County fiscal years (October 1 – September 30) following the termination of this Agreement.
- b. Report Submittals. All of the Contractor's reports to the County shall be submitted in a hard copy and in an electronic format that is compatible with the County's software. The format and content of the Contractor's reports are subject to the Administrator's approval. The reports shall be verified and signed by the Contractor's Senior Manager.
- c. Weekly Reports. On the first Scheduled Collection Day of each week, the Contractor shall deliver to the Administrator the following reports containing data and information for the immediately preceding Residential Collection Service week:
 - (i) Roll Cart Activity Report. A report detailing the movement or other displacement of all Roll Carts from their assigned locations as stated in the database referenced in Section 14. c., above.
 - (ii) RFID Movement Report. A report detailing all RFID enabled Roll Carts which show an exception to normal use during the previous week including without limitation recorded tips at wrong Assessed Parcel

address, recorded tips an unusual distance from the assigned parcel, or non-recordable (“N/A”) designations.

(iii) Contractor’s Missed Collection Report. A report summarizing all calls or messages the Contractor received regarding Missed Collections which lists the date of call, Resident name, address, phone number, type of Missed Collection, recovery status, and brief root cause analysis. This report must be delivered in Excel format or in any other format pre-approved by the County. This report shall be accompanied by a geographical depiction of the Missed Collections.

d. Monthly Summary Reports. On or before the seventh (7th) Day of each month, the Contractor shall deliver the following summary reports to the Administrator, all of which shall be based upon lists of information the County will provide the Contractor on or before the second (2nd) Day of each month:

(i) Litter and Spillage Summary. A resolution status and a root cause analysis for each Litter and Spillage event occurring during the previous month.

(ii) Missed Collections Summary. A recovery status and a root cause analysis for each Missed Collections event occurring during the previous month.

(iii) Property Damage Summary. A resolution status and a root cause analysis for each event of property damage occurring during the previous month.

(iv) Roll Cart Repair and Replacement Summary. A resolution status and a root cause analysis for each Roll Cart repair and replacement event occurring during the previous month.

The Contractor shall deliver all the reports described in this subparagraph in Microsoft Excel format or in another format the County has pre-approved for use. With each report the Contractor shall submit a geographical depiction of each event summarized in the respective report (i.e., Litter and Spillage, Missed Collection, property damage, Roll Cart repairs and replacements).

e. Additional Monthly Reports. Additionally, on or before the fifteenth (15th) day of each month, the Contractor shall also deliver the following reports to the Administrator containing data and information for the immediately preceding month:

(i) Roll Carts issued by location;

(ii) Summary of Roll Cart distribution and ending inventory;

(iii) Contractor’s monthly operating expense statements associated with its providing the County services pursuant to this Agreement; and

(iv) Summary of accidents involving Contractor's vehicles.

- f. Accident and Property Damage Report. The Contractor shall notify the Administrator of any accidents involving the Contractor's staff, vehicles, or equipment which require the Contractor to notify the Occupational Safety and Health Administration ("OSHA") or any other Person under Applicable Law. The Contractor also shall notify the Administrator of accidents involving personal injuries or damage to public or private property. In all such cases, verbal notice shall be provided within four (4) hours of the accident and a written report shall be provided to the Administrator within one Day of the Accident. If any issues are unresolved at that time, a subsequent report shall be provided to the Administrator within two (2) days following the ultimate disposition of the case. The Contractor also shall provide the Administrator with copies of any reports or notices provided to OSHA or the Department of Transportation, within two (2) days after such documents are submitted.
- g. County's Annual Report. Commencing November 30, 2018, and continuing on or before each November 30th thereafter during the Term, the County shall deliver to the Contractor a report summarizing the Contractor's total performance scorecard based on the results of the Monthly Performance Evaluations (described in Section 21 d., below) of its Agreement duties and obligations during the immediately preceding Agreement Year.
- h. Cooperation. The Contractor shall fully cooperate with the Administrator and provide reasonable assistance to the County so the County may ascertain whether the Contractor is properly performing its Agreement duties and obligations.
- i. Right to Records. The County shall have the right to inspect, copy, and audit all of the Contractor's records concerning the Contractor's services under this Agreement. The Contractor's records shall be made available for inspection during the Hours at the Contractor's office in Polk County within one Day following the County's requesting the same. The audit rights stated in this Section 19 i. may also be exercised by the Polk County Clerk of Court, Department of Inspector General,
- j. Right to Inspect Facilities. The County shall have the right without providing advance notice to inspect the Contractor's facilities and operations at any reasonable time to determine whether the Contractor's performance complies with the Agreement requirements. The Contractor shall make its facilities and operations available for the County's inspections and shall cooperate fully with the County.

20. Rates for Collection Services.

- a. Base Rates. The Rates stated in the attached Exhibit "E," Base Rates, are the initial amounts that shall be charged for the Residential Collection Service provided by the Contractor pursuant to this Agreement.

- b. Change in Law. If a Change in Law will directly and materially affect the Contractor's cost of providing the Residential Collection Service under this Agreement, the Contractor may request that the County adjust the Rates. If the Contractor exercises this option, the Contractor shall prepare and submit a schedule of proposed Rates that will distribute the increased costs in a fair and non-discriminatory manner. The Contractor's request will be accompanied by all data and analyses necessary for the Administrator to fairly evaluate the proposed Rate increase. The Administrator shall request and the Contractor shall provide additional information as necessary. After receiving the requested information and all other pertinent information necessary to evaluate the request, the Administrator shall present the Contractor's request and the Administrator's recommendations to the Commission. The Commission shall fairly evaluate the Contractor's request in a timely manner and in compliance with the requirements of Section 49, below. The Commission's decision to grant, grant in part, or deny the Contractor's request shall be final and non-appealable. If any adjustments to the Rates are approved, the adjusted Rates shall become effective upon the date designated by the County. Any adjustments to the Rates shall be designed to compensate the Contractor for the increased costs incurred by the Contractor after the Change in Law took effect.
- c. Other Rate Adjustments. Apart from a Change in Law Rate adjustment as stated above, no more than once every two (2) years the Contractor may petition the County for a Rate adjustment to compensate the Contractor for those unforeseen increased costs in local operations (e.g., fuel, direct labor, and other local expenses), the amount of which could not have been reasonably projected in formulation of the original Rate by a prudent, experienced Person when the Contractor submitted its proposal responding to the County's RFP No. 16-366. Among other substantiating documentation, at a minimum a petition requesting a Rate adjustment must include a summary statement explaining why the Contractor deems a Rate adjustment is warranted, a detailed breakdown of the local operational cost projections used to establish the original (or current) Rate to include projected increases, and financial statements, audited and certified by an independent auditor, documenting an increase in local operating expenses associated with this Agreement for the previous two (2) year period. The County will review all documentation within sixty (60) days after the date it receives the Contractor's request and shall render a final determination within ten (10) days after its review has been completed. The Administrator's decision to grant, grant in part, or deny, the Contractor's request shall be final and non-appealable. If accepted, the Rate adjustment will become effective on October 1st of the year immediately following the two (2) year period the request is submitted. In no event shall an approved Rate adjustment exceed five percent (5%) of the then-current Rate amounts. A Rate adjustment shall not be granted to compensate the

Contractor for any cost or expense incurred by the Contractor prior to the date an approved Rate adjustment becomes effective.

- d. **Rate Reduction.** The County shall have the right to reduce the Rates at any time after providing the Contractor at least thirty (30) calendar days' advance written notice and an opportunity for a public hearing. The County may exercise this right when the Commission determines that a Change in Law, a reduction in Collection costs, or an extraordinary event warrants a reduction in the Rates. Any Rate reduction made pursuant to this Section 20. d. must be based upon facts and information substantiating that the cost to provide Collection services has decreased. Prior to scheduling a public hearing regarding a proposed Rate reduction, the Administrator shall deliver a written summary to the Contractor stating the basis for a potential Rate reduction together with all substantiating documents, facts and information. The Contractor shall have twenty-one (21) days after receipt of the summary and substantiating materials to provide the Administrator any and all documents, facts, and other information the Contractor would present to the Commission in opposition to the proposed Rate reduction. Thereafter, the Administrator and the Contractor's Senior Manager will make a good faith effort to resolve or refine the differences in their respective positions on the matter. If after such effort differences remain, then within thirty (30) days after concluding an impasse exists, the Administrator shall schedule the public hearing for the Commission to consider the proposed Rate reduction.

21. Payment for Residential Collection Services.

- a. **General.** The County shall have no obligation to pay any fee, charge, cost, or other sum to the Contractor unless such payment is explicitly in this Agreement and the fee is identified in Exhibit "E," Base Rates. The Rates for the three types of Residential Collection Service stated in Exhibit "E" shall constitute full and complete compensation to the Contractor for all of the services provided by the Contractor under this Agreement. In all cases, the County shall have the sole authority to determine whether and the extent to which the Contractor is entitled to payment for the services it provided under this Agreement.
- b. **Residents.** Neither the Contractor nor its agents, subcontractors, employees or other representatives shall solicit or accept any payment or monetary remuneration from any Resident for the provision of any service described in this Agreement.
- c. **Procedures.** Subject to the limitations contained herein, each month the County shall pay the Contractor for the Residential Collection Service that the Contractor has provided to Residents the preceding month with payment provided in accordance with the following procedures:

(i) The County's monthly payments to the Contractor shall be based upon the number of Dwelling Units identified in the Annual Assessment Roll for an Agreement Year that are within the Service Area. When the County's Annual Assessment Roll is adopted by the Commission, the County shall provide a copy of the adopted Annual Assessment Roll to the Contractor. Thereafter, unless revised in accordance with Section 21 c. (ii), below, for the purposes of the payments due the Contractor for Residential Collection Service under this Agreement, the number of Dwelling Units within the Service Area shall remain unchanged for that Agreement Year although the number of Dwelling Units receiving Residential Collection Service during the Agreement Year may increase or decrease.

(ii) If the Contractor disputes the accuracy or completeness of the County's adopted Annual Assessment Roll as it applies to the Dwelling Units within the Service Area, then no later than December 31st of the applicable Agreement Year, the Contractor must deliver written notice to the Administrator identifying each Dwelling Unit that the Contractor believes should be added to or deleted from the Annual Assessment Roll, together with complete, detailed supporting documentation sufficient for the County to make an informed decision with respect to each such Dwelling Unit. If after receipt of the notice and documentation the Administrator determines that a Dwelling Unit should be added to or removed from the Annual Assessment Roll, the County shall adjust the monthly payments to the Contractor accordingly. In cases where the Administrator determines a Dwelling Unit should be added to the Annual Assessment Roll, the Contractor shall be paid for the Residential Collection Service provided to such Dwelling Units from and after October 1 of the Agreement Year. Similarly, where the Administrator determines a Dwelling Unit should be removed from the Annual Assessment Roll, the Contractor shall not be paid for any Residential Collection Services provided to that unit during the Agreement Year. If the Contractor does not deliver timely written notice of a dispute concerning a particular Dwelling Unit, the Contractor shall be deemed to have waived any claims for payment concerning that Dwelling Unit, and the County shall not be required to adjust its payments to the Contractor for that Dwelling Unit.

(iii) On or before the 5th Day of each month, the Contractor shall deliver to the County a certified invoice in a form approved by the County for the Residential Collection Services rendered during the previous month. The amount due the Contractor shall be calculated by: (A) multiplying the

applicable monthly Rate for Residential Collection Service times the number of Dwelling Units within the Service Area that are on the Annual Assessment Roll (as adjusted pursuant to Section 21 c. (ii), above), and (B) deducting any Retainage, administrative fees, liquidated damages or other sums that are due and owing from the Contractor pursuant to this Agreement or any other agreement by and between the parties including without limitation any charges or amounts due the County for Tipping Fees the Contractor has incurred for waste disposed at any Designated Facility. The County's payment shall be sent to the Contractor by the last Day of the month after the month when the Contractor's Residential Collection Services were provided.

- d. Retainage and Monthly Performance Evaluations. Each month the County shall evaluate the Contractor's performance of the Essential Duties based on the Performance Criteria set forth on the Monthly Performance Evaluation Form attached as Exhibit "F." The County will complete and submit a copy of the completed evaluation to the Contractor within ten (10) Days after the end of the month in which the services were rendered. Commencing after the expiration of the Initial Period and continuing each month thereafter during the Term, the County shall withhold and retain five percent (5%) of the Contractor's monthly Residential Collection Service payment pending completion of the performance evaluation for that month. The overall monthly evaluation results will determine the amount of the retained monthly Residential Collection Service payment the Contractor will receive. If the Contractor fails to meet one or more of the Essential Duties Performance Criteria stated on the Monthly Performance Evaluation Form, then it shall not be entitled to receive the percentage of the Retainage applicable to each such criterion and the County shall be entitled to keep the same. The Administrator's decisions regarding the Contractor's performance of the Essential Duties shall be final and non-appealable.
- e. Over- and Underpayments. If the County pays the Contractor in error, for whatever reason, the Contractor shall promptly notify the Administrator to rectify the mistake. The Administrator shall make appropriate adjustments to the Contractor's payments under this Agreement to offset any past underpayments or overpayments resulting from any error.
- f. Limitations. The County's payments to the Contractor shall be derived from the revenues collected by the County from the Residents. The Contractor shall have no right to any revenues or funds obtained by the County from any other source, including without limitation funds generated through the County's Solid Waste operations or the County's General Fund.

22. Performance Incentive Payments.

- a. Purpose. The Performance Incentive described in this Section 22 has been designed to provide the Contractor reasonable flexibility to exercise its expertise and knowledge of best management practices to exceed the Performance Criteria for the Essential Duties. The Performance Incentive affords the Contractor an opportunity to be rewarded each month that it exceeds specific performance benchmarks as further described in this section.
- b. Description. Subject to the monetary limitations stated in Section 22 d., below, the Contractor may earn Performance Incentive payments each month by exceeding designated benchmarks in its performance of the Essential Duties as stated on the Performance Incentive Table attached as Exhibit “G,” Monthly Performance Incentive Benchmarks and Calculation Example.
- c. Eligibility. Performance Incentive payments reward the Contractor for exceeding the performance expectations for the same Essential Duties on which it is evaluated each month pursuant to Section 21 d., above. Accordingly, the Contractor shall not be eligible to receive a Performance Incentive payment with respect to any Essential Duty for which the Contractor did not receive the full amount of Retainage withheld because it failed to meet the applicable Performance Criteria in its Monthly Performance Evaluation for that same month.
- d. Annual Maximum Amount. The maximum Performance Incentive amount payable each Agreement Year will equal ten percent (10%) of the gross Residential Collection Service payment the Contractor is eligible to receive for that Agreement Year. The monthly Performance Incentive payment amount will be determined as stated on the attached Exhibit “G.” The County will evaluate the Contractor’s performance monthly, determine any Performance Incentives earned, and disburse the earned amounts quarterly as a lump sum payment in accordance with the following schedule:

Quarter	Payable
October – December	January 30th
January – March	April 30th
April – June	July 30th
July – September	October 30th

- e. Monthly Maximum Amount. The maximum Performance Incentive amount accruable each month will equal one-twelfth (1/12th) of the maximum Performance Incentive amount payable for the applicable Agreement Year.

23. Disposal Costs.

a. Allotted Tonnage Amounts; Payment.

(i) The annual allotted tonnage amount is calculated each Agreement Year utilizing a Waste Generation Factor for each waste type. Each Agreement Year, the annual allotted tonnage amount for each waste type shall be calculated as the product of (1) the applicable Waste Generation Factor, and (2) the number of Dwelling Units within the Service Area. Based on historical data, the Initial Waste Generation Factors are 0.85 tons per Dwelling Unit per year for Garbage/Bulk Waste and 0.20 tons per Dwelling Unit per year for Horticultural Trash. The Initial Waste Generation Factors may only be adjusted as provided in Section 23. b., below. The County shall establish a unique landfill account to document tonnages of each waste type delivered to the Designated Facilities under this Agreement. Each month the County shall be responsible to address the Tipping Fees for the amount of each such waste type actually delivered to the Designated Facility up to but not exceeding one-twelfth (1/12th) of the annual allotted tonnage amounts. Each month, the Contractor shall be solely responsible for the payment of the Tipping Fees incurred for the disposal of each Residential Solid Waste type collected in the performance of the Residential Collection Service whose weight exceeds one-twelfth (1/12th) of the annual allotted tonnage amounts for each waste type.

(ii) Notwithstanding the provisions of Section 23.a.(i) above, if at any time on or before March 31, 2018, the Administrator determines based upon observation and collected data that the Contractor is collecting Garbage/Bulk Waste or Horticultural Waste which should have been collected prior to October 2, 2017 (such waste of either type, the "Excess Waste") in amounts that cause the aggregate tonnage for either waste type to exceed the applicable monthly allotted tonnage amount, then the Administrator shall increase the applicable monthly allotted tonnage amount for the affected month to account for the Excess Waste so the Contractor will not be required to pay Tipping Fees for the disposal of such Excess Waste. Any such increase in a monthly allotted tonnage amount made pursuant to this Section 23.a.(ii) shall not reduce the originally calculated monthly allotted tonnage amount for any subsequent month during the first Agreement Year but may result in the Administrator increasing the annual allotted tonnage amount for the first Agreement Year. Any increases to the monthly allotted tonnage amount or to the annual allotted tonnage amount made pursuant to this Section 23.a.(ii)

shall not affect and shall not be the basis for any adjustment to the Waste Generation Factors.

(iii) Notwithstanding the provisions of Section 23. a. (i) above, for any month in which the Administrator reasonably determines based upon identifiable factors, to include without limitation seasonal and climate variations, that produce temporary periods of increased Horticultural Trash set out for Collection at Assessed Parcels, the Administrator may in its sole discretion increase the monthly allotted tonnage amount of Horticultural Trash for an affected month to account for the increased waste being collected because of the identifiable factors. Any such increase in a monthly allotted tonnage amount shall not increase the Horticultural Trash annual allotted tonnage amount, and will not decrease any Horticultural Trash monthly allotted tonnage amount for the remainder of the Agreement Year except for those months, if any, after the Contractor has reached the annual allotted tonnage amount for that waste type.

b. Adjustment of Waste Generation Factors.

(i) If the Contractor reasonably determines the Initial Waste Generation Factors (or subsequently determined Waste Generation Factors) do not accurately evidence the amount of Residential Solid Waste the Contractor is collecting from Assessed Parcels within the Service Area, then it may request the County adjust the factors to reflect the amount of Residential Solid Waste being collected. When submitting any such request, the Contractor must provide detailed supporting documents clearly evidencing how the Contractor reached its determination and addressing matters including without limitation the origin of waste collected, demonstrating any material deviations from the Waste Generation Factors. Any Excess Waste amount, regardless of whether or not the amount collected causes the Administrator to increase a monthly allotted tonnage amount for any month or to increase the annual allotted tonnage amount for the first Agreement Year, shall not be the basis for adjusting the Waste Generation Factors. If after receipt of the request and supporting documents the County deems it necessary and notifies the Contractor, the Contractor shall provide additional documentation required for the County to complete its evaluation of the request. The Administrator shall review the complete submission and determine whether an adjustment is warranted. Within sixty (60) days after the date it received all necessary (to include further requested) documents, the Administrator shall notify the Contractor of the County's response to the request which shall include

findings and conclusions regarding the Contractor's submitted material. If the supporting documents substantiate the Contractor's determination regarding the requested Waste Generation Factor adjustment, then the County will adjust the Waste Generation Factors accordingly with the monthly allotted tonnage amounts being adjusted beginning in the month following the approval of the Contractor's request. The Administrator's decision to grant, grant in part, or deny, the Contractor's request shall be final and non-appealable.

If the Waste Generation Factor is adjusted in accordance with the foregoing process, then for waste collected during the first Agreement Year only, the County will reimburse the Contractor the amount of any Tipping Fees the Contractor actually paid to a Designated Facility for the disposal of Garbage or Horticultural Trash collected in accordance with this Agreement which would have been the County's responsibility if the applicable annual allotted tonnage amount(s) for the first Agreement Year had been calculated based on the adjusted Waste Generation Factor(s).

(ii) If the County reasonably determines the Initial Waste Generation Factors (or any subsequently determined Waste Generation Factors) do not accurately evidence the amount of Residential Solid Waste the Contractor is collecting from the Assessed Parcels, then the County may adjust the factors to reflect the amount of Residential Solid Waste being collected. Prior to any such adjustment, the County will provide the Contractor detailed supporting documents clearly evidencing how the County reached its determination. If within thirty (30) days after receipt of the County's notice and supporting documents the Contractor disagrees with the County's determination, it must notify the County stating specific matters in dispute and providing clear documentation supporting the Contractor's position. The Administrator shall consider the Contractor's notice and documentation and within thirty (30) days after receipt notify the Contractor of the County's response. If the Contractor's documentation does not contradict or refute the County's determination, then the County will adjust the Waste Generation Factors accordingly with the monthly allotted tonnage amounts being adjusted beginning in the month the Contractor received the County's original notice of the Waste Generation Factor adjustment. The Administrator's decision to grant, grant in part, or deny, the Contractor's request shall be final and non-appealable.

24. Verification of Payment Amounts.

- a. **No Accord or Release.** The County's acceptance of any payment from the Contractor or the County's deduction of any amount from the payments due to the Contractor for

Residential Collection Services, shall not be construed as an accord that the amount paid is the correct amount, nor shall it be construed as a release of any claim the County may have for additional sums payable from the Contractor.

- b. Verification; Payments. The County may at any time verify that the Contractor has paid the County all amounts due and owing to the County under the Agreement. If the Contractor has not done so, then within thirty (30) days after receiving notice from the County, the Contractor shall immediately pay the County the entire past due amount together with interest at the maximum rate allowed by law. If the Contractor fails to timely pay the past due amount, the County may withhold the past due and owing amount from its next monthly payment to the Contractor made pursuant to Section 21, above. The Contractor shall be responsible to pay all costs the County reasonably incurs to collect any past due and owing amount.
 - c. Set-Off. The County may set-off from the amounts due Contractor pursuant to Section 21 and Section 22, above, any sum the Contractor owes the County whether under this or any other agreement and the monetary amount of any and all damages incurred, whether direct or indirect, actual or liquidated, that arise from the Contractor's breach of the Agreement or otherwise.
 - d. County Rights. The County may at its expense inspect, copy and audit any books, records and documents of the Contractor that are relevant to the County's calculation of the amounts that are due and payable under this Agreement. The audit rights stated in this Section 24 may also be exercised by the Polk County Clerk of Court, Department of Inspector General,
25. Indemnification. The Contractor hereby covenants and agrees to fully defend, protect, indemnify and hold harmless the County from and against each and every claim, demand or cause of action and any and all liability, cost, expense (including without limitation reasonable attorneys' fees, costs, expenses, and liabilities incurred in defense of the County, even if incident to appellate, post-judgment or bankruptcy proceedings), damage or loss whatsoever which may be made or asserted by the Contractor or any third party (including without limitation the County) whether caused in whole or in part by, arising out of, or in any way resulting from, incidental to or in connection with the Contractor's acts, omissions, defaults, negligence, or misconduct under this Agreement, or the County's decision to award this Agreement to the Contractor. At the election of the County, the Contractor shall contest and defend the County against any such claims by defense counsel satisfactory to the County Attorney. Such obligation to hold harmless and indemnify shall continue notwithstanding any negligence or comparative negligence on the part of the County relating to such loss or damage and shall include all reasonable and related costs, expenses, and liabilities incurred by the County in connection with any such claim, suit, action or cause of action, including the adjustment and investigation

thereof and the defense of any action or proceeding by defense counsel satisfactory to the County Attorney and any order, judgment, imposition or decree which may be entered in any action or proceeding as a result thereof. This indemnification shall also include, without limitation, any claim or liability arising from or in any way related to actual or threatened damage to the environment, agency costs of investigation, personal injury or death, or damage to property, due to a release, alleged release, or improper handling by Contractor of Solid Waste, Hazardous Waste, Biomedical Waste, Biological Waste, Special Wastes, Unauthorized Waste, or Sludge (as such terms are defined in Florida Statutes, section 403.703, or Florida Administrative Code Rule 62-701.200), regardless of the merits of the claim. Only those matters which are determined by a final, nonappealable judgment to be the result of the negligence of the County shall be excluded from the Contractor's duty to indemnify the County, but only to the extent of gross negligence of the County. For the purpose of this Section 25, the "County" shall be deemed to include the County Commissioners and the County's officers, agents, employees and Affiliates, and the "Contractor" shall be deemed to include the Contractor's subcontractors, sub-subcontractors of any tier, and their respective officers, agents, employees, and Affiliates. For purposes of this indemnification, "claims" shall mean and include all obligations, actual and consequential damages, and costs reasonably incurred in the defense of any claim against the County, including without limitation reasonable fees for accountants, attorneys, attorney assistants and expert witnesses, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses. The County shall have the right to defend any such claim against it in such manner as the County deems appropriate or desirable in its sole discretion without relieving Contractor of any obligation hereunder. Contractor acknowledges that twenty five dollars (\$25.00) paid by the County from the moneys payable to Contractor is separate and distinct consideration for the giving of this indemnity and hold harmless, and the Contractor acknowledges and agrees that County would not enter into this Agreement without this indemnification of County by Contractor, and that the County's entering into this Agreement, in addition to the foregoing, shall constitute good and sufficient consideration. Nothing in this Agreement shall be construed in any way to affect the County's rights, privileges, and immunities as set forth in Florida Statutes, Section 768.28, as amended from time to time. This indemnity and hold harmless obligation requirement does not limit any additional compensation available from insurance, bonding, or equitable and legal remedies available under this Agreement. This indemnity and hold harmless obligation shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

26. **Insurance.** From and after the Effective Date until this Agreement is terminated, the Contractor shall maintain, on a primary basis and at its sole expense, the following insurance coverages, with the limits and endorsements described in this section. The requirements contained in this section, as well as the County's review or acceptance of

insurance maintained by the Contractor, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement.

- a. Commercial General Liability. The Contractor shall maintain Commercial General Liability at a limit of liability not less than \$2,000,000.00 Each Occurrence / \$2,000,000 General Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- b. Business Automobile Liability. The Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$2,000,000.00 Combined Single Limit / Each Accident. Coverage shall include liability for Owned, Non-Owned & Hired automobiles.
- c. Pollution Liability. Contractor shall maintain Pollution Liability at a minimum limit not less than \$2,000,000.00 Each Occurrence / \$4,000,000.00 Aggregate.
- d. Excess Liability. The Contractor shall maintain Excess Liability at a limit of liability not less than \$5,000,000.00 Each Occurrence / \$5,000,000.00 Aggregate. Contractor shall include each required policy herein as an underlying policy on the Excess Liability. Contractor shall endorse the County as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Excess Liability provides coverage on a "True Following-Form" basis. This liability may be satisfied by Umbrella Liability form, and the limit may be satisfied by multiple layers of coverage.
- e. Workers' Compensation & Employers Liability. The Contractor shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Chapter 440, Florida Statutes. Contractor shall maintain Employer Liability Limits not less than \$1,000,000.00 Each Accident, \$1,000,000.00 Disease Each Employee, and \$1,000,000.00 Disease Policy Limit.
- f. Claims Made Coverage, and Supplemental Coverage. For policies written on a "Claims-Made" basis, Contractor shall maintain a Retroactive Date prior to or equal to the Effective Date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggers the right to purchase a Supplemental Extended Reporting Period (SERP) coverage during the term of this Agreement, Contractor agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.
- g. Additional Insured Endorsements. The Contractor shall endorse its insurance with the County as an Additional Insured as follows: (1) for the Commercial General Liability, the Contractor shall endorse the County with either a CG 2026 Additional

Insured – Designated Person or Organization endorsement or CG 2010 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement, or similar endorsement; (2) for the Business Automobile Liability, the Contractor shall endorse the County with a CA 2048 – Designated Insured, or similar endorsement; (3) for the Pollution Liability, the Contractor shall endorse the County with the standard Additional Insured endorsement filed by the insurer for use in the State of Florida; and (4) for the Excess Liability, the Contractor shall endorse the County as an "Additional Insured" on the Umbrella or Excess Liability, unless the policy provides coverage to the underlying policies on a "True Following-Form" basis. The Additional Insured shall read "Polk County, a political subdivision of the State of Florida" for all endorsements.

- h. Waiver of Subrogation. Contractor agrees to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.
- i. Certificates of Insurance. Prior to the Effective Date, the Contractor shall provide the County Certificate(s) of Insurance evidencing that all coverages, limits, deductibles, self-insured retentions and endorsements required by this Agreement are maintained and in full force and effect. The Certificate(s) of Insurance shall include a minimum thirty (30) calendar day duty to notify due to cancellation, material change in coverage, or non-renewal of coverage. Each Certificate should state that "Polk County, a political subdivision of the State of Florida" is the holder of the Certificate. The Contractor shall deliver the Certificates of Insurance to the following:

Original to: Polk County
Risk Manager
Risk Management Division
P.O. Box 9005, Drawer AS06
1250 Golfview Drive
Bartow, FL 33831-9005

And to: Polk County
Waste & Recycling Division
10 Environmental Loop South
Winter Haven, Florida 33880
Attention: Administrator

- j. Deductibles or Self-Insured Retention. The Contractor shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention. When a self-insured retention or deductible exceeds \$25,000.00 for any of the foregoing required policies, the County reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statements to determine the reasonability of the retention levels, based on the financial capacity of Contractor.
- k. Right to Revise or Reject. The County reserves the right, but not the obligation, to revise any insurance requirement including without limitation limits, coverage, deductibles, self-insured retentions or endorsements, or to reject any insurance policies that fail to meet the criteria stated herein. Additionally, the County reserves the right, but not the obligation, to review or reject any insurer providing coverage due to its poor financial condition or failure to operate in compliance with Applicable laws.

27. Performance Bond.

- a. Requirements. The Contractor shall furnish to the County an irrevocable, annually renewable, Performance Bond for the faithful performance of this Agreement and all of the Contractor's obligations hereunder. For the time period from the Effective Date through September 30, 2017 and for the first Agreement Year, the amount of the Performance Bond shall be an amount equal to one-half of the amount estimated to be payable to the Contractor pursuant to Section 21, above, for the first Agreement Year without considering any possible deduction for Retainage, administrative fees and charges, liquidated damages or any other sum. For each Agreement Year thereafter, the amount of the Performance Bond shall equal to one-half of the Gross Revenues paid to the Contractor under this Agreement in the preceding Agreement Year. The form and content of the Performance Bond shall be substantially the same as the bond form attached as Exhibit "H," Performance Bond (Form), and shall be subject to the approval of the County. The Performance Bond shall be issued by a surety company that is acceptable to the County. At a minimum, the surety company shall be rated "A+" or better as to management and "FSC XV" or better as to strength by Best's Insurance Guide or Surety, and the surety company must also be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds. The Surety shall have been in business and have a record of successful and continuous operation for at least five years. The Performance Bond shall: (i) contain any provisions required by Applicable Law; (ii) guarantee the performance of the Agreement; (iii) serve as security for the payment of all Persons performing labor and furnishing materials in connection with this Agreement; and (iv) not be canceled or altered without at least thirty (30) calendar days prior notice to the County. The Contractor shall furnish the Performance Bond to the County within thirty (30) calendar days after the Effective

Date. The Performance Bond shall be maintained in full force and effect at all times during the Agreement Term.

- b. Liability. The Contractor's maintenance of the Performance Bond and its performance of all the obligations under this section shall not relieve the Contractor of liability arising for its default or breach of this Agreement. The Performance Bond may be "called" and used upon any default or breach of this Agreement by the Contractor. Calling or using the Performance Bond shall not restrict or preclude the availability or use of any additional or other remedies available to the County for damages or other harm caused by the Contractor's breach or default of the Agreement.

28. Intentionally Omitted.

29. Default and Remedy.

- a. Process. If the Contractor materially defaults in the timely performance of any Agreement obligation, or if the Contractor is otherwise in material default of the Agreement to include without limitation due to the matters described in Section 29 b., below, then the County shall have the right to (i) with or without terminating this Agreement, immediately call the Performance Bond, and engage other contractors or providers at the Contractor's sole cost and expense to provide those unperformed or deficient Agreement obligations of the Contractor; (ii) set-off the monetary amount of any and all damages arising therefrom, whether direct or indirect, actual or liquidated, from the amounts due Contractor pursuant to Section 21 and Section 22, above, (iii) immediately terminate this Agreement by delivering written notice to the Contractor, and (iv) pursue any and all remedies available in law, equity, and under this Agreement including without limitation the recovery of any increased cost the County incurs to provide for the Residential Collection Service from and after the termination of this Agreement pursuant to this Section 29. Upon any such termination pursuant to this Section 29, the County shall pay the Contractor the full amount due and owing for all services properly performed through the date of Agreement termination, less any amount subject to the County's right of set-off, and all liability of the County to the Contractor shall cease.
- b. Certain Material Defaults. Among other matters, any of the following shall constitute the Contractor's material default of this Agreement: the appointment of a receiver to take possession of all or substantially all of the Contractor's assets, a general assignment by the Contractor for the benefit of creditors, or any action taken by or suffered by Contractor under any insolvency or bankruptcy act; or the Contractor is convicted of a public entity crime, is determined to have violated federal or state law prohibiting discrimination as stated in Section 287.134, Florida Statutes, or is prohibited from performing work for or transacting business with the County

pursuant to Section 287.133 or to Section 287.134, Florida Statutes, all as described in Section 41, below; or an assignment made without the express written consent of the County as described in Section 43, below; or the submission of a false certification to the County or engagement in prohibited business operations, both as described in Section 45, below.

30. Administrative Charges

a. Basis. The acts described in this Section 30 are violations of this Agreement which, among other effects, would undermine the integrity and stability of the County's Residential Solid Waste Collection and disposal services and harm the County's relationship with the Residents and public at-large. Consequently, the County and Contractor acknowledge and agree that it is difficult or impossible to accurately determine the amount of any damages the County would or might incur due to the failures or circumstances described in this Section 30 for which the Contractor would otherwise be liable to the County. Accordingly, prior to entering this Agreement, the County provided the Contractor its good faith estimate of the administrative charges the County would generally anticipate incurring in contract compliance and investigative costs upon the occurrence of each proscribed act stated in Section 30. c. and Section 30. d., below, the basis for those administrative charges, and an opportunity to challenge those bases and the applicable proposed administrative charge. The parties subsequently agreed that the assessment of the administrative charges stated in this Section 30 are reasonable upon the occurrence of such failures or circumstances. The Contractor and County also have consulted with their respective legal counsel and confirmed that the administrative charges are appropriate. Therefore, the administrative charges assessed as stated in this Section 30 shall constitute liquidated damages, not penalties, for the Contractor's breach of this Agreement.

b. Procedure.

(i) Prior to assessing an administrative charge, the Administrator shall provide written notice to the Contractor, indicating the County's withholding of Residential Collection Service payment amounts associated with the County's intent to assess an administrative charge and the basis for the County's position.

(ii) After receiving the Administrator's letter, the Contractor shall have ten (10) days to file a written letter of protest with the Administrator.

(iii) If a protest is timely filed, then within five (5) Days after receipt of the protest letter, the Administrator shall refer the matter to the County Manager for resolution. The County Manager shall review the issues in a timely manner and within thirty (30) days after receipt of the protest

provide a written decision to the Contractor. The County Manager's decision shall be final and non-appealable.

(iv) If a protest or petition is not timely filed by the Contractor, or if the County Manager concludes that the administrative charge should be assessed, the Administrator shall deduct the amount assessed from the County's next payment to the Contractor for Residential Collection Service.

c. Failure to Timely Commence Residential Collection Service. The Administrator shall assess an administrative charge in the amount of Twenty Thousand Dollars (\$20,000.00) for each Day of delay if the Contractor does not commence all Residential Collection Services on October 2, 2017. There will be no Initial Period "relief" in connection with this provision.

d. Performance Failures. The Administrator shall assess administrative charges in the stated amounts upon the occurrence of the following acts.

(i) The Contractor's mixing, combining or comingling Commercial Solid Waste with Residential Solid Waste collected under this Agreement shall result in the imposition of an assessment of \$25,000.00 per incident. The Administrative Charge amount recoverable for this act does not include the actual amount of any lost revenue, payment for services claimed but not rendered (whether in whole or part), or any other type of calculable damage the County actually sustains exclusive of the Unknown Costs described in the County's good faith estimate described in Section 30. a., above. The County may separately recover all such actual, calculable damages pursuant to Section 29 of the Agreement.

(ii) The Contractor's falsifying any report or any other document submitted to the County shall result in the imposition of an assessment of \$25,000.00 per incident. The Administrative Charge amount recoverable for this act does not include the actual amount of any lost revenue, payment for services claimed but not rendered (whether in whole or part), or any other type of calculable damage the County actually sustains exclusive of the Unknown Costs described in the County's good faith estimate described in Section 30. a., above. The County may separately recover all such actual, calculable damages pursuant to Section 29 of the Agreement. Additionally, the County may recover the amount of any Performance Incentive payments paid to the Contractor based on the content of the falsified reports or documents.

(iii) The Contractor's mixing, combining or comingling Garbage, Horticultural Trash and/or Recyclable Materials in any manner whatsoever

shall result in the imposition of an assessment of \$25,000.00 per incident. The Administrative Charge amount recoverable for this act does not include the amount of any fine, penalty, assessment, or other charge imposed against the County, or the actual amount of any lost revenue from a partial or complete shutdown of landfill operations as a consequence of the commingling, or the actual cost the County incurs to dispose of Residential Solid Waste collected pursuant to the Agreement, or any other type of calculable damage the County actually sustains exclusive of the Unknown Costs described in the County's good faith estimate described in Section 30. a., above. The County may separately recover all such actual, calculable damages pursuant to Section 29 of the Agreement.

31. **Limit of County Liability.** IN NO EVENT, SHALL THE COUNTY BE LIABLE TO THE CONTRACTOR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.
32. **Attorneys' Fees and Costs.** Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.
33. **Waiver.** No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the County or Contractor at any time to require performance by the other party of any term in this Agreement shall in no way affect the right of the County or Contractor thereafter to enforce same. Nor shall a waiver by the County or Contractor of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver must be in writing and signed by the party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.
34. **Force Majeure.** A party shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. Within two (2) days after the occurrence of an Event of Force Majeure, the affected party shall deliver written notice to the other party describing the event in reasonably sufficient detail and how the event has precluded the affected party from performing its obligations hereunder. The

affected party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the affected party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the affected party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the affected party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

35. **Waiver of Flow Control Claims.** The Contractor acknowledges it has voluntarily entered into this Agreement for the purpose of enjoying the economic and other benefits conferred upon the Contractor by this Agreement. To ensure the County also enjoys the benefits of this Agreement, the Contractor hereby knowingly, voluntarily, and permanently waives, releases and forever discharges its right to challenge, contest, or invalidate the provisions in this Agreement that require the Contractor to use a Designated Facility for the disposal or processing of Solid Waste collected by the Contractor. This waiver includes without limitation any right or ability to claim that this Agreement implements an inappropriate form of Solid Waste "flow control," regardless of whether the claim is based on local, state, or federal law, or the Florida or U.S. Constitution, or any other grounds, and regardless of whether the claim seeks damages, injunctive relief, or other remedies at law or in equity.
36. **Non-Discrimination.** The Contractor shall not discriminate against any employee or applicant for employment for work under this Agreement because of handicap, race, color, religion, sex, age, or national origin and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment by Contractor without regard to race, color, religion, sex, age or national origin. This provision shall include 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 apprenticeships. Upon request, the Contractor shall furnish the County with a copy of its Affirmative Action Policy. A copy of the policy also shall be submitted to the Administrator at least thirty (30) calendar days before the Service Commencement Date.
37. **Unauthorized Aliens.** The Contractor shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the County's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the County, the Contractor shall also deliver a complete

and executed affidavit in a form provided by the County certifying the Contractor's compliance with applicable immigration laws.

38. Public Records Law.

- a. **Compliance.** The Contractor acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and to comply in the handling of the materials created under this Agreement. The Contractor further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Contractor shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all Applicable Laws.
- b. **Obligations.** Without in any manner limiting the generality of the foregoing, to the extent applicable, the Contractor acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
 - (i) keep and maintain public records required by the County to perform the services required under this Agreement;
 - (ii) upon request from the County's Custodian of Public Records or his/her designee, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Term if the Contractor does not transfer the records to the County; and
 - (iv) upon completion of the Agreement transfer, at no cost, to the County, all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Agreement the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. Upon receipt of a request from the County's Custodian of Public Records, all records stored electronically

must be provided to the County in a format that is compatible with the information technology systems of the County.

- c. Contact. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIASON OFFICER
POLK COUNTY
330 WEST CHURCH ST.
BARTOW, FL 33830
TELEPHONE: (863) 534-7527
EMAIL: RMLO@POLK-COUNTY.NET**

39. Compliance with Laws. The Contractor shall at all times comply with all Applicable Laws now in effect or hereafter enacted, which are applicable in any way to the Contractor, its officers, employees, agents, or subcontractors.
40. Permits and Licenses. The Contractor, at its sole cost and expense, shall obtain and maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for Contractor to perform the work and services described herein.
41. Fair Dealing; Public Entity Crimes.
- a. Fair Dealing. The Contractor declares and warrants that it enters into this Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no County Commission member, County officer, or County employee, directly or indirectly owns more than one percent (1%) of the total assets or capital stock of the Contractor, nor will any such Person directly or indirectly benefit by more than one percent (1%) from the profits or emoluments of this Agreement, nor has the Contractor provided any gift to any such Person or their family. The Contractor warrants that it has not employed or retained any company or Person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and the Contractor has not paid or agreed to pay any Person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this Agreement.

b. Public Entity Crimes. The Contractor declares and warrants that it is not subject to the restrictions in Sections 287.133 and 287.134, Florida Statutes, regarding, respectively, the commission of a public entity crime or act of prohibited discrimination. If during the Term the Contractor or any person or entity who controls (as that term is defined in Section 43, below) the Contractor is convicted of a public entity crime, or is determined to have violated federal or state law prohibiting discrimination as stated in Section 287.134, Florida Statutes, or is prohibited from performing work for or transacting business with the County pursuant to Section 287.133 or Section 287.134, Florida Statutes, then upon the occurrence of any of the foregoing, the Contractor shall be in material default of this Agreement. Upon any such material default, the County shall have the rights stated in Section 29, above.

42. Contractor Representations. The Contractor hereby represents and warrants the following to the County:

- a. Status. Contractor is a Sociedad Anónima (S. A.) that is duly organized under the laws of the Country of Spain and authorized to do business within the State of Florida, and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- b. Violations. Contractor's performance under this Agreement will not violate or breach any contract or agreement to which the Contractor is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation.
- c. Authority. Contractor has the full legal right, requisite power and authority to enter into this Agreement and to perform its obligations in accordance with its terms.
- d. Authorizations. Contractor now has and will continue to maintain all licenses, permits, consents, approvals, and all other authorizations from third parties and governmental authorities that are required for it to conduct its business and to satisfy its duties and obligations under this Agreement.
- e. Actions. To the best of the Contractor's information and belief, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority pending against the Contractor, in which an unfavorable decision, ruling, or finding would materially and adversely affect the Contractor's performance of its Agreement duties and obligations, or that would in any way adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Contractor or any of its Affiliates in connection with this Agreement.
- f. Impairment. Contractor has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

- g. Character. Contractor shall conduct its business activities and perform all Agreement duties, obligations, and services in a reputable manner, with the utmost integrity and to the highest professional ethical standards.
- h. Qualifications. Contractor has the personnel, background, knowledge, skill, expertise, experience, integrity, and character necessary to perform all Agreement duties, obligations, and services in a professional and workmanlike manner.
- i. Standard of Performance. Contractor shall exercise the same degree of care, skill, and diligence in the performance of the Agreement duties, obligations, and services as provided by an organization of like experience, knowledge, expertise, and resources, under similar circumstances.
- j. Warranty. Contractor shall, at no additional cost to County, re-perform those Agreement duties, obligations, and services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement.
- k. Legality. The Contractor's execution, delivery, and performance of this Agreement:
 - (i) Have been duly authorized;
 - (ii) Do not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained after the Effective Date;
 - (iii) Have been duly authorized by all requisite action of the Contractor, and no other proceedings on the part of the Contractor, its officers, partners, or managers are necessary to authorize this Agreement or to perform the duties and obligations of the Contractor contemplated by it;
 - (iv) Will not violate any law applicable to the Contractor or its property or any provisions of the Contractor's articles of incorporation or by-laws;
 - (v) Do not constitute a default under or result in the creation of any lien, charge encumbrance, or security interest upon any assets of the Contractor under any agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound or affected in any manner that prohibits or otherwise adversely affects the Contractor's ability to perform its obligations under this Agreement; and
 - (vi) Do not and will not violate any copyrights, patents, or other intellectual or proprietary rights of any Person.
 - (vii) The Agreement has been duly executed and delivered by the Contractor and, as of the Effective Date, constitutes a legal, valid, and binding obligation of the Contractor, enforceable by the County against the Contractor in accordance with its terms, except to the extent its enforceability is limited by the application of general principles of equity and by bankruptcy, insolvency, moratorium, debtor relief, and similar laws

of general application affecting the enforcement of creditor rights and debtor obligations.

43. **Assignment**

a. **Restriction**. The Contractor shall not assign this Agreement, or any duty, obligation, right or responsibility occurring hereunder, whether in whole or in part, directly or indirectly, without the prior express written consent of the County, which consent the County may withhold in its sole and absolute discretion, with or without cause. An assignment includes the following:

(i) the Contractor's agreeing or contracting, directly or indirectly, with any Person to effectively undertake any of the Contractor's Agreement duties, obligations, or responsibilities, regardless of the form or nature of any such contract or agreement;

(ii) the Contractor's merger or consolidation with any Person;

(iii) a sale, lease, or other transfer of all or substantially all of the Contractor's assets;

(iv) a sale or other transfer of any equitable ownership interest, voting interest, or voting security in the Contractor to another Person; and

(v) a change in control of the Contractor;

with the term "control" (to include the terms "controlling", "controlled by", and "under common control with") meaning the possession, directly or indirectly, singularly or through one or more Affiliates or other parties, of the power to direct or to cause the direction of the Contractor's management or management policies, whether through the ownership of voting interests or securities, ownership of fee, leasehold or other interest in real estate or operating equipment, by contract or other agreement, or by any other means.

b. **Requests**. Notwithstanding the restriction stated in Section 43. a. above, the County could, in its sole and absolute discretion and without any obligation whatsoever to do so, elect to entertain and consider a written request the Contractor may submit to assign all or some portion of its interests in this Agreement. If it elects to consider any such request, then among the factors the County would consider in its evaluation is whether the request included the following: the proposed assignee joining with the Contractor in submitting the request, the same information about the proposed assignee that was necessary for the County to evaluate and select the Contractor pursuant to RFP 16-366, reliable information as to the financial resources, expertise, equipment and capabilities of the proposed assignee and its ability to comply with all the Agreement requirements; the amount of any proposed remuneration to the County for its consideration and approval of the request, and the proposed assignee's written

verification that if approval is granted it will comply with all of the requirements in this Agreement and that it has the financial resources, expertise, equipment and other capabilities necessary to do so.

- c. Discretion. If it agrees to entertain a request pursuant to Section 43. b., above, the County shall have the right in its sole and absolute discretion to approve or to deny, with or without cause, any proposed assignment by the Contractor and to grant a request subject to certain conditions. If the County entertains but denies any request for a proposed assignment, then the Contractor shall continue to provide all of the Agreement services for the remainder of the Term. If the County entertains and approves a request for an assignment, then upon the later of the assignment effective date or the date of the County's approval, assignee shall assume full responsibility for all the Agreement duties, obligations and liabilities of the Contractor through the remainder of the Term.
- d. Termination. Any assignment of this Agreement made by the Contractor without the prior express written consent of the County shall be null, void, and a material default of this Agreement. Upon any such material default, the County shall have the rights stated in Section 29, above.

44. Scrutinized Companies and Business Operations Certification; Termination.

- a. Certification. By its execution of this Agreement, the Contractor hereby certifies the following to the County:
 - (i) the Contractor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Contractor engaged in a boycott of Israel; and
 - (ii) the Contractor is not on the Scrutinized Companies with Activities in Sudan List created pursuant to Section 215.473, Florida Statutes; and
 - (iii) the Contractor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; and
 - (iv) the Contractor is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and
 - (v) the Contractor was not on either of the above-referenced Lists, nor engaged in a boycott of Israel, nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County with respect to Request for Proposals 16-366; and
 - (vi) the Contractor is fully aware of the penalties that may be imposed upon the Contractor for submitting a false certification to the County regarding the foregoing matters.
- b. Termination. The County may terminate this Agreement if the Contractor:

(i) has submitted a false certification to the County with respect to whether the Contractor (A) is on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List; or (B) has been engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria; or

(ii) is placed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List; or engages in a boycott of Israel, or engages in business operations in Cuba or Syria.

45. Amendments.

- a. **Generally.** This Agreement shall not be modified, altered, changed or amended in any respect unless done in writing and signed by the Contractor and the Commission or its designee.
- b. **County Amendments.** The County shall have the power to make changes in this Agreement relative to the scope and method of providing Residential Collection Service, when the County deems it necessary and desirable for the public welfare. The Administrator shall give the Contractor notice of any proposed change and an opportunity to be heard concerning any relevant matters. The County and Contractor will enter into good faith negotiations to modify this Agreement and the Rates, as necessary. The scope and method of providing Residential Collection Service, as referenced herein, shall be liberally construed to include without limitation the manner, procedures, operations, and obligations of the Contractor.
- c. **Change in Law.** The County and the Contractor acknowledge that a change in Applicable Law may require the parties to modify some of the conditions or obligations of this Agreement. If any future Change in Law materially alters the Agreement obligations of the Contractor or the County, then the parties will negotiate in good faith as to any required Agreement amendment.

- 46. Independent Contractor.** Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Contractor (including its officers, employees, and agents) as the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Contractor is to be and shall remain forever an independent contractor with respect to the duties, obligations, and services performed pursuant to this Agreement. The Contractor shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Contractor shall have no right to speak for or bind the County in any manner.

47. Pre-Termination Obligations.

- a. Service Beyond Stated Term. If the County does not exercise its right to renew this Agreement or if there are no renewal options remaining, the County will attempt to award a new agreement to a Person at least six (6) months prior to the expiration of this Agreement. If a new agreement has not been awarded within such time frame and the County requests it do so, the Contractor shall provide Residential Collection Services to the County for an additional one hundred eighty-one (181) calendar days after the expiration of this Agreement at the then established Rates.
- b. Cooperation and Coordination. Prior to the termination of this Agreement, the Contractor shall ensure that there is no interruption or reduction of service when the Contractor ends its services to the County. If a new franchise agreement is awarded to a Person other than the Contractor, the Contractor shall coordinate and cooperate with the newly selected franchise hauler and the County to minimize any disruptions in the service provided to the public.
- c. Residential Collection Service Procurement. At any time, the County may issue a bid, a request for proposals or other type of solicitation, may commence negotiations with a Person other than the Contractor, or may take any other step deemed necessary by the County to obtain the services of a Person who will collect Residential Solid Waste for the County after this Agreement expires or is terminated.

48. **Notice.** Whenever either party desires to give notice to the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section 48. For the present, the parties designate the following as their initial respective places for giving of notice:

For County: Polk County
 Waste & Recycling Division
 10 Environmental Loop South
 Winter Haven, Florida 33880
 Attention: Administrator

For Contractor: Fomento de Construcciones y Contratas, S.A.,
 1610 Woodstead Court, Suite 360
 The Woodlands, TX 77380
 Attention: _____

49. **County Approval Rights.** Whenever this Agreement authorizes the County or one of its representatives (e.g., the Administrator) to approve a request by the Contractor, the County shall have the right to withhold its approval until the Contractor submits all of the information needed to evaluate the Contractor's request. The County shall fairly and objectively evaluate the information provided by the Contractor, as well as any other relevant facts. However, the County shall have the exclusive right to weigh the relevant facts and determine whether the approval of the Contractor's request is consistent with the requirements in this Agreement and with the public interest.
50. **Annual Appropriations.** Contractor acknowledges that during any fiscal year the County shall not expend money, incur any liability, or enter into any agreement which by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, any agreement, verbal or written, the County may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The County may enter into agreements whose duration exceeds one year; however, any such agreement shall be executory only for the value of the services to be rendered which the County agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the County's performance and obligation to pay the Contractor under this Agreement is contingent upon annual appropriations being made for that purpose.
51. **Governing Law; Venue.** This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida.
52. **Severability.** The definitions and provisions contained in this Agreement shall not be construed to require the County or the Contractor to take any action that is contrary to any local, state or federal law. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the County, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect. This Agreement shall be construed as if such invalid, illegal, void or unenforceable provision had never been contained herein.
53. **Construction; Counterparts.** Both parties are represented by legal counsel and the parties waive any rule of law that would require any vague or ambiguous provision herein to be construed against the party that physically prepared the Agreement. This Agreement and its individual provisions shall not be construed in favor or against either

party based on which party drafted the Agreement or particular provision. This Agreement may be executed in counterparts, each of which shall be deemed an original binding document but all of which shall constitute one and the same instrument.

54. **Survivability**. Any term, condition, covenant, or obligation which requires performance by a party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.
55. **Integration**. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. This Agreement shall supersede all prior agreements between the parties regarding the matters addressed herein.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;

THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE

WITH THE PARTIES' SIGNATURES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

STACY M. BUTTERFIELD
CLERK OF THE BOARD

Polk County, a political subdivision
of the State of Florida

By: _____
Deputy Clerk

By: _____
Melony M. Bell, Chairman
Board of County Commissioners

Date Signed By Chairman _____

Reviewed as to form and legal sufficiency:

County Attorney's Office

ATTEST:

Fomento de Construcciones y Contratas, S.A.
a Sociedad Anónima

By: [Signature]

By: [Signature]

ANDREA RODRIGUEZ
PRINT NAME

Anthony J. Emilio
PRINT NAME

NOTARY, TECHNICAL MANAGER
TITLE

Director of Municipal Services
TITLE

Date: 12/2/2016

SEAL

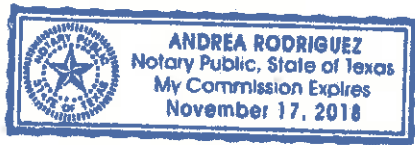


Exhibit List

<u>Exhibit</u>	<u>Title</u>
A	Service Area
B	Transition Tasks and Services
C	GPS/AVL System Functional Requirements
D	RFID System Functional Requirements
E	Base Rates
F	Monthly Performance Evaluation Form
G	Monthly Performance Incentive Benchmarks and Calculation Example
H	Performance Bond (Form)

Exhibit "A"
(Service Area)

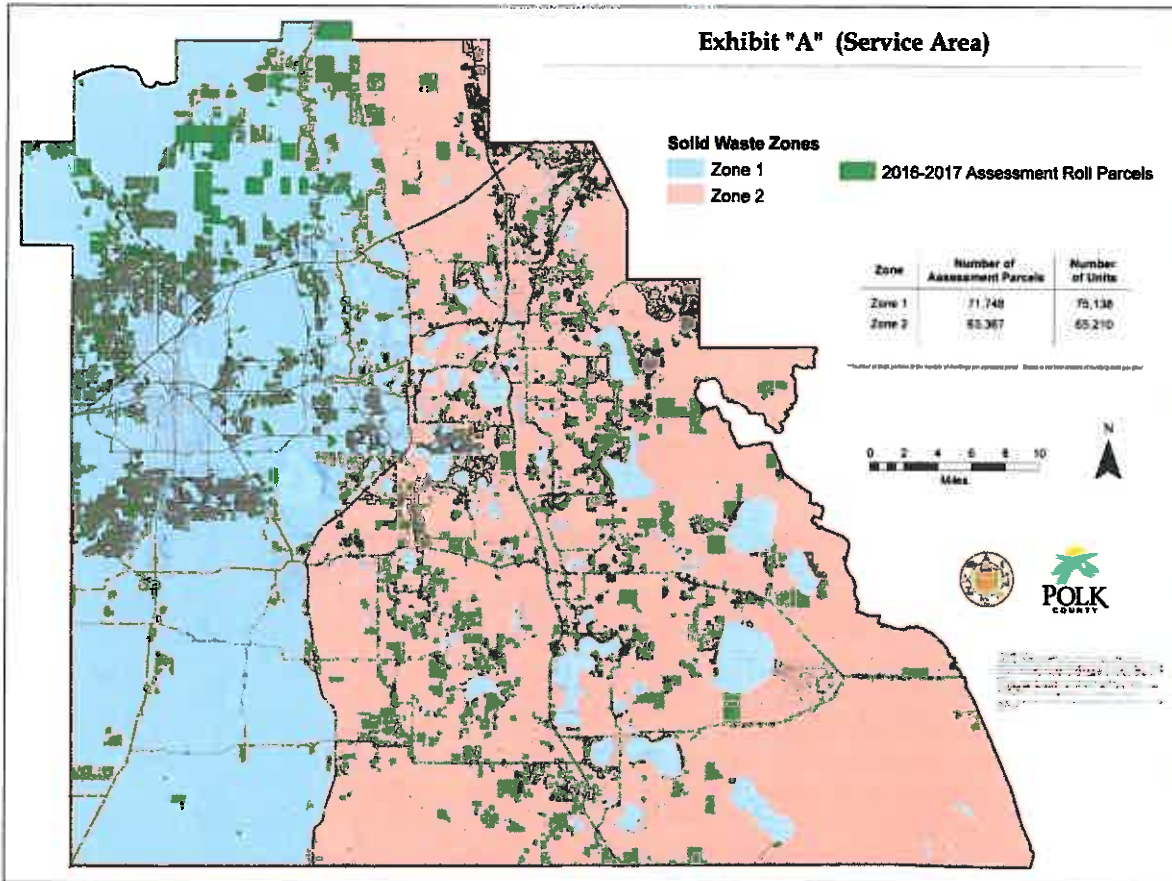


Exhibit "A"
(Service Area) (Continued)

Zone 1 (West) Service Area Legal Description

Begin at the North Quarter corner of Section 2, Township 25 South, Range 25 East, Polk County, Florida, and said corner also being a point on the North Political Subdivision Boundary of Polk County, Florida according to Title II Chapter 7 of Florida Statutes;
Thence South on the East line of the West Half of Sections 2, 11 and 14, also in Township 25 South, Range 25 East, Polk County, Florida, to the intersection with Van Fleet Road;
Thence East on Van Fleet Road to the intersection with Brown Shinn Road;
Thence South on Brown Shinn Road to the intersection with Deen Still Road;
Thence East on Deen Still Road to the intersection with Old Grade Road;
Thence South on Old Grade Road to the intersection with Interstate Four, where Old Grade Road turns into Highway 557, thence continue South on Highway 557, also known as Buena Vista Drive, to the South bound lanes of Highway 17-92, also referred to as Shinn Road, in the City Limits of Lake Alfred;
Thence continue south along the southbound lanes of Highway 17-92, to the intersection where Highway 92 and Highway 17 separate, and Highway 17 continues south;
Thence Southerly on Highway 17, approximately 33 miles +/- to the South Political Subdivision Boundary of Polk County, Florida according to Title II Chapter 7 of the Florida Statutes;
Thence West, North, and East in a Clockwise direction along the said Political Subdivision Boundary of Polk County, to the North Quarter corner of Section 2, Township 25 South, Range 25 East, Polk County, Florida, and the Point of Beginning.

Exhibit "A"
(Service Area) (Continued)

Zone 2 (East) Service Area Legal Description

Begin at the North Quarter corner of Section 2, Township 25 South, Range 25 East, Polk County, Florida, and said corner also being a point on the North Political Subdivision Boundary of Polk County, Florida according to Title II Chapter 7 of Florida Statutes;
Thence South on the East line of the West Half of Sections 2, 11 and 14, also in Township 25 South, Range 25 East, Polk County, Florida, to the intersection with Van Fleet Road;
Thence East on Van Fleet Road to the intersection with Brown Shinn Road,
Thence South on Brown Shinn Road to the intersection with Deen Still Road;
Thence East on Deen Still Road to the intersection with Old Grade Road;
Thence South on Old Grade Road to the intersection with Interstate Four, where Old Grade Road turns into Highway 557, thence continue South on Highway 557, also known as Buena Vista Drive, to the South bound lanes of Highway 17-92, also referred to as Shinn Road, in the City Limits of Lake Alfred;
Thence continue south along the southbound lanes of Highway 17-92, to the intersection where Highway 92 and Highway 17 separate, and Highway 17 continues south;
Thence Southerly on Highway 17, approximately 33 miles +/- to the South Political Subdivision Boundary of Polk County, Florida according to Title II Chapter 7 of the Florida Statutes;
Thence East, Northwesterly, and West in a Counter-Clockwise direction along the said Political Subdivision Boundary of Polk County, to the North Quarter corner of Section 2, Township 25 South, Range 25 East, Polk County, Florida, and the Point of Beginning.

Exhibit "B"
(Transition Tasks and Services)

Task	Completion Deadline
Identify management team	June 1, 2017
Provide proof of equipment procurement	March 1, 2017
Submit Collection Plan	June 1, 2017
Establish yard and office site in Polk County	August 1, 2017
Submit Transition Plan to the Administrator	May 31, 2017
Frontline personnel in place	August 1, 2017
County inspections of Contractors installations	August 1, 2017

Exhibit "C"

(GPS/AVL System Functional Requirements)

The GPS/AVL System will meet the following functional requirements:

1. The GPS/AVL system will be one with at least five (5) years deployment with a fleet of comparable size.
2. The GPS/AVL system will provide data recording and monitoring meeting the following requirements:

a. Functionality Requirements

1. Real-Time Vehicle Location (or Near Real-time when Real-time is not available).
2. Bread Crumb Trail
3. Geofencing/Landmarking
4. Information Gather Rate/Ping Rate of not more than 30 seconds between "pings" with 15 seconds preferred
5. Ad hoc Reporting requirement
6. Alerting

b. Data Requirements

1. Physical Address of Collection Events produced via existing reverse geocoding technology
2. Date of Collection Event
3. Time of Collection Event
4. Route Number
5. Truck Number
6. Latitude/Longitude
7. Ignition Status
8. Truck Movement Status (i.e., moving, idle, etc.)

c. Business Process Requirements

1. All trucks will have all necessary hardware and/or software capabilities installed which meet the Functional and Data Requirements

2. All trucks will have a new complete and operational system installed which meets the Functional and Data Requirements for the type of truck utilized for the specific services.
3. All trucks will be equipped with mobile data services specific to their system solution and capable of supporting the operational requirements for each system.
4. All trucks will have equipment capable of recording and storing data in a batch process in the event of mobile data service loss.
5. The system will provide Collection Event data as required by the County.
6. Geofencing/Landmarking shall be established for critical areas that the County will designate to include, without limitation, the Service Area boundaries.
7. Standard Collection Event reporting may be established at the request of the County and set up to automatically push via email from the host system at specific intervals the County may from time to time designate. Reporting will include the following Data elements:
 - i. Vehicle Label/Truck Number
 - ii. Address of Collection Events produced via existing reverse geocoding technology
 - iii. Time and Date of each Collection Event
 - iv. Latitude/Longitude Coordinates of each Collection Event

3. The GPS/AVL system will be capable of providing the following information:

- a. Physical address at the Point of Collection produced via existing reverse geocoding technology
- b. Date of Collection Event
- c. Time of Collection Event
- d. Truck #
- e. Route #
- f. GPS Point(s) of Collection (latitude and longitude)
- g. Ignition Status
- h. Truck Movement Status (i.e., moving, idle, etc.)

Exhibit "D"

(RFID System Functional Requirements)

The technology solution will meet the following functional requirements:

1. The RFID system provider should have at least five (5) years of industry experience and with at least 350 RFID units installed and currently operating for system users as of the date of this Agreement.
2. The online reporting system must be accessible on a twenty-four (24) hour basis.
3. The system must be capable of maintaining RFID data records in accordance with the Agreement; from the Effective Date of the Agreement through a time period expiring five (5) years after the expiration of earlier termination of the Agreement.
 - a. Online records should be accessible for up to six (6) months of online history. In order to ensure that data is preserved, routine backups of collected RFID should be provided to the County each month for the previous months' data in the form of digital media.
 - b. Archived data must be readable, accessible, and in a format that is an industry standard platform, (i.e., .csv, .dbf, .txt, .xls, etc.).
4. The preferred system should be a hosted solution, or a web-based solution.
5. The system should be a real-time solution (or a near real-time solution when a real-time solution is not applicable) and accessible via remote tools in the event technical troubleshooting is required.
 - a. Real-time data (or near Real-time data if real-time is not applicable) should be the primary source of data captures.
 - b. If the system goes off-line, the system should continue to capture data and send in a batch process to prevent data loss.
6. The system shall provide data capable of being used to determine total number of Roll Cart tips over a given period of time. The criteria needed to accomplish this are provided in Section 7 below.
 - a. The system must be capable of maintaining accurate Roll Cart inventories.
 - b. Field locations
 - c. In-house quantities and locations.
7. Collection data from the system must be accurate, complete, and provide the following data:
 - a. Date of Collection Event
 - b. Time of Collection Event
 - c. Truck #

- d. Route #
 - e. Physical Address associated to the Roll Cart RFID (number, street name, city, etc.)
 - f. Roll Cart RFID number
 - g. Roll Cart serial number (Embossed serial number and bar codes are linked in the Roll Cart management service database.)
 - h. GPS Point(s) of Collection (Latitude and Longitude)
8. The system should be capable of providing collection data that can be used to accurately track the location of a Roll Cart with certainty and maintain that data as stated in Section 3, above.
 9. The system must be capable of providing downloadable data via export and/or import functions (i.e., Excel, text, etc.).
 10. The preferred system should be in a format importable into Esri ArcGIS to give Polk County IT the ability to analyze GPS data in the event Polk County IT would like to do analysis beyond the scope of the Agreement reporting requirements.

Exhibit "E"

Base Rates

Fomento de Construcciones y Contratas (FCC) – Service Area 1

Service	Collection Price (per Unit per Month)
Garbage (including Bulk)	\$5.26
Horticultural Trash	\$2.56
Recyclable Materials	\$2.07
Total per Unit Price per Month	\$9.89

Exhibit "F"

(Monthly Performance Evaluation Form)

Essential Duties and Performance Criteria	Performance Criteria met? Y/N	% of Retainage
Missed Collection Garbage, Recycling and Horticultural Trash do not exceed 150 per month		30%
Quality of Service –Each occurrence of Litter cleaned up within 4 hours		20%
Quality of Service – Each occurrence of Spillage cleaned up within 4 hours		20%
Each occurrence of property damage investigated and repaired within 2 Days		5%
Roll Cart repairs/replacements resolved within 2 Days of each occurrence of Roll Cart issue requiring repairs/replacements		10%
Accurate reports submitted within 7 Days of the end of the previous month		15%

Exhibit "G"

(Monthly Performance Incentive Benchmarks and Calculation Example)

Essential Duties	Benchmarks	Weight	Performance Incentive %
Missed Pickups (all lines of business)	Less than 88...3 88-114...2 115-149...1 greater than 149...0	60%	3 pts = 100% 2 pts = 67% 1 pt = 33%
Litter – Average Time of all Occurrences	0 – 2 hours...3 Greater than 2 hours but less than 3...2 Greater than 3 hours but less than 4 ...1 4 hours or greater ...0	20%	3 pts = 100% 2 pts = 67% 1 pt = 33%
Spills- Average Time of all Occurrences	0 – 2 hours...3 Greater than 2 hours but less than 3 ...2 Greater than 3 hours but less than 4 ...1 4 hours or greater ...0	10%	3 pts = 100% 2 pts = 67% 1 pt = 33%
Property Damage – Average Time of all Occurrences	Same day...2 1 day but less than 2...1 2 days or greater...0	5%	2 pts = 100% 1 pts = 50%
Roll Cart Repairs – Average Time of all Occurrences	Same day...2 1 day but less than 2...1 2 days or greater...0	5%	2 pts = 100% 1 pt = 50%

Exhibit "G"

(Monthly Performance Incentive Benchmarks and Calculation Example)

The Performance Incentive amount earned for a particular month shall be calculated in a manner presented in the following table:

Essential Duty	Weight	Maximum Allowable Incentive*	Performance Incentive %	Earned Performance Incentive
Missed Pickups	60%	\$6,000	100%	\$6,000
			67%	\$4,020
			33%	\$1,980
			0%	\$0
Litter - Average Time of all Occurrences	20%	\$2,000	100%	\$2,000
			67%	\$1,340
			33%	\$660
			0%	\$0
Spills - Avg Time of all Occurrences	10%	\$1,000	100%	\$1,000
			67%	\$670
			33%	\$330
			0%	\$0
Property Damage - Avg Time of all Occurrences	5%	\$500	100%	\$500
			50%	\$250
			0%	\$0
Roll Cart Repairs - Avg Time of all Occurrences	5%	\$500	100%	\$500
			50%	\$250
			0%	\$0

Total Maximum Incentive: \$10,000

**For demonstration purposes only. Actual values will be based on annual contract payments.*

Exhibit "H"

(Performance Bond (Form))

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that we,

Fomento de Construcciones y Contratas, S.A. (Contractor Name)

_____ (Primary Business Phone Number)

hereinafter referred to as the Principal, whose principal business address and telephone number is as stated above; and

_____ (Primary Business Phone Number)

hereinafter referred to as the Surety, a surety insurer chartered and existing under the laws of the State of _____ and authorized to do business within the State of Florida, whose principal address and telephone number is as stated above, are held and firmly bound unto Polk County, a political subdivision of the State of Florida, as Obligee, whose principal address is 330 West Church Street, Bartow, Florida 33830 in the sum of Four Million Nine Hundred Seventy-Seven Thousand Seven Hundred Sixty-Nine Dollars, (\$4,977,769.00) in lawful currency of the United States, for the payment of which we bind ourselves, successors, and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered into that certain RESIDENTIAL SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION FRANCHISE AGREEMENT for Service Area 1 (the "Agreement") having an Effective Date of December 6, 2016 with the Obligee to provide certain duties and obligations as more fully described therein, which Agreement is attached hereto and incorporated herein by reference; and

WHEREAS, the Surety states that it has read all the Agreement and carefully considered the Principal's obligations and duties under the Agreement including without limitation Section 29 (Default and Remedy) and Section 30 (Administrative Charges); and

WHEREAS, the Obligee's entry into the Agreement with the Principal and the Obligee's issuance of an exclusive franchise to the Principal are contingent upon the execution of this Bond and these presents;

NOW, THEREFORE, the condition of this Performance Bond is that if the Principal:

Promptly, faithfully, efficiently and fully performs all its duties and obligations stated in the Agreement at all times including without limitation any renewal term or period of required extended performance; and

Promptly and fully pays the Obligee for any and all loss, damage – whether actual or liquidated, expense, fee, or cost whatsoever including without limitation attorneys' fees, costs and expenses, inclusive of those resulting from appellate actions and

proceedings, the Obligee sustains because of the Principal's default under the Agreement;

then the Surety shall have no obligation under this Performance Bond.

1. This Bond shall be effective for the definite period of December 6, 2016 to December 6, 2017. The Bond may be extended, at the sole option of the Surety, by continuation certificate for additional periods from the expiry date hereof. However, neither: (a) the Surety's decision not to issue a continuation certificate, nor (b) the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew, shall itself constitute a loss to the Obligee recoverable under this Bond or any extension thereof.

2. Whenever the Principal shall be in default of the Agreement and the Obligee has notified the Principal and the Surety of such default, then the Surety shall promptly and at its expense take one of the following actions:

a. With the Obligee's prior consent, arrange for the Principal to perform and complete the Agreement;

b. Undertake to perform and complete the Agreement itself, through its agents or through independent contractors, all of whom must be acceptable to the Obligee in the exercise of its reasonable discretion;

c. Obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee, in the exercise of its reasonable discretion, for the performance and completion of the Agreement, arrange for a contract to be prepared between the Obligee and the selected contractor which shall be secured with performance bonds equivalent to those required by the Agreement and executed by a qualified surety, and pay to the Obligee, or to the selected contractor on behalf of the Obligee, the difference between the amount that would have been payable to the Principal pursuant to the Agreement for completion of its remaining duties and obligations, and the amount payable to the selected contractor for performing those same duties and obligations pursuant to the replacement contract;

and shall promptly pay the Obligee the amount of all damages resulting from Principal's default as stated in this Performance Bond.

3. Any changes in or under the Agreement and compliance or noncompliance with any formalities connected with the Agreement or the changes shall not affect the Surety's obligations under this Performance Bond. The Principal shall notify the Surety of all such changes.

4. The undersigned expressly acknowledge their obligations and liability for payment of liquidated damages suffered by the Obligee under the provisions of the Agreement.

5. The undersigned confirm that no change, extension of time, exercise of options for Agreement renewal, changes to Agreement amounts, alterations or additions to the terms of the Agreement or to the work to be performed thereunder, shall in any way affect their obligation on this Performance Bond, and Surety does hereby expressly waive notice of the occurrence of any of the foregoing.

6. No amendments, alterations, or additions to this Performance Bond shall be binding unless specifically agreed in writing by the Obligee, Principal, and Surety.

7. In the event there is a failure to perform the conditions of this obligation, the Obligee may bring any and all actions, suits, or proceedings, or otherwise take such steps as it deems appropriate, to enforce the obligation of the Surety, and the Obligee may do so without joining the Principal in any such actions, suits, or proceedings. Thereafter, whether judgment is obtained against the Surety or not, successive actions can be brought against the Principal and this Bond shall remain a continuing obligation on the part of the Surety and the Principal until the conditions of the Bond have been fully performed, including the resolution of third party lawsuits.

8. The parties understand and agree that the obligation of the Principal under this Bond continues from day to day until paid, and a new cause of action arises thereon daily with the result that the statute of limitations of the State of Florida does not run against the entire claim. The obligation of the Surety under this Bond, therefore, continues in this manner, and no action, suit, or proceeding against the Principal or the Surety hereunder shall be barred, except under such conditions as would bar it under the said statute of limitations.

9. Any suit, action or proceeding, whether legal or equitable, under this Performance Bond shall only be brought in the courts of the Tenth Judicial Circuit located within Polk County, Florida, or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida, and must be instituted within the applicable statute of limitations after the first to occur of the following dates: the date of Principal's default under the Agreement, or the date Principal ceased Agreement performance, or the date the Surety refuses or otherwise fails to perform its obligations under this Performance Bond.

10. Any notice to the Surety, the Principal or the Obligee shall be mailed or delivered to the address shown on the first page of this Performance Bond.

11. This Bond may not be canceled or altered without providing at least thirty (30) calendar days prior written notice to the Obligee.

Signed and sealed this _____ day of _____ 2016, by the duly authorized representatives of the Principal and the Surety,

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE INSTRUMENT CONTINUES ON THE FOLLOWING SIGNATURE PAGES.**

PRINCIPAL:

Fomento de Construcciones y Contratas, S.A.
a Sociedad Anónima

ATTEST:

Witness

By: _____
Authorized Signature

Witness

Printed Name

Title

-OR-

(SEAL)

Witness

By: _____
As: Attorney in Fact (Attach Power)

Witness

Printed Name

(SEAL)

ACKNOWLEDGEMENT

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____
(Date)

by _____
(Name of officer or agent, title of officer or agent)

of Fomento de Construcciones y Contratas, S.A., a Sociedad Anónima, on behalf of the same, pursuant to the powers conferred upon said officer or agent by the entity. He/she personally appeared before me at the time of notarization, and is personally known to me or has produced _____
(Type of Identification)

as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this _____

(Official Notary Signature and Notary Seal) Commission Number _____

(Name of Notary typed, printed or stamped) Commission Expiration Date _____

SURETY:

<<Printed Surety Name>>

ATTEST:

(SEAL)

Witness

By: _____
Authorized Signature

Witness

Printed Name

Title

-OR-

(SEAL)

Witness

By: _____
As: Attorney in Fact (Attach Power)

Witness

Printed Name

Agency Name

Agency Mailing Address

Agency Telephone Number

ACKNOWLEDGEMENT

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____
(Date)

By _____
(Name of officer or agent, title of officer or agent)

of _____
(Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation, pursuant to the powers conferred
(State or Place of Incorporation)
upon said officer or agent by the corporation. He/she personally appeared before me at the time of
notarization, and is personally known to me or has produced _____
(Type of Identification)

as identification and did certify to have knowledge of the matters stated in the foregoing instrument and
certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this _____

(Official Notary Signature and Notary Seal) Commission Number _____

(Name of Notary typed, printed or stamped) Commission Expiration Date _____