

*Special Called
Meeting
Agenda*

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CITY COMMISSIONERS OF THE CITY OF WILDWOOD

- Mayor/Commissioner – Ed Wolf – Seat 1
- Mayor Pro-Tem/Commissioner – Ronald Allen – Seat 5
- Pamala Harrison-Bivins – Seat 2
- John M. Johnson – Seat 4
- Robby Strickland – Seat 3
- Robert Smith –City Manager

June 7th, 2010
5:30 PM

~PLEASE TURN OFF ALL CELL PHONES AND PAGERS~

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Department, ADA Coordinator, at 352-330-1330, Ext. 102, forty-eight (48) hours in advance of the meeting.

F.S.S. 286.0105A-If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (The City of Wildwood DOES NOT provide this verbatim record).

AGENDA

- THE MEETING IS CALLED TO ORDER BY THE MAYOR
- INVOCATION
- FLAG SALUTE

1. ~~TIMED ITEMS AND PUBLIC HEARINGS~~

7:00 PM [*] (a)	NONE AT THIS TIME	
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* Quasi Judicial Hearing

2. ~~REPORTS AND PUBLIC INPUT~~

No Special Input at the time:

- a. ~~City Manager~~
- b. ~~City Attorney~~
- e. ~~City Clerk~~
- d. ~~Commission Members~~
- e. ~~Public Forum (10 minute time limit)~~
- f. ~~Notes, Reports, and items for the file as attached~~

3. ~~NEW BUSINESS – ACTION REQUIRED~~

a. ~~MINUTES~~

- 1. ~~Minutes of Regular Meeting held on _____ (Attachments – Staff recommends approval)~~

~~b. ORDINANCES FIRST READING ONLY (READ ONLY – NO VOTE)~~

~~1. None~~

~~c. RESOLUTIONS FOR APPROVAL:~~

~~1. None~~

~~d. APPOINTMENTS~~

~~1. None~~

~~e. CONTRACTS AND AGREEMENTS~~

~~1. None~~

~~f. FINANCIAL~~

~~1. Bills/Invoices (Attachment – Staff Recommends Approval)~~

g. GENERAL ITEMS FOR CONSIDERATION

1. Discussion regarding the consolidation of Building Services (Attachments – Board Option)
2. Discussion regarding the privatization of Refuse Services (Attachments – Board Option)
3. Discussion regarding seasonal tent sales in the City of Wildwood (Attachments – Board Option)

4. **ADJOURN**

~~**NOTES – NO ACTION REQUIRED**~~

~~a. None~~

REPORTS

~~**CITY MANAGER:**~~

~~a. None~~

~~b. _____~~

~~**CITY CLERK:**~~

~~e. None~~

Consolidation of Building Services

Presented to Commission

June 7, 2010

Background

- As requested by the Commission, the City Manager was instructed to present to the Commission this report as to the possibility of consolidating Building Services with Sumter County.

Building Services Responsibilities

- Building Plan Review
- Building Inspections
- Fire Safety Inspections
 - As of October 1, 2009 this function was consolidated with Sumter County
- Code Enforcement:
 - As of October 1, 2010, this function will be consolidated with the Police Department.

Building Services

- All inspections and reviews, whether the property is located within the City limits or within the Unincorporated Areas, all have to adhere and are inspected based upon the same Florida Building Codes.

Ex: Neighbor 1 in the City: Florida Building Code

Neighbor 2 in the County: Florida Building Code

Development Services Responsibilities

- 1. Processing small and large scale comprehensive plan amendments to comply with applicable state regulations.
- 2. Amending land development regulations for current issues and consistency with the comprehensive plan.
- 3. Reviewing applications for consistency with the future land use map and comprehensive plan.
- 4. Reviewing site plans for consistency with City ordinances such as zoning and subdivision regulations.

Development Services Responsibilities

- Future Land Use, Zoning, LDR amendments, Design Standards, etc... are all local decisions.

Ex: Neighbor 1 in City: City Land Use & Codes

Neighbor 2 in County: County Land Use & Codes

* Exception: Within JPA

Permit Fees

- Pursuant to Florida Statutes 553.80, jurisdictions are very limited in how they can expend building fee money.
- Section 553.80(7)(a) and (b), Florida Statutes:
 - (a) As used in this subsection, the phrase “enforcing the Florida Building Code” includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, re inspections, and building permit processing; building code enforcement; and fire inspections associated with new construction.
 - (b) The following activities may not be funded with fees adopted for enforcing the Florida Building Code:
 1. Planning and zoning or other governmental activities
 2. Inspections of public buildings for a reduced fee or no fee
 3. Public Information requests
 4. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code.

Permit Fees

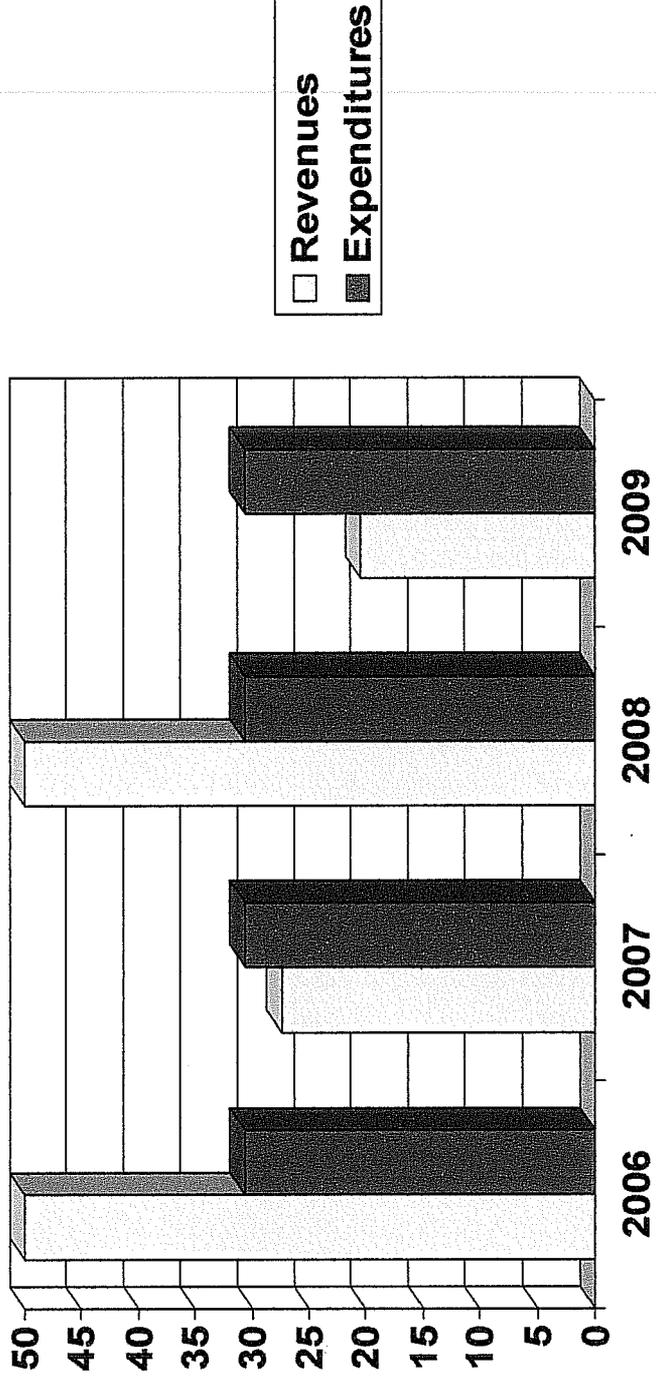
- What does this mean?
 - The City’s permit fee structure needs to reflect the actual costs of providing the service.
 - The City may utilize some of the fees for indirect costs but cannot be viewed as a revenue generating function. These indirect costs would be:
 - Executive Department Time: Coordination, etc..
 - Legislative Department Time: Coordination, etc..
 - Clerks Department: Invoices, Coordination, etc..
 - Development Services: Coordination, etc..
 - Facilities: Mortgage, Electric, Insurance, etc..

Permit Fees

- The Government Entity can have a surplus of fees to cover the cost of high and low periods of construction to keep the consistency of the service intact. This amount should be restricted for this reason.

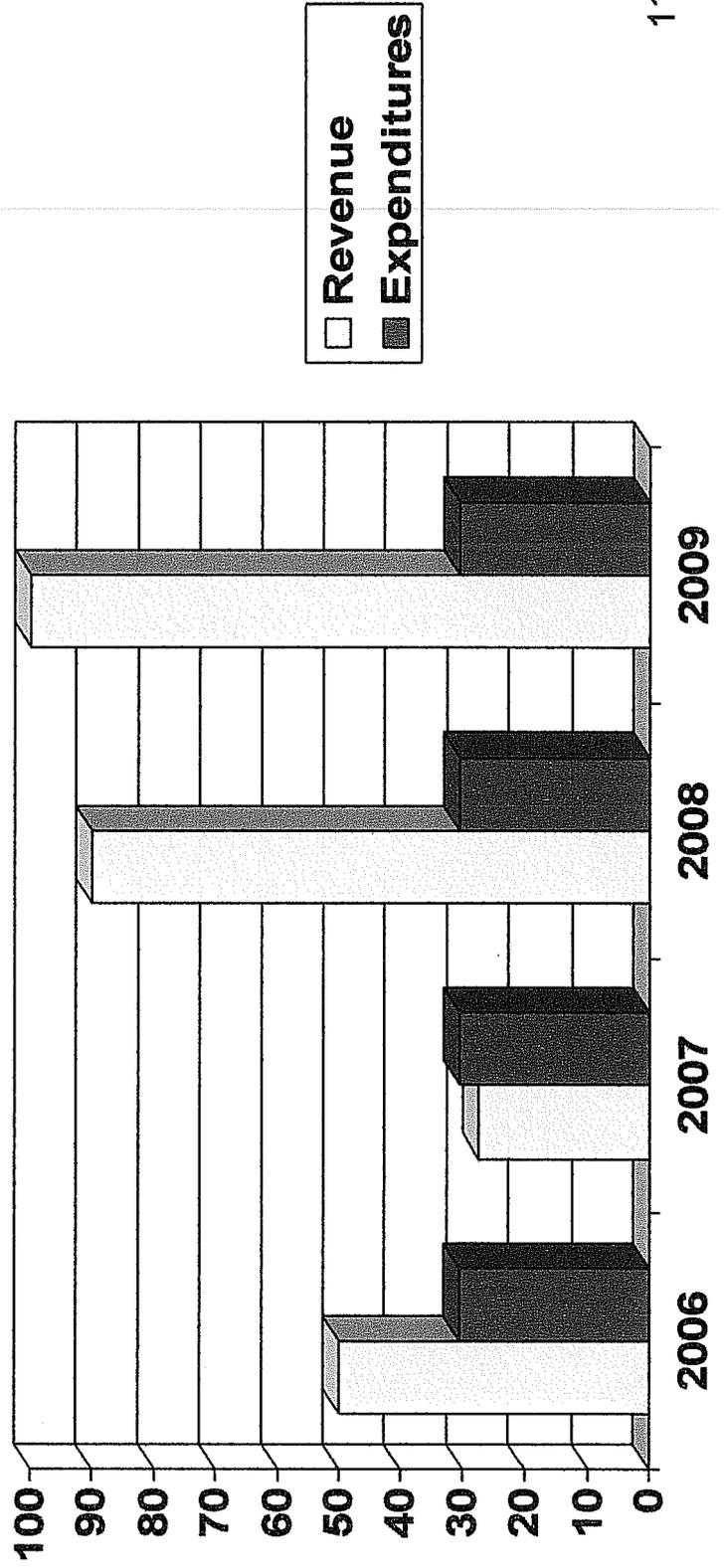
Permit Fees

- Example of how a carry over should function.
- The revenues from good years should be used to supplement the bad.



Permit Fees

- Carryover needs to reflect expenditures and needs to pass the reasonableness test. If not, permit fees need to be reduced.



Auditors Opinion Letter

2010-2011 Building Services Proposed Budget

- Anticipated Revenue: \$300,000
- Operating Expenditures: \$226,518.47
- 6% Administration Costs: \$18,000
- Total Expenditures: \$244,518.47
- Cash forward \$55,481.53
- This cost doesn't include 5% technology fee which is used to pay off CRW Permitting Software. Total Cost: \$21,094/yr.

2010-2011 Building Services Department

Current Staff

Director: Don Dixon

Permit Tech: Tracy Cuba

2010-2011 Staff

Director

Permit Tech (2)

Consolidation Proposal & Strategy

- As of October 1, 2010, the County would take over Building Services from the City.
- The County would hire Don Dixon at his current pay grade.
- Building Services for the City would be located at the Sumter County Extension Office on 466a and Powell Rd.
- Tracy Cuba would be relocated to the Police Department and become the support staff person for Code Enforcement. (Experience with CRW)
- The Utility Department would move over to the Building Services Area and the Clerks Department would relocate their support staff to the front lobby.
- The County would agree to pay an annual fee not to exceed \$60,000 for administration and coordination associated with Building Services. This fee would cover the CRW system software as well as the coordination costs of the various departments stated earlier. After five years the do not exceed amount will increase per the CPI on an annual basis.
- The City's Building Permit Fee structure will be amended to reflect the new costs of Building Services.

Fee Structure Amendment

1500 Sq Ft Structure

	<u>City</u>	<u>County</u>
Permit	\$3,531.26	\$800
Process	\$35.00	\$15.00
FBC Code	\$7.50	\$7.50
Surcharge	<u>\$7.50</u>	<u>\$7.50</u>
Total	\$3,581.26	\$830.00
	Savings	\$2,751.26

Fee Structure Amendment

2000 Sq Ft Structure

	<u>City</u>	<u>County</u>
Permit	\$4,148.34	\$800
Process	\$35.00	\$15.00
FBC Code	\$10.00	\$10.00
Surcharge	<u>\$10.00</u>	<u>\$10.00</u>
Total	\$4,203.34	\$835.00
	Savings	\$3,368.34

Fee Structure Amendment

2500 Sq Ft Structure

	<u>City</u>	<u>County</u>
Permit	\$4,765.43	\$800
Process	\$35.00	\$15.00
FBC Code	\$12.50	\$12.50
Surcharge	<u>\$12.50</u>	<u>\$12.50</u>
Total	\$4,825.43	\$840.00
	Savings	\$3,985.43

Permit Fees

- These permit fees were compared at the current costs. The reduction of fee is dependant upon the volume and the annual administration fee the City would assess the County.

Additional Item for Consideration

- If the City were to consolidate Building Services, the County would be in the position to reimburse the City up to \$100,000 annually for dispatch services.

Summary

- If the City consolidates:
 - No loss of jobs
 - No loss of level of service
 - City would receive Building Services Administration Costs Annually
 - Permit Fees would be reduced
 - City would receive annual cost reimbursement for dispatch services

Board Option

- City Staff would like direction on how the Commission would like to proceed.
- Option 1: City retains Building Services
- Option 2: City Consolidates Building Services with the County.

Building Permitting and Inspection Service Delivery Agreement

This Building Permitting and Inspection Services Delivery Agreement (the "Agreement") is made and entered into this XX day of XXXX, 2010, by and between the City of Wildwood ("City") and Sumter County ("County").

WHEREAS, the City possess Municipal Home Rule Powers pursuant to Article VIII, Section 2(b), Florida Constitution and Section 166.021, Florida Statutes; and

WHEREAS, the County possesses powers of self government as provided by general or special law, so long as such acts are in the common interest of the people of the County, said powers being held and exercised pursuant to Article VIII, Section 1(f), Florida Constitution and Section 125.01, Florida Statutes; and

WHEREAS, The County and City each provide building permitting and inspection services within their respective jurisdictions. This independent approach to building permitting and inspections does not allow for the most efficient provision of this service. Currently, there is coordination of building permitting and inspection issues; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local government to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as building permitting and inspection services; and

WHEREAS, the Municipal Annexation or Contraction Act, Chapter 171, Part I, Florida Statutes, and the Interlocal Service Boundary Agreement Act, Chapter 171, Part II, Florida Statutes, recognizes the use of interlocal service boundary agreements and joint planning agreements as a means to coordinate public services such as building permitting and inspections.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree a unified approach to building permitting and inspection services will result in a more efficient and cost effective method of service and promote safety and welfare of all of the citizens of Sumter County and agree a need exists to change said service delivery arrangements in the following manner:

1. Service Delivery Agreement:

- a. The County shall serve as the single, unified point of service for building permitting

and inspections services in unincorporated areas of the county and within the City. This service shall be known for purposes of this Agreement as the "Consolidated County/City Building Services". The Consolidated County/City Building Services shall provide the staffing and resources for all building permit application processing, building permit plan review, building inspections, and building code enforcement. The Sumter County Building Official shall serve as the Building Official for the City. The building permit processing, review, inspection services, and building code enforcement shall be provided consistent with the City's local ordinances and State law.

b. The Consolidated County/City Building Services will function and be funded as a Subdivision under Sumter County Board of County Commissioners.

c. The County shall be responsible for funding of the staff and operational costs of the Consolidated County/City Building Services. Funding for the Consolidated County/City Building Services shall be generated from fees collected for building permit applications, reviews, and inspections within unincorporated Sumter County and the City. Fees collected for building permits, reviews, and inspections within the City shall be based on the County's fee schedule. Annually, the City shall submit an invoice to the County for reimbursement for costs allowable under Florida Statutes. Under no circumstances shall invoiced costs exceed \$60,000.00 per year for the first five (5) years of this agreement and not to exceed \$60,000.00 excluding the annual adjustment based upon the change in the Consumer Price Index (CPI) from March 2014 to March 2015, with the change to be effective for the next ensuing County fiscal year and thereafter on the same basis for the remaining term of this agreement.

d. The County and City agree to prepare and adopt unified operational procedures for building permit processing, review, and inspections to assure a high level of service to customers without undue delay.

e. The County shall provide for a building, permitting and inspection customer interface location within the incorporated boundaries of the City.

f. The County agrees to hire the City's current building official as of October 1, 2010 as a County building inspector at his existing rate of pay as of September 20, 2010.

2. The County and City agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Either Party may initiate the dispute resolution process by providing written notice to the other Party. Initiation of the dispute resolution process shall operate as a stay of the action which is the subject of the dispute.

a. Notwithstanding the foregoing, in the event that either Party determines in its sole discretion and good faith that it is necessary to file a lawsuit or other

formal challenge in order to meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise to preserve a legal or equitable right related to this Agreement, such lawsuit or challenge may be filed, but upon the filing and any other act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the Parties shall thereafter promptly file a joint motion with the reviewing court or administrative law judge requesting that the case be abated in order to afford the Parties an opportunity to pursue the dispute resolution procedures set forth herein. If the abatement is granted, the Parties shall revert to and pursue the dispute resolution procedures set forth herein.

- b. Within ten (10) days of the abatement order, the allegedly aggrieved party shall then effect the transmittal of a notice of conflict, in the form of a certified letter, to all governmental bodies involved in the dispute at issue. Upon receipt of the notice, which shall specify the areas of disagreement, the Parties agree to conduct a conflict assessment meeting at a reasonable time and place, as mutually agreed upon, within thirty (30) days of receipt of the notice of conflict.
- c. If discussions between the Parties at the conflict resolution meeting fail to resolve the dispute, within forty (40) days of the receipt of the notice described in subparagraph A, above, the Parties shall conduct a mediation in the presence of a neutral third party mediator. If the Parties are unable to agree upon a mediator, the County shall request appointment of a mediator by the Chief Judge of the Circuit Court in and for Sumter County, Florida. The mediation contemplated by this Section is intended to be an informal and non-adversarial process with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.
- d. If the Parties are unable to reach a mediated settlement, within fifty (50) days of the receipt of the initial notice of conflict, the parties shall hold a joint intergovernmental meeting. If the joint intergovernmental meeting does not successfully resolve the issues identified in the notice of conflict, the entities participating in the dispute resolution procedures described herein may avail themselves of any otherwise available rights, including the suspension of abatement of existing actions.

2. Fire Inspections and Plan Review: Consistent with existing interlocal agreements, the County, through Sumter County Fire Rescue, shall, pursuant to Section 633.0215, Florida Statutes, and Section 901 of the Florida Building Code, utilize the Florida Fire Prevention Code in providing all fire prevention/safety inspections and complete all fire

building plan reviews within the City and unincorporated areas.

End of Building Services Sub Agreement



Law Enforcement Service Delivery Sub-Agreement

This Law Enforcement Services Delivery Sub-Agreement is made and entered into this ___ day of _____, 2010, by and between the City of Wildwood ("City") and Sumter County ("County").

WHEREAS, the City possesses a Municipal Home Rule Powers pursuant to Article VIII, Section 2(b), Florida Constitution and Section 166.021, Florida Statutes; and

WHEREAS, the County possesses powers of self government as provided by general or special law, so long as such acts are in the common interest of the people of the County, said powers being held and exercised pursuant to Article VIII, Section 1(f), Florida Constitution and Section 125.01, Florida Statutes; and

WHEREAS, the County provides funding for law enforcement services by the Sumter County Sheriff's Office; and

WHEREAS, the County provides funding for code enforcement services by the Sumter County Board of County Commissioners; and

WHEREAS, the City provides funding for law enforcement services and code enforcement services for the City, by the City's police department; and

WHEREAS, the County and City recognize the most efficient approach to providing adequate law enforcement protection is a coordinated approach between the County and the City; and

WHEREAS, the City provides the backup 911 Public Safety Answering Point ("PSAP") to the primary 911 PSAP provided by Sumter County; and

WHEREAS, the County recognizes and desires to resolve the financial inequities that may exist through the City's performance of code enforcement and acting as the backup 911 PSAP; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local government to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as law enforcement services; and

WHEREAS, the Municipal Annexation or Contraction Act, Chapter 171, Part I, Florida Statutes, and the Interlocal Service Boundary Agreement Act, Chapter 171, Part II, Florida Statutes, recognizes the use of interlocal service boundary agreements and joint planning agreements as a means to coordinate future land use, public facilities and

services, and protection of natural resources; and

NOW, THEREFORE, accepting the above WHEREAS clauses as true and incorporating same as if stated herein, and in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree that a coordinated and unified approach to law enforcement services results in a more efficient and effective method of service and promotes the safety and welfare of all of the citizens of Sumter County and agree that a need exists to continue said service delivery arrangements in the following manner:

1. Service Delivery Agreement. The County and City shall continue to utilize the current mutual aid agreement in place with the Sumter County Sheriff's Office. If that agreement should terminate without renewal, the City shall be solely responsible for law enforcement within the incorporated boundaries of the City.
2. The City shall utilize its own law enforcement agency to perform code enforcement within the City. The City shall also allow Sumter to utilize City as a backup 911 PSAP. The County agrees to make an annual payment of \$100,000.00 to the City, said monies to be utilized strictly for the law enforcement aid and services described herein.
3. The incorporated boundaries of the City shall include those areas annexed into the City including those areas annexed pursuant to the Planning Services subagreement and the MSA as defined in the Planning Services subagreement.
4. Within the MSA, all law enforcement jurisdiction shall remain with the County in all areas which have not been annexed into the City unless otherwise specified herein.
5. For purposes of law enforcement jurisdiction, a road right of way and road contained in a road segment shall be considered annexed into the City at the time of annexation. If at least fifty-one percent (51%) of the linear footage of the on both sides of the road segment of a County non-regionally significant road is within the existing City boundary then the entire road segment shall be considered within the City consistent with the Road Services subagreement.

End of Law Enforcement Services Sub-Agreement

Privatization of Refuse Services

Presented to City Commission

June 7, 2010

Background

City staff continues to explore additional ways to reduce expenditures and increase General Fund revenues without lowering the quality of life or level of service that our citizens are accustomed.

One way to accomplish this goal is to privatize certain departments which the City could realize both an increase in service and revenue without increasing rates to our current customers.

Refuse Services History

* Does not include General Insurance Costs

Revenue Source	2005 Budgeted	2005 Actual
Operating	\$604,000	\$603,825
Other Income	\$9,000	\$9,154
Wood Waste	\$18,000	\$19,727
Total	\$631,000	\$632,706
Expenditures	\$624,197	\$518,992
Difference	\$6,803	\$113,714
6% Administration Fee	\$37,860	\$37,860
Year end	-\$31,777	\$75,854
Private: 10% Franchise Fee	\$63,100	\$63,270.60
Difference		\$12,583.40

Refuse Services History

* Does not include General Insurance Costs

Revenue Source	2006 Budgeted	2006 Actual
Operating	\$680,601	\$636,897
Other Income	\$0	\$10,590
Wood Waste	\$0	\$25,635
Total	\$680,601	\$673,122
Expenditures	\$720,000	\$583,195
Difference	-\$39,399	\$89,927
6% Administration Fee	\$40,836.06	\$40,836.06
Year end	-\$80,235.06	\$49,090.94
Private: 10% Franchise Fee	\$68,060	\$67,312.20
Difference		-\$18,221.26

Refuse Services History

* Does not include General Insurance Costs

Revenue Source	2007 Budgeted	2007 Actual
Operating	\$708,000	\$699,571
Other Income	\$11,400	\$11,668
Wood Waste	\$23,600	\$21,163
Roll Off	\$0	\$3,887
Total	\$743,000	\$736,289
Expenditures	\$855,000	\$643,885
Difference	-\$112,000	\$92,404
6% Administration Fee	\$44,580	\$44,580
Year end	-\$156,580	\$47,824
Private: 10% Franchise Fee	\$74,300	\$73,240
Difference		-\$25,416

Refuse Services History

* Does not include General Insurance Costs

Revenue Source	2008 Budgeted	2008 Actual
Operating	\$766,887	\$767,142
Other Income	\$8,745	\$9,225
Wood Waste	\$14,866	\$15,777
Roll Off Billing	\$9,908	\$8,257
Total	\$800,406	\$800,401
Expenditures	\$901,987	\$679,917
Difference	-\$101,581	\$120,484
6% Administration Fee	\$48,024.36	\$48,024.36
Year end	-\$149,605.36	\$72,459.64
Private: 10% Franchise Fee	\$80,040	\$80,040
Difference		-\$7,580.36

Refuse Services History

* Does not include General Insurance Costs

Revenue Source	2009 Budgeted	2009 Actual
Operating	\$765,687	\$762,612
Other Income	\$9,212	\$8,117
Wood Waste	\$13,465	\$13,594
Roll Off Billing	\$8,038	\$8,413
Total	\$796,402	\$792,736
Expenditures	\$742,221	\$765,098
Difference	\$54,181	\$27,638
6% Administration Fee	\$47,301.84	\$47,301
Year end	\$6,879.16	-\$19,663
Private: 10% Franchise Fee	\$78,836	\$79,273
Difference		-\$98,936

Refuse Services History

Revenue Source	2010-2011 Budgeted
Operating	\$759,450
Other Income	\$6,000
Wood Waste	\$10,000
Roll Off Billing	\$5,000
Total	\$780,450
Expenditures	\$668,167
Difference	\$112,283
6% Administration Fee	\$46,827
Year end	\$65,456
Private: 10% Franchise Fee	\$78,836
Difference	-\$13,380

Refuse History

- Actual Revenues vs. Expenditures, the City received a net income of \$225,564.94 over the term or \$45,112.98 per year.
- If the Department was privatized back in 2005, the City would have realized a net income of \$363,135.80 over the term or \$72,627.16 a year.
- The Difference would be an additional income of \$27,514.18 annually.

Residential Rate Comparison

City	Rate	Difference	Budget Impact
Wildwood	\$16.00		
Bushnell	\$20.30	\$4.30	26% Increase
Leesburg	\$19.13	\$3.13	20% Increase
Ocala	\$21.70	\$5.70	36% Increase
Average		\$4.38	27% Increase

Commercial Refuse Rates City of Wildwood

Size	Rate 2x Week
2 Yard	\$61.00
4 Yard	\$120.00
6 Yard	\$177.00
8 Yard	\$227.00

Commercial Refuse Rates

City of Bushnell

(Wildwood offers 2X Week minimum: Bushnell 1x: extra pull included in below figures)

Size	Rate 2x Week	Difference
2 Yard	\$119.90	\$58.90
4 Yard	\$229.20	\$109.20
6 Yard	\$340.40	\$163.40
8 Yard	N/A	

Commercial Refuse Rates

City of Ocala

(Wildwood offers 2X Week minimum: Ocala 1x: extra pull included in below figures)

Size	Rate 2x Week	Difference
2 Yard	\$101.40	\$40.40
4 Yard	\$176.72	\$56.72
6 Yard	\$247.67	\$70.67
8 Yard	\$309.32	\$82.32

Commercial Refuse Rates

City of Leesburg

(Wildwood offers 2X Week minimum: Leesburg 1x: extra pull included in below figures)

Size	Rate 2x Week	Difference
2 Yard	\$97.36	\$36.36
4 Yard	\$188.72	\$68.72
6 Yard	\$280.08	\$103.08
8 Yard	\$371.44	\$144.44

Commercial Refuse Rates Difference

Size	Rate 2x Week Average	Budget Impact Average
2 Yard	\$45.22	74%
4 Yard	\$78.21	65%
6 Yard	\$112.38	63%
8 Yard	\$113.38	50%

General Insurance Savings

- General Insurance related to Refuse services cost on average about \$12,565
- General Insurance is typically divided between both General and Enterprise Funds so the savings to the each fund would be \$6,282.50
- Added to the revenue increase would net \$33,796.68

Waste Management

Waste Management

Proposal

- WM will keep both residential and commercial rates as they are now. (increases subject to contract terms)
- WM will implement a curb side recycling program without an increase to the rates
- WM will hire the two employees affected by the privatization.
- WM will purchase all assets associated with the City's Refuse service at appraised values.
- WM will continue same level of service that our customers are accustomed to.

Waste Management

Rate Increase Control

Per contract, the rate can only increase or decrease if the following indicators fluctuate:

- CPI Increase
(only portion associated with administration)
- Increase in Disposal Costs
(only portion associated with disposal)
- Increase in Gas prices
(only portion associated with fuel costs will increase not entire rate)

Waste Management

Billing and Franchise Structure:

- City Billing: If the City continues to bill for refuse services, the City will receive 10% of gross WM revenues. City would take on bad debt (unpaid customers). Currently all utilities are on one bill meaning that if a portion is not paid all utilities are turned off until payment is received. This reduces your exposure to bad debt.
- WM Billing: If WM does the billing, the City would receive 10% of WM's net revenues. WM would take on the bad debt.

Waste Management

Representatives Presentation

Q & A

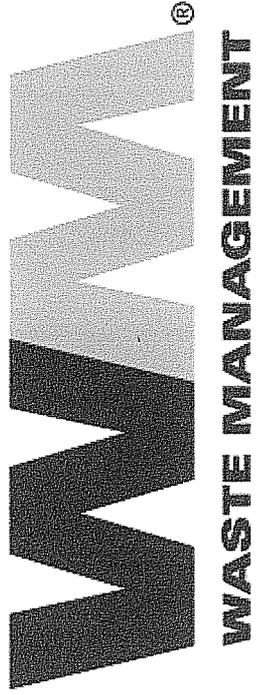
Board Option

Motion 1:

- Proceed with Privatization of Refuse Service
- or
- Continue with current service

Motion 2: If Privatization is determined

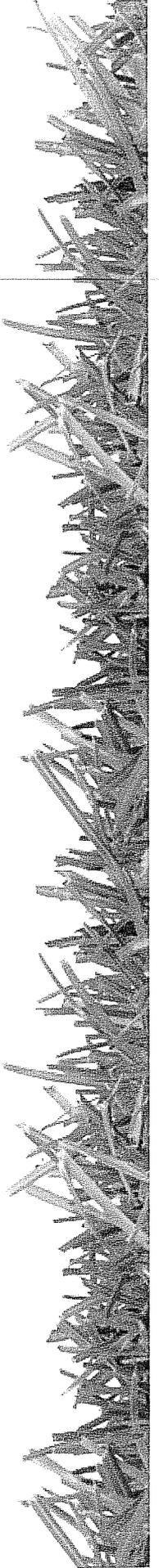
- City to do the billing
- or
- WM to do the billing



Think Green!

City of Wildwood

Privatization Presentation



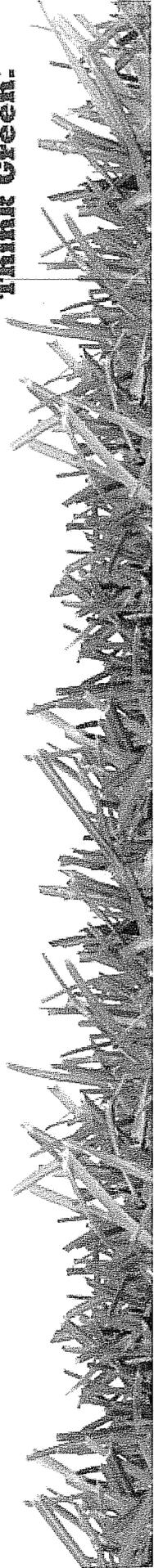


City of Wildwood

Waste Management, Inc

“A Company with National Strength & Hometown Presence”

- 48,000 Employees
- 25 Million Residential Customers Served
- 2 million Commercial Customers Served
- 300 Active Landfills with 5 Hazardous Landfills
- 467 Collection Locations
- 300 Transfer Stations
- 16 Waste-To-Energy Facilities
- 30,200 Vehicles





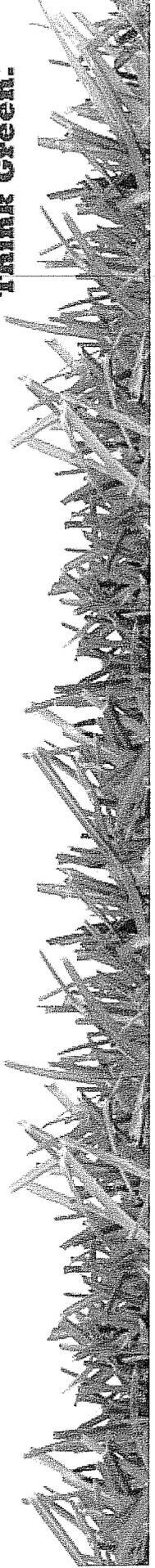
City of Wildwood

Waste Management, Inc

“A Company with National Strength & Hometown Presence”

- 146 Employees in our City of Wildwood Hauling Facility
- 85 Employees at the Leesburg Area Call Center
- 5,000 Commercial Customers Served
- 86,000 Residential Customers
- 90 Collection Vehicles
- Currently Servicing Lake County including the Villages, Town of Lady Lake*, Cities of Fruitland Park*, Mount Dora*, Tavares, Eustis*, Inverness*, Crystal River*, and Dunnellon*

* Privatized by Waste Management from 1986-2004





City of Wildwood

Local Management

- Doug McCoy- District Manager-30 years with WM- 14 years in local area
- Tony Fugnitto- Operations Manager-19 years with WM and 27 years in local area
- Christopher Beck- Senior Route Manager- 40 years with WM- 12 years in local area

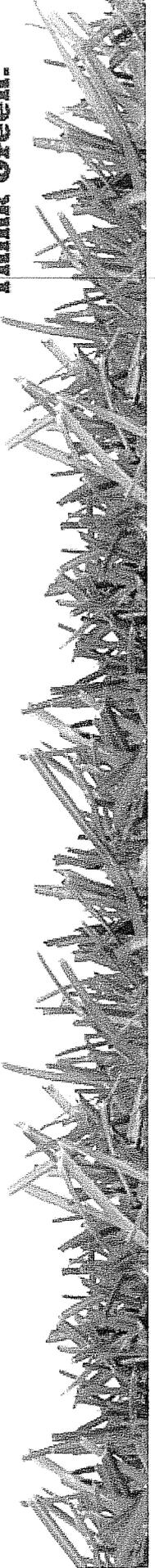




City of Wildwood

“Four Core Values That Are Absolute”

- Great Safety Performance
- Great Customer Service
- Great Employee Care & Satisfaction
- Great Environmental Compliance

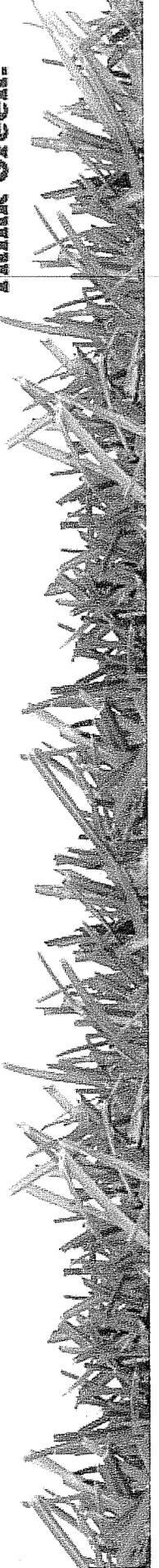




City of Wildwood

“Safety Performance”

- A safe environment for our employees and the public
- Best safety record in the industry
- New Drivers receive 80 hours classroom instruction and 150 hours of “on the job training”
- Zero tolerance for unsafe acts
- Continuous retraining regimen, observations and testing
- Financial incentives for exemplary safety performance





City of Wildwood

“Customer Service”

- WM Exclusive Service Initiative called “Service Machine”
- Twenty three performance standards monitored by Corporate on a weekly basis to ensure high service standards
- Residential Service Standards include same-day service recovery & follow up calls, telephone answering speed and many more...
- Wildwood District averages 300,000 services per week and only receive 30 customers service issues per week
- Service Performances also monitored by J.D. Power & Assoc.
- Service references follow presentation



Think Green.

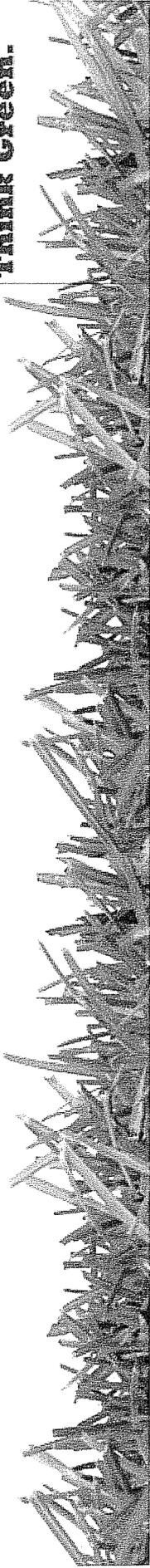




City of Wildwood

“Employee Care and Satisfaction”

- Average Driver Compensation \$17.50/hour (\$52K/annually)
- Full Medical/Dental Benefits for employee/family
- Prescription Drug and Vision Plan Benefits
- Employee and Family Assistance Program
- Short term/Long term Disability/Life Insurance
- 401K Retirement Plan with Company Match
- Employee Stock Ownership Plan
- Up to 4 weeks vacation/7 personal days/3 days bereavement
- Five Paid Holidays
- Learning Education Assistance Program
- Customer Service Recognition Program

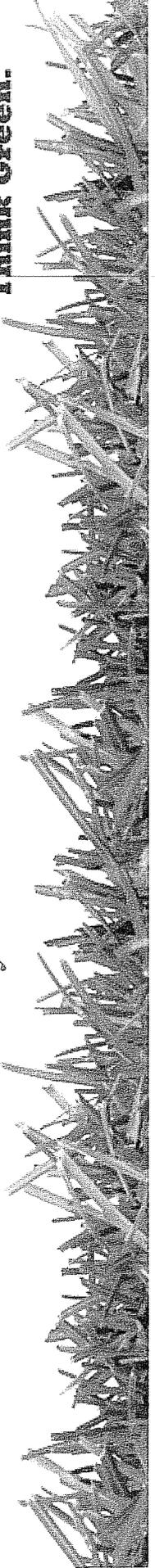




City of Wildwood

“Employee Care and Satisfaction” (cont.)

- Employee Discount Programs with Ford, Nissan, Toyota GM, Chrysler, Dell Computers, banking services & others...
- Individual, Team and Group Safety Financial Incentives
- Annual Gallup Poll Surveys to determine employee satisfaction with action plan follow up
- Flex Care Spending Accounts
- Adoption Assistance Program
- Education Savings Plan
- Legal Services Plan
- Company provided Uniforms, Boots/safety gear
- Ice Cream each Thursday





City of Wildwood

“Protection of the Environment/Community”

- “State of the Art” Operating Facility in the City of Wildwood
- Environmental Compliance is monitored and tested by an intranet compliance tracking system called Cycle
- Facility and Operations meet or exceed requirements set forth by Florida Department of Transportation (FDOT), Florida Department of Environmental Protection (FDEP), Federal Environmental Protection Agency (EPA), and OSHA
- Used Tires, anti-freeze, motor and hydraulic oil, scrap steel, and cleaning solvents are recycled
- Emergency spill procedures are in place for on and off site spill events.





City of Wildwood

Waste Management's (WM) Commitment

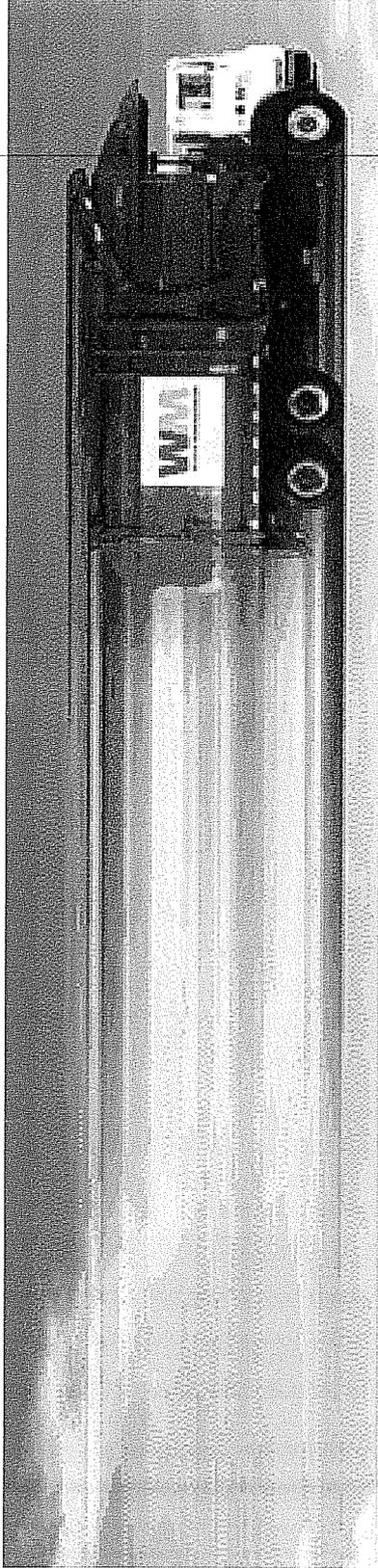
- WM will honor all terms and conditions of the Town of Melbourne Beach recently awarded contract.
- WM will purchase all collection vehicles and containers from the City of Wildwood at fair market value.
- WM will hire the City's two displaced employees and provide applicable benefits associated with their years of service with the City.
- WM will offer services as currently being provided by the City plus 64 gallon cart single stream recycling services for all City residents.



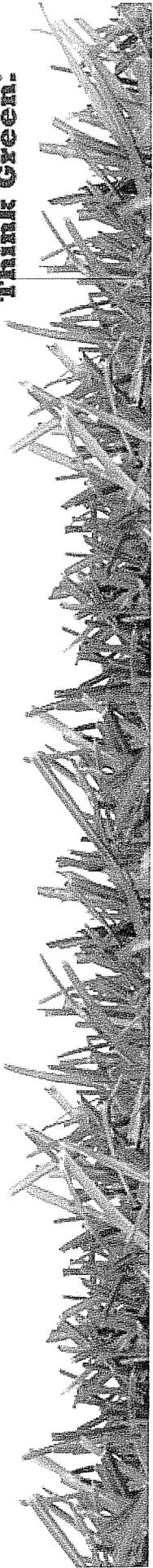


City of Wildwood

Questions?



We are ready to roll!



SAMPLE CONTRACT

FOR

REFUSE PRIVATIZATION

**Presented to City Commission
June 7th, 2010**

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, 2009, by and between, the Town of Melbourne Beach, Brevard County, Florida, hereinafter referred to as "the Town" and _____, hereinafter referred to as "the Contractor".

NOW THEREFORE, in consideration of the mutual covenants, Contracts, and considerations contained herein, the Town and the Contractor hereby agree as hereinafter set forth:

SECTION 1 - DEFINITIONS

For the purpose of this article the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular number, and words in the singular number include the plural number. The "shall" is always mandatory and not merely directory.

- A. **BULKY WASTE** shall mean large discarded items generated from residences and commercial businesses within the Town, such as pallets, furniture, bedding, refrigerators, stoves, and other household appliances.
- B. **CART RESIDENTIAL (AKA TOTER)** shall mean a container mounted on wheels and designed for ease of use and durability, of not more than ninety six (96) gallons, with the option of a thirty two (32) gallon or sixty four (64) gallon upon residential request (unless otherwise approved by the Town Manager or his designee) with an attached tight fitting lid.
- C. **COMMERCIAL CART/TOTER PICK UP** shall mean garbage and trash collection service to commercial customers utilizing CARTS/TOTERS (96 gallons maximum).
- D. **COMMERCIAL FRONT OR REAR LOAD CONTAINER (DUMPSTER)** refers to a 2, 4, 6, 8 yard mechanically emptied collection container.
- E. **COMMERCIAL RECYCLING COLLECTION** refers to collection, transportation, and recovery of recyclable materials by a Contractor from participating commercial units in the recycling service area. This Contract **does not include commercial recycling** which will be accomplished on an open market basis per existing Town, County and State ordinances.
- F. **COMMERCIAL TRASH** shall mean any and all accumulations of paper, rags, excelsior, wooden pallets, paper or cardboard boxes, or containers of sweepings, and any other accumulations not included under the definition of garbage, generated by the operation of stores, offices, and other business places. Commercial trash shall include furniture, appliances, car parts, and all other accumulations not included within the definition of garbage.
- G. **COMMERCIAL UNIT** shall mean all units other than those described in BB(a), BB(b) and Town-owned property and buildings.
- H. **CONSTRUCTION AND DEMOLITION DEBRIS** means discarded materials generally considered to be not water-soluble and non hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris.

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

The term also includes:

- (a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project.
- (b) Effective January 1, 1997, except as provided in 2s. 403.707(13) (j), unpainted, non treated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted, non treated wood pallets provided the wood scraps and pallets are separated from other solid waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other solid waste, and
- (c) De minimis amounts of other non hazardous wastes that are generated at construction or destruction projects provided such amounts are consistent with best management practices of the industry.

- I. **CONTRACTOR** shall mean the individual, firm or corporation who or which agrees to perform the work or services as set forth in the Contract RFP and Contract Agreement.
- J. **DESIGNATED RECOVERY FACILITY** shall mean the recycling/ processing center(s) specifically agreed upon by the Contractor and Town for the recovery of recyclable materials.
- K. **Excessive Waste:**
 - a. **Vegetative Garden and Yard Trash:** shall mean as described in JJ below which exceeds an amount of four (4) cubic yards.
 - b. **Bulk Waste:** shall mean as described in A above which exceeds an amount of four (4) cubic yards,
- L. **EXCLUDED ACCOUNTS** shall mean the business accounts listed _ within the Town limits that are excluded from this Contract. **At the present time the only excluded accounts are the Brevard County School system. See exhibit "C".**
- M. **EXCLUDED WASTE** shall mean any and all debris and waste products generated by land clearing, building construction or alteration and hauled away by the respective Contractor (except do-it-yourself projects); public works type construction projects whether performed by a governmental unit or by contract; waste produced by governmental agencies other than the Town of Melbourne Beach; materials deemed by the Town Manager to be hazardous waste and items not allowed at the County landfill or other approved landfill. Yard waste produced by landscape maintenance Contractors which is required to be hauled away by same; as well as tree removal debris is also considered excluded waste.
- N. **EXEMPT WASTE** shall mean vegetative garden and yard trash from land clearing operation or preparation for construction or removal of trees or tree trimming by a landscaping contractor or tree surgeon which shall be properly disposed of by the landscape contractor.
- O. **GARBAGE** shall include and mean all accumulations of animal, fruit or vegetable matter that attends the preparation, use, cooking and dealing in, or storage of meats, fish, fowl, fruit, vegetables, and any other matter, of any nature whatsoever which is subject to decay, putrefaction and the generation of noxious and offensive gasses or odors, or which, during and after decay, may serve as breeding or feeding material for flies and/or other germ carrying insects; bottles, cans, or other food containers which due to their ability to retain water may serve as a breeding place for mosquitoes or other water breeding insects, and does not include recyclables.

- P. **GARBAGE CANS** shall be an approved plastic or galvanized metal can of a type commonly sold as a garbage can of a capacity not less than twenty (20) gallons and not to exceed thirty-two (32) gallons, and each such can shall have two handles upon sides of can or bail by which it may be lifted and shall have a tight fitting top.
- Q. **HOUSEHOLD TRASH** shall mean any and all accumulations of waste material from the operation of a home, which is not included within the definition of garbage. Household trash shall include all bulky wastes, yard toys, and building material waste from residential type do-it-yourself projects, but does not include vegetative matter.
- R. **MULTI-FAMILY DWELLING UNITS** shall mean any building containing more than four (4) permanent living units, utilizing mechanically emptied containerized collection.
- S. **NEIGHBORING COMMUNITY** shall mean municipalities within Brevard County.
- T. **PERFORMANCE BOND** shall mean the form of security approved by the Town and furnished by the Contractor, as a guarantee that the Contractor will faithfully execute the work in accordance with the terms of the Contract and will pay all lawful claims.
- U. **RECOVERED MATERIALS** means metal, paper, cardboard, glass, plastic, textile, rubber materials, fluorescent light bulbs, and electronic waste otherwise known as E-waste, that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste.
- V. **RECYCLABLE MATERIALS** shall mean newspaper, cardboard, aluminum and metal beverage and food cans, all colors of glass bottles/jars, and plastic bottles coded 1, 2, at the bottom, which previously held liquid (no automotive, food, or toxic chemical bottles), and such other materials as mutually agreed upon in writing by the Contractor and the Town Manager or his designee during the term of this Contract.
- W. **RECYCLING BINS** shall mean a container with a flat bottom, four sides and an open top. Designed for ease of use, either a 14 gallon or 18 gallon capacity. These containers are to be provided by the Contractor in accordance with the general specifications of the Contract.
- X. **RECYCLING CARTS/TOTERS** shall mean a container mounted on wheels and designed for ease of use and durability of not less than 32 gallons and not to exceed 96 gallons with a tight fitting lid. These containers are provided by the Contractor in accordance with the general specifications of the Contract.
- Y. **RECYCLING SERVICE AREA** shall mean the entire area within the Town limits and as amended from time to time as a result of annexations to the Town.
- Z. **REFUSE** shall include and mean all garbage, dead animals, vegetative garden and yard trash, bulky wastes, household trash, commercial trash, and construction and demolition debris
- AA. **RESIDENTIAL CURBSIDE COLLECTION** refers to collection, transportation, and recovery of garbage, vegetative garden and yard trash, bulk items and recyclable materials by the Contractor from participating residential units in the entire area within the Town limit and as amended from time to time.

- BB. RESIDENTIAL RECYCLING CONTAINERS** shall mean the receptacles purchased by the Contractor and distributed by the Contractor on behalf of the Town for the intended use as a receptacle of recyclable materials.
- CC. (a) RESIDENTIAL UNIT** shall mean one single family or duplex dwelling or one living unit of an apartment or townhome which is served and billed as a residential account.
- (b) RESIDENTIAL MULTI-FAMILY** shall mean multiple family dwelling buildings utilizing mechanically emptied containers.
- DD. ROLL OFF CONTAINERS** serviced by a specially equipped truck.
- (a) Roll Off Compactor** shall mean a metal container with closed sides, ends and top and a compaction unit located within the unit used for storing commercial and industrial waste for transportation and disposal ranging in size from 17 to 40 cubic yards.
- (b) Roll Off Open Top** shall mean metal open top container with closed sides normally used for construction and demolition debris collection and hauling with most common of sizes being 20, 30 and 40 cubic yards.
- EE. SOURCE SEPARATED** means the recovered materials are separated from solid waste where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials.
- FF. SURETY** shall mean the party who is bound with and for the Contractor to insure the payment of all lawful debts pertaining to and for the faithful performance of the Contract.
- GG. Toter – Residential & Small Business (AKA Cart)** shall mean a container mounted on wheels and designed for ease of use and durability, of not less than ninety (96) gallons, unless approved by the Town Manager or his designee, with an attached tight fitting lid.
- HH. TOWN** shall mean the Town of Melbourne Beach, Florida, a municipal corporation, acting through the Town Commission or Town Manager, or official designated by the Town Manager as the case may be.
- II. TOWN MANAGER** shall mean the Town Manager or his designee.
- JJ. TRASH** unless specifically provided to the contrary, the term trash shall include and mean commercial trash, household trash, and garden and yard trash as defined below.
- KK. VEGETATIVE GARDEN AND YARD TRASH** shall mean any and all accumulations of grass, palm fronds, leaves, branches, shrubs, vines, trees, tree stumps, and other similar items generated by the homeowner's maintenance of lawns, shrubs, gardens, and trees.
- LL. Work** shall mean and refer to the tasks to be performed under this contract agreement by the Contractor, including but not limited to the collection, transport, delivery and disposal of all Refuse, Bulky Waste, and Recyclable Materials, Vegetative Garden and Yard Trash with or without a "claw" truck, Refuse using Roll-Off Containers; the furnishings, delivery, and pick-up of Toters, Commercial Carts/Toters, Recycling Bins and Containers, Roll-Off Containers, and Recycling Containers Carts/Toters; the administration of and labor involved in performing the foregoing tasks; the obtaining, use, maintenance, and operation of equipment in furtherance of

performance of this contract agreement; the marketing of Recyclable Materials; the establishment and operation of office facilities; the compliance with any safety regulations of laws, administrative rules or regulations, or ordinance; or the performance or non-performance of any requirements, duties, obligation, or tasks required to be performed by or for the Contractor pursuant to or as a result of this contract agreement.

SECTION 2 - SCOPE OF WORK

Work will commence on May 1, 2010. It is the intent of this Contract to provide for the total collection of all refuse in the Town of Melbourne Beach, Florida, with the exception of exclusions which are specifically listed herein.

A. **RESIDENTIAL UNITS** One single family dwelling or one living unit of an apartment or townhome which is served and billed as a residential account. **Currently there are estimated to be 1190 active units.**

1. **GARBAGE, HOUSEHOLD TRASH AND RESIDENTIAL RECYCLING**

(A) **CARTS/TOTERS:** The Contractor shall distribute up to two (2) carts to each residential unit, if needed, of a ninety six (96) gallon, sixty four (64) gallon or 32 gallon capacity. Contractor shall maintain, at all times, a sufficient number of carts to ensure that all extra or replacement carts can be provided within three (3) working days upon notification by the Town or customer. New Carts shall be distributed to new residential units, within three (3) working days of request either by the Town or the residents, which are added during the term of this Contract. Carts that have been lost or damaged due to customers' abuse or negligence shall be repaired or replaced, at the expense of the customer utilizing the then current cost of the cart. Customer may purchase a third cart for a charge of \$70.00. New carts must identify the Contractor with company name.

(a) **WHEN:** The Contractor shall collect garbage and trash from places of residence two (2) times per week, the alternate proposal will be one (1) time per week. Bulk items, such as household furniture and appliances, shall also be removed by the Contractor. It shall be the responsibility of the garbage and trash route driver to note bulk items that are set out and immediately radio in the item to be picked up to the Contractor's dispatcher. The pickup shall then be scheduled within 72 hours after entry into tracking system, if available. If called in by the residential customer the Contractor will log the call into the tracking system and the collection must be made within seventy two (72) hours of the request.

It is proposed that all residential collection shall occur on Monday through Saturday, between the hours of 7:00 AM and 7:00 PM, inclusive. **Any change in the collection day schedule must be approved by the Town Manager before the Contractor implements a collection schedule change. If the request for change of schedule is granted by the Town Manager it will be the responsibility of the Contractor to properly notify the residents of such change in a manner satisfactory to the Town Manager.**

Alternative route submissions will be considered by the Town. Normal routes are not to be scheduled on Sunday or allowable Holidays.

(b) **QUANTITY:** The Contractor shall be required to pick up all garbage and

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

household trash generated by a residential unit. All vegetative garden and yard trash shall be picked up except for units with approved exemptions, per Town ordinance.

- (c) **WHERE:** Complete garbage and refuse collection service is hereby provided for in this Contract. Collections of garbage shall be made from alleys or in an area adjacent to a driveway or curbside and not over five (5) feet from the curb or ten (10) feet from the edge of pavement or edge of traveled way with the exception of handicapped or elderly where special arrangements will be made for backdoor or side yard pickup upon receipt of proper written notice to the service provider from a medical doctor (on a form provided by the Town) at no additional cost to the resident or the Town. Household trash and bulk items, such as household furniture and appliances, shall be placed at the curbside.
- (d) **HOW:** The Contractor shall make collections with a minimum of noise and disturbance to the residents. Garbage receptacles shall be handled carefully by the Contractor and shall be thoroughly emptied and left in an upright position with the lids in place in the location where they are found within 5 feet of the edge of the pavement. Refuse may be transferred from the residents' totes into tubs, cans, hampers, or other containers used by the Contractor in carrying refuse to collection trucks. This work shall be done in a sanitary manner. All garbage or trash spilled by the collector shall be picked up immediately by the Contractor's employees. Any item not collected by the Contractor will require the Contractor to place a Contractor provided written notice either on the tote or a door hanger notice as to the reason(s) such items were not collected. At the option of the Town Manager, on the same day, the Contractor will be required to deliver to the Town Manager a copy of such notice(s) which will also include the address. The Contractor will submit a copy of the notices to the Town electronically using the Town's electronic tracking system, or alternatively a method authorized by the Town Manager.
- (e) Recyclable materials will be collected one time per week in a commingled state, single stream. Recycling bins shall be left in the position where they are found, behind the curb or within five (5) feet of the edge of pavement.
- (f) The Contractor shall collect and dispose of automobile tires generated by residential customers, at no additional charge, in accordance with state and federal disposal requirements; provided, however, that the Contractor may impose an additional charge, with prior approval of the Town Manager or his designee and prior notice to the customer, if the following annual maximums are exceeded by any residential customer: Four (4) automobile tires.

2. VEGETATIVE GARDEN AND YARD TRASH

- (a) **WHEN:** The Contractor shall collect all vegetative garden and yard trash from places of residence as specified in the routes accepted by the Town not less than one (1) day per week.
- (b) **QUANTITY:** The Contractor shall be required to pick up all vegetative garden and yard trash generated by a residential unit. The Contractor shall inform the owners of residential units that items such as tree limbs, tree trunks, palm fronds, etc., shall be cut in lengths of no greater than four (4) feet, if the item's diameter is less than four (4) inches. No single item shall exceed forty (40) pounds.

This Contract does not include vegetative garden and yard trash from land clearing operation or preparation for construction or removal of trees or tree

trimming by a landscaping Contractor or tree surgeon which shall be properly disposed of by the landscape Contractor.

EXCESSIVE YARD WASTE: Contractor will take a picture of the excessive yard waste at the time of pick up, and then enter the information including the picture into the Town's web base tracking system, if available, which immediately submits to the Town the incident with a tracking number and dated ticket of the collection. For items exceeding diameters greater than 4 inches, lengths exceeding four feet (4') or single items exceeding forty (40) pounds, a special pick up shall be required and a reasonable service charge, which is to be agreed to by the customer and Contractor, may be levied by the Contractor. The Town Manager or his designee shall mediate in the event of a dispute regarding the special pick up charge. The Contractor is to provide a schedule of standard charges to the Town for special pick up service annually. Pictures must be submitted by the Contractor through the Town's electronic tracking system.

- (c) **WHERE:** Garden and yard trash shall be collected from the front of the premises within five (5) feet of the curb or roadway (curbside). On streets where no parkways or lawn areas near the street are available for placement of trash, the owner or occupant shall place trash adjacent to the driveway, but not further than five (5) feet from the street, and not in the street or right of way.
- (d) **HOW:** The Contractor shall make collections with a minimum amount of noise and disturbance to the household. In the case of reusable containers or regular garbage cans the containers shall be handled carefully and shall be thoroughly emptied and left in an inverted position, not lying on its side, and in the case of totes/carts they will be thoroughly emptied and left in an upright position where they were found. Boxes and bags of garden and yard trash shall be collected and any spillage picked up immediately by the Contractor. All leaves and pine needles, clippings, palm fronds and tree trimmings with branches less than 4 inches in diameter and less than 4 feet in length and not weighing over fifty pounds shall be placed in the cart. Only tree branches and palm fronds with high volume that cannot fit into the cart shall be cut in four foot lengths and bundled and stacked at the curb for collection. Large volume vegetative waste requiring a "Claw" truck will be provided on an "on call" basis and collected 1 time per week. A reasonable price for special pickup, which is to be agreed to by the customer and Contractor and will also be submitted to the Town in the same manner as "B" above for approval and the Town will bill the customer. One (1) "Claw" truck will be available to service the Town at all times.
- (e) **EXEMPT WASTE:** Customers with exempt waste will be quoted a price for special pickup which will also be submitted to the Town in the same manner as "B" above for approval and the Contractor will bill the customer.

B. MULTI-FAMILY UNITS- CONTAINERS EMPTIED BY MECHANICAL MEANS

Multiple family dwelling units not using tote containers shall be required to use containers emptied by mechanical means and shall be considered Commercial Units except for collection of recyclable materials for which the above would be considered residential.

C. COMMERCIAL UNITS

Commercial customers shall be identified as, but not limited to, all office buildings, stores,

filling stations, lodges, motels, laundries, hotels, all public buildings, food services, lodging establishments, service establishments, light industry, schools, churches, clubs, hospitals, nursing homes, condominiums and apartment buildings using mechanically emptied containerized collection or commercial toter collection.

- (a) **WHEN:** Refuse shall be collected Monday thru Saturday between the hours of 7:00 AM and 7:00 PM not less than twice per week and at a greater frequency if required to protect the public health. Collection service for customers using containers emptied by mechanical means and commercial toter collection will be available two (2) days per week, and the frequency of service will be as mutually agreed upon by the customer and the Contractor. Requests for frequency of service less than two times per week must be approved by the Town Manager. Bulk items such as furniture and appliances shall be collected one (1) time per week on the same schedule as the Town's residential refuse collection. It shall be the responsibility of the garbage and trash route driver to note bulk items that are set out and immediately radio in the item to be picked up to the Contractor's dispatcher. The pickup shall be scheduled within 72 hours after entry into the tracking system. Bulk items may also be called in by the customer and the Contractor will collect such items requested within 72 hours of the request.
- (b) **QUANTITY:** All refuse generated at commercial and industrial establishments shall be collected except for excluded wastes and recyclable material collection. Commercial and industrial establishments may contract for recyclable material collection independent of this Contract in accordance with State Statutes, the Town of Melbourne Beach Ordinances or the Brevard County Commercial Recycling Ordinance, as adopted or as may be amended from time to time. Collection of commercial yard waste is optional as landscape maintenance Contractors may transport and dispose of generated commercial yard waste thereby considered excluded waste.
- (c) **WHERE:** It is the duty of the commercial owners/operators of such establishments to accumulate refuse in locations mutually agreed upon by the owners/operators and the Contractor, and which are convenient for collection by the Contractor. Where mutual agreement is not reached, the Town Manager shall determine the location consistent with the ordinances and requirements of the Town of Melbourne Beach.
- (d) **HOW:** The Contractor shall make collections 7:00 AM thru 7:00 PM Monday thru Saturday with as little disturbance as possible to business and commercial establishments. This work shall be done in a sanitary manner and any refuse spilled by the collector shall be picked up immediately by the Contractor's employees. The Contractor shall be responsible for returning the container to the enclosure, closing the container lids, doors and the screened enclosure doors or gates. It will be a requirement of the Contractor to properly spray the container as directed by the Town with a sanitizing spray from the collection vehicle. In the event unsanitary conditions such as continually overflowing containers or otherwise inappropriately placed materials are encountered by the collection vehicle driver, it shall be his responsibility to immediately radio the condition to the Contractor's dispatcher who shall in turn enter location into the tracking system, if available, immediately notify the Town Manager. Waste placed outside the container for pickup shall also be called into dispatch for entry into the tracking system for the purpose of either increasing their service or container size. It shall be the responsibility of the collection vehicle driver to immediately radio in any damage caused by his operation to the enclosure or gates thereto to

the Contractor's dispatcher who will arrange for repairs at the Contractor's expense and immediately notify the Town Manager.

(e) **CONTAINERS**

Commercial and industrial establishments may use any of the following containers for accumulation of refuse:

- (1) Refuse containers as defined in this Contract, See definitions C, O & AA
- (2) Containers emptied by mechanical means.
- (3) Dumpster containers shall be made available to commercial customers in not less than 96 gallon totes, 2, 4, 6, and 8 cubic yard capacities. Service to commercial customers shall be provided with the same size containers currently in use and with the same frequency of pick up unless otherwise approved by the Town Manager.

D. **RECYCLING**

1. **RECYCLABLE MATERIALS COLLECTION AND DISPOSAL:** The services to be performed under this Contract by the Contractor consists of curbside residential and multi-family residential collection of all recyclable materials, and collection of all recyclable materials from Town owned locations in the recycling service area, transportation, and recovery of said recyclable materials to a designated recovery facility, or, if no market is available, to the nearest County landfill. The Contractor shall provide, as part of the quarterly Recycling report, weights and types of any recycled materials disposed of by landfill. This report shall include the reason for disposal rather than recycling of these materials. The Contractor shall perform such services as are required to provide a complete recyclable materials program. Recycling collection services will be provided to the Town at Town owned or occupied locations at no cost to the Town.
2. **PROPOSED SCHEDULE OF COLLECTION OF RECYCLABLES AND DESCRIPTION OF THE WORK:** The Contractor shall collect all recyclable material set out for the purpose of recycling from all residential units. The collection of curbside residential recyclables shall be conducted using the recycling bin(s) or carts furnished by the Contractor, for a commingled system for single family and 96 gallon totes furnished by the Contractor for multi-family using mechanically emptied containers.
3. **FREQUENCY OF COLLECTION:** The Contractor shall collect recyclable material within the service area a minimum of one (1) time per week.
4. **HOURS OF COLLECTION:** Collection shall begin no earlier than Seven o'clock (7:00) a.m. and shall cease no later than Seven o'clock (7:00) p.m. weekdays. If weekend collection is needed following a holiday or other circumstances, collection shall not begin earlier than seven o'clock (7:00) a.m. and shall cease no later than seven o'clock (7:00) p.m. In the event of an emergency, or unforeseen circumstances, collection may be permitted at a time not allowed by this paragraph following approval by the Town Manager.
5. **POINT OF PICKUP OF RECYCLABLE MATERIALS:** Collection of residential recyclable materials shall be at curbside. Multi-family recyclable materials shall be picked up at a location adjacent to the regular refuse, or other such locations as will provide ready accessibility to the Contractor's collection crew and vehicle. In the event an appropriate

location cannot, be agreed upon, the Town Manager shall designate the location. As with regular residential garbage collection, handicapped residents will be accommodated at no additional fee.

6. **RECEPTACLES:** The Contractor shall pick up all recyclable materials which have been properly prepared for collection and placed in recycling containers and set at the appropriate location.

Each residence within the service area will be provided with a recycling container and, on occasion, additional containers will be supplied by the Contractor as directed by the Town Manager.

Multi-family residential complexes utilizing mechanically emptied containers of 10 units or greater will utilize large toters (not less than 96 gallon) for collection of each type of recyclable material. The toters are to be supplied by the Contractor at his expense.

7. **METHOD OF COLLECTION OF RECYCLABLE MATERIALS:** For residential units, unless otherwise agreed in writing, the Contractor shall be picked up as single stream. The Contractor shall make collections with a minimum amount of noise and disturbance to the residents and commercial customers. The Contractor shall handle recycling containers with reasonable care and return them to the approximate location from which they were collected. Any recyclable materials spilled by the Contractor shall be picked up immediately. Recycling containers shall be thoroughly emptied and left in an upright or inverted position, whichever is appropriate, at the point of collection. The Contractor and the Town shall mutually develop a procedure for handling placement of incorrect material in recycling bins by residents. At a minimum, the Contractor shall leave the incorrect materials in the recycling bin along with a Contractor provided notice describing the proper materials and reason(s) items have not been collected. The Contractor will be required to place such notice either within the container or place a door hanger notice at the residence. Upon request by the Town Manager the Contractor will be required to deliver to the Town Manager a copy of the notice including the reason(s) items have not been collected and the address of the residence. This is to be done on the same day the notice is given to the residence. Also the copy of the notice shall be sent electronically to the Town.

For multi-family residential units, the Contractor shall transport the individual toters from the storage location, empty into the truck and return toters to their original location.

8. **SCHEDULES AND ROUTES:** Recyclable materials collection shall be made to residential units on the same day in which garbage is collected. Therefore, schedules and routes shall match the schedules and routes for solid waste collection, except that the Town Manager is authorized to modify, extend or suspend schedules in the event of natural disaster, health hazard or any other state of emergency, requiring such action.

Should the County close the landfill in honor of holidays, the Contractor shall not be required to collect on that day. The Contractor then would collect on the following day, excluding Sunday. Customers under this Contract shall receive reasonable notification, as approved by the Town Manager, of the schedules provided by the Contractor prior to commencement of service.

9. **RESERVED**

10. **MARKETING OF RECYCLABLE MATERIALS:** The Contractor and the Town shall cooperate to develop markets for recyclable materials. To the extent possible, based on

availability, capacity and market prices, the Contractor may market the recyclable materials through local business operations in Brevard County. At a minimum, the Contractor will provide for taking, marketing or storing of recyclables at the nearest County landfill.

11. **REVENUES GENERATED FROM RECYCLING:** The Contractor shall account for all revenues generated through recycling and report all such revenues to the Town on a monthly basis. The revenue amounts are to be verified by accompanying receipts from the purchaser of the recyclable material and the Contractor shall retain all revenues generated from the sale of the recyclables. The Contractor will remit by the 10th of each month, to the Town, an amount equal to thirty dollars (\$30.00) per ton for all recyclables collected under this Contract for the previous month (exclusive and non exclusive services).
12. **CHARGES FOR DISPOSAL OF RECYCLABLE MATERIAL:** In the event recyclable materials are not saleable and must be disposed of at a disposal facility, the Contractor will not charge the Town for the number of tons of material so disposed.
13. **RECYCLING BINS AND TOTER/CARTS CONTAINERS:** Residential recycling bins, toters and carts will be provided by the Contractor, at the Contractor's expense and identified with the Contractor's name imprinted on the container, and distributed as needed by the Contractor. All requests for recycling bins, toters or carts by either the Town or a resident will be delivered by the Contractor within seventy two (72) hours of request. Type and size of multi-family residential recycling containers shall be approved by the Town Manager and provided by the Contractor at his expense.

E. **PROPERTY OWNED, LEASED, RENTED AND CONTROLLED BY THE TOWN OF MELBOURNE BEACH – (EXHIBIT “E”)**

The Contractor shall empty all refuse containers used by the Town as identified in exhibit “E”. The schedule may be amended during the term of the Contract upon the direction of the Town Manager. The Town shall have the right to use regular commercial type trash containers, toters, or cans with covers. Servicing of these facilities shall be performed by the Contractor at no additional cost to the Town.

F. **MISCELLANEOUS**

1. **VACANT LOTS:** The Contractor shall collect trash from normal maintenance of vacant lots in the same manner as the collection from residences, except the Contractor will only be responsible for the weekly collection of up to and including; See SECTION 2 Scope of Work, # 2 Vegetative Garden and Yard Trash, paragraph 2(b), page 7.
2. The Contractor shall be responsible for the collection and proper disposal of all used tires improperly deposited on Town right-of-ways and collected at the Public Works Complex.

G. **CHANGE IN COST OF DOING BUSINESS**

The fees or compensation payable to the Contractor for the second and subsequent years of the term hereof may be adjusted upward or downward as of May 1st of each year of the Contract upon written request to the Town by the Contractor at least 90 days before the anniversary date. If requested, the rate adjustment shall be equal to 100% of the Consumer Price Index (CPI), Urban Wage Earners and Clerical Workers, United States, South Urban, Not Seasonally Adjusted, All items less energy Consumers, published by the U.S. Department of

Labor, Bureau of Labor Statistics for the preceding twelve (12) month Contract period. The CPI adjustment will only be applied to the cost component of collection and will not be applied to the disposal costs or the fuel increase portion of the CPI. The fuel adjustment portion of the CPI will be applied in paragraph I below. The Contractor has the right to request a separate rate adjustment due to increases in disposal costs (See Page Section 10, page 32). If a rate adjustment is not requested, the rate adjustment for that particular 12 month period shall be deemed waived and shall not be taken into consideration in the future rate adjustments. The Town, upon approval by the Town Manager for the rate adjustment, shall incorporate those changes into the Contract by written Contract amendment. The CPI index to be used will be from February to February for the previous twelve months.

H. UNUSUAL CHANGES OR COSTS

The Contractor may petition the Town on the anniversary date of the Contract for rate adjustments or at reasonable times on the basis of unusual changes in Contractor's cost of doing business, such as revised laws, ordinances, or regulations, changes in location of disposal sites or changes in disposal charges.

I. FUEL ADJUSTMENT COMPONENT

The Town shall adjust payments to the Contractor on a semi-annual basis for either increase or decrease for the fuel cost to the Contractor for providing the service to the Town as per the Contract. The fuel adjustment component (FAC) shall be adjusted on the semi-anniversary after the start date of the Contract with the base of fuel pricing being set at ten(10%) percent above the fuel pricing as per "On Highway Retail Diesel Price" Lower Atlantic Region, U. S. Department of Energy, Energy Information Administration published on the Internet at:

http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report.asp

This fuel adjustment component will not be considered within the CPI adjustment in paragraph "G" above.

Example: Fuel cost as per the internet listing at the start date of the Contract:

\$4.00 per gallon	
10% of rate	.40
Base Rate	\$4.40
1 st semi-annual	\$4.45
Rate increase	.05 per gallon

.05 multiplied by the gallons used by Contractor. Semi-annually the Contractor shall calculate the adjusted fuel component price described above and send a letter to the Town showing the calculations using the route miles, route hours and gallons of fuel used to provide the services to the Town as per the Contract. The Contractor will break the fuel consumption into components for each service provided, residential garbage, residential yard waste, residential bulk, residential recycling and commercial. The rate paid to the Contractor will be adjusted by residential unit counts for residential and commercial will be adjusted by the collected cubic yard price. If the Contractor fails to notify the Town in writing as per the above described format within ten (10) days of the end of each semi-annual period the Town will not consider the fuel adjustment for that given semi-annual period. The Town agrees to adjust the monthly payments, to be paid to the Contractor, which will reflect the short fall from the previous semi-annual period fuel reports at the time of the semi-annual rate adjustment.

- J. **Favored Nations Clause:** In the event a neighboring municipality negotiates a more favorable rate than the Town of Melbourne Beach for the provisions of the same or substantially the same services provided in this Contract with the Contractor of this Contract, the Contractor shall be required to upon execution of the Contract with the neighboring municipality reduce the rates charged to the Town to be equal to or lower than the rates charged the neighboring municipality. Neighboring municipality shall mean municipalities within Brevard County.

SECTION 3 – STORAGE AND OFFICE FACILITIES

The Contractor shall establish and maintain an office and maintenance facility within forty (40) miles of the Town limits of the Town of Melbourne Beach within Brevard County where collection services such as stop service, request for additional services or change of service, and complaints can be made within two (2) weeks after the award of the Proposal. It shall be equipped with sufficient toll free telephones; shall have a responsible person in charge with the ability to communicate with the public and shall be sufficiently staffed during collection hours and shall be open during the operational hours of this Contract, 7:30 AM to 5:30 PM. After hours of operation, the Contractor will provide a telephone answering service.

SECTION 4 - SCHEDULES AND ROUTES

A. IN GENERAL

The Contractor shall abide by the routes and schedules provided with the proposal documents. The Town reserves the right to deny the Contractor's vehicles access to certain streets, alleys, and public ways inside the Town or outside the Town in route to the disposal facilities, where it is in the best interest of the general public to do so due to conditions of streets, bridges or for other reasons determined by the Town. The Contractor shall not interrupt the regular schedule and quality of service because of such street closures. Customers under this Contract shall be notified by the Contractor of the collection schedules to be provided. Individual route starting times and succession of pickup shall remain constant so as to promote and achieve regularity of service. Any and all route and/or schedule changes shall be approved by the Town Manager.

The Town Manager shall be notified of any route changes in the best interest of the general public and the Town Manager reserves the right to change any such routes in the best interest of the general public with proper notification to the Contractor which will be not less than seven (7) days. Written notices of changes in schedules shall be furnished to the customers by the Contractor, at least ten (10) days prior to the actual change in routes or schedules. The decision may be appealed to the Town Manager and decision of the Town Manager shall be final.

NOTE: The Contractor's attention is directed to the fact that at various times during the year, the quantity of refuse to be disposed of is materially increased by fluctuations in the amount of garden and yard trash. This additional work-load will not be considered as adequate justification for failure of the Contractor to maintain the required collection schedules and routes.

B. STORM

The Contractor shall have a disaster response plan for removal and disposal of excessive amounts of debris or refuse accumulated by reason of a storm of disastrous proportions, natural disaster, severe disturbance, riot, terrorist activity or other calamity. The Contractor will provide the Town with a detailed plan specifically for the first seventy two (72) hours of an event as described above and is required to update and review the plan, which will include pricing and terms for work to be performed, with the Town annually before the start of the hurricane season. The Town will agree to pay the FEMA rates stated at the time of the named event for the first seventy two (72) hours. The Town has the sole option of invoking a collection action following such an event listed above. Any additional collection required after the first seventy two (72) hours of the named event the Contractor will revert to the pre agreed pricing and terms. The plan

submitted by the Contractor must describe in detail the responsibilities of the Contractor. The Contractor agrees the Town will have total and absolute authority to direct and monitor the Contractor during any such event of how, when and where action must be taken by the Contractor to accomplish the task of clean up and clearing of roads and property, and the Contractor will not be entitled to any reimbursement without the prior written authorization of the Town for any action taken.

The Contractor shall have, at all times, written contracts with sub—contractor(s) for collection, hauling and disposal relating to the paragraph above should the Contractor not have sufficient resources of its own to affect a timely clean up. Such contract(s) should contain operational details and unit pricing for collection and hauling with actual disposal cost to be an add-on charge. The initial sub-contractor contracts are to be an addendum to this Contract with annual renewals to be reviewed and agreed to by the Town of Melbourne Beach. The Contractor's emergency response plan should also have operational details and unit pricing. Contractor and sub-contractor contracts must be reviewed and agreed to by the Town prior to May 1st each year.

Should an event of the above magnitude occur, the Town Manager or his designee and the Contractor will meet as soon as possible to formulate and agree upon a cleanup plan.

The Town reserves the option to utilize the Contractor forces, Contractor's sub—contractors, services other than provided by this Contract (Town's own contractors), Town forces, mutual aid contracts or any combination thereof.

C. **FORCE MAJEURE**

The performance of any act by the Town or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any other cause beyond the reasonable control of such party, provided, however, the Town shall have the right to provide substitute service from third party contractors or Town forces and in such event the Town shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of 14 days, the Town may, at its option and discretion, cancel or renegotiate this Contract.

D. **EXCLUSIVE RIGHTS**

The Contractor shall have sole and exclusive rights to collect refuse, as defined in the Contract, within the corporate limits of the Town of Melbourne Beach with the following exception: contractors, commercial and residential customers engaged in building or remodeling operations, shall be permitted to remove the waste accumulated as a result of their operations with their own trucks and labor or will contract with the Town's exclusive licensed hauler to remove construction and demolition debris. No other waste removal will be permitted by another solid waste contractor, other than excluded waste, exempted yard waste, commercial recycled materials, hurricane debris collected by the Town or another contractor chosen by the Town. The Town of Melbourne Beach reserves the rights to pick up refuse relating to street maintenance and other activities relating to Town functions or ordinances. Contractor shall have the exclusive right to collect and haul recyclable and recovered material except source separated recovered material at commercial establishments as terms are defined under state law.

E. **MISCELLANEOUS**

The Contractor shall not be responsible for scattered refuse unless the same has been caused by his acts or those of any of his employees, in which case, all such scattered refuse shall be picked up immediately by the Contractor. Employees of the Contractor shall not be required to expose

themselves to the danger of being bitten by vicious dogs or other animals in order to accomplish refuse collection in any case where the owner or tenants have such animals at large; in such event the Contractor shall immediately notify the customer and Town Manager, in writing, of such conditions and of his inability to make collection because of such conditions.

F. HOLIDAYS

When a holiday falls on a regularly scheduled collection day, the Contractor may collect all solid waste on the following day, excluding Sunday. Each Contractor shall list the holidays which will be exempt from the residential and commercial collection schedule as offered in the Contractor schedule. The Contractor will notify all residential and commercial customers of observed holidays. Notification can be made by way of direct mail, door hangers or newspaper advertisement one (1) week prior to the holiday date of non collection. The notification must include a statement of the makeup day the waste, recycling or yard waste will be collected. Currently the observed holidays are as follows:

- July 4th
- Memorial Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

**SECTION 5 - DURATION OF CONTRACT -
COMMENCEMENT OF WORK - EXTENSION OF CONTRACT**

- A. The term of this Contract shall be for a period of seven (7) years with work commencing May 1, 2010, and terminating on April 30, 2017, unless terminated or breached at an earlier date.
- B. The Contractor must commence work on the date and year entered in Section 5A. Failure to commence work on the specified date will result in forfeiture of the Proposal bond.
- C. The initial term of this Contract may be extended for additional seven (7) year terms, under the existing terms and conditions or as modified through additional negotiations, if either party notifies the other in writing, not less than 180 days prior to the expiration of the initial term or subsequent term. This Contract may be extended with the mutual consent of both parties. Any extensions or modification of the initial Contract shall be ratified by resolution of the Town Commission and shall become a written amendment to the Contract.

**SECTION 6 – CONTRACTOR’S RELATION TO THE
TOWN**

A. CONTRACTOR AS INDEPENDENT CONTRACTOR

It is expressly agreed and understood that the Contractor is, in all respects, an Independent Contractor as to the work notwithstanding in certain respects the Contractor is bound to follow the direction of designated Town officials, and that the Contractor is in no respect an agent, servant, or employee of the Town. The Contract specifies the work to be done by the Contractor, but the method to be employed to accomplish this work shall be the responsibility of the Contractor, unless otherwise provided in the Contract.

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

B. SUBLETTING CONTRACT

The Contract, or any portion thereof, shall not be sublet except with the prior written consent of the Town Manager which may be withheld for any reason or for no reason. No such consent will be construed as making the Town a party of or to such subcontract, or subjecting the Town to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under this Contract, and despite any such subletting; the Town shall deal through the Contractor. Subcontractors will be dealt with as workmen and representatives of the Contractor, and as such will be subject to the same requirements as to character and competence as are other employees of the Contractor.

C. SUPERVISION OF CONTRACT PERFORMANCE

The Contractor's performance of this Contract shall be supervised by the Town Manager and the Contractor shall be so notified in writing by the Town Manager of the Contractor's performance. If at any time during the life of the Contract, performance satisfactory to the Town Manager shall not have been made, the Contractor, upon notification by the Town Manager shall increase the force, tools and equipment as needed to properly perform this Contract. The failure of the Town Manager to give such notification shall not relieve the Contractor of his obligation to perform the work at the time and the manner specified by this Contract.

D. TOWN MANAGER or HIS DESIGNEE'S AUTHORITY

To prevent misunderstanding and any litigation, the Town Manager shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of performance, the interpretation of the Contract provisions, and the acceptable fulfillment of the Contract on the part of the Contractor; and the Town Manager will determine whether or not the amount, quantity, character and quality of the work performed is satisfactory, which determination shall be final, conclusive and binding upon both the Town and the Contractor. The Town Manager shall make such explanation as may be necessary to complete, explain or make definite the provisions of this Contract; and his findings and conclusions shall be final and binding upon both parties. Contractor may appeal the Town Manager final findings and conclusions to the Town Commission. The Town Commission decision shall be final.

E. INSPECTION OF WORK

The Contractor shall furnish the Town Manager with every reasonable opportunity for ascertaining whether or not the work as performed, is in accordance with the requirements of the Contract. The Contractor shall designate, in writing, the person to serve as agent and liaison between his organization and the Town. The Town Manager may appoint qualified persons to inspect the Contractor's operation and equipment at any reasonable time. The Contractor shall admit authorized representatives of the Town to make such inspections at any reasonable time and place with proper notice by the Town to the Contractor, not less than twenty four (24) hours in advance of the inspection.

F. DISAGREEMENTS – REFUSE TO BE COLLECTED - HOW

It is recognized that disagreements may arise between the Town and the Contractor with regard to the collection of certain items due to interpretation of the specific language in the Contract.

In the event a disagreement arises and refuse needs to be collected and disposed of, the Town Manager may notify the Contractor of the location of refuse which has not been collected due to disagreement between the Town and the Contractor, and it shall be the duty of the Contractor to

remove all such refuse within twenty four (24) hours of the notice. Should the Contractor fail to remove the refuse, the Town will remove the refuse and the Town shall deduct costs incurred from the next scheduled payment to the Contractor.

G. **TAXES**

The Contractor shall pay all federal, state and local taxes, to include sales tax, social security, workmen's compensation, unemployment insurance, and other required taxes which may be chargeable against labor, material, equipment, real estate and any other items necessary to and in the performance of this Contract.

H. **TOWN NOT LIABLE FOR DELAYS**

It is expressly agreed that in no event shall the Town be liable or responsible to the Contractor or to any other person on account of any stoppage or delay in the work provided for herein, by injunction or other legal or equitable proceedings brought against the Contractor, or from or by or on account of any delay from any cause over which the Town has no control.

I. **REPORTS OF OPERATIONS**

Reports and billing by the Contractor are to be submitted to the Town by the 10th of each month for the previous month.

- Residential garbage, recycling and garden and yard trash tonnage by route
- Used tire tonnage for all routes
- Commercial hand collection accounts, in alpha order, by service address, number of toters, days of collection, excess amounts collected in cubic yards and truck or route number
- Commercial toter collection report listing, in alpha order, service address, size, days of collection and truck or route number
- Commercial front load report listing, in alpha order, service address, dumpster size, days of collection and truck or route number
- Summary of service and complaint log and if requested by the Town Manager a complete copy of the service and complaint log

The roll off compactor and open top roll off reports are required monthly by service address, size of container, date pulled, number of pulls per month, copy of signed pull tickets and the amount of the gross billing minus the disposal cost.

J. **SCHEDULE OF PAYMENTS**

For and in consideration of the services to be performed by the Contractor pursuant to this Contract, the Town agrees to authorize payments in accordance with this Contract through the Towns billing agent to the Contractor as follows:

The Contractor will be paid no later than the 20th of each month, during the term of the Contract, and based on the preceding month's customer and volume counts. The Contract payment will be made based on the monthly number of residential customers, monthly commercial yardage and monthly commercial front load or rear load container rental billed by the Town and multiplied by the contractual unit prices identified in the proposal form **EXHIBIT "H"**, minus fifteen percent (15%) to be retained by the Town as a franchise fee during the initial Contract term. The Town will adjust the franchise fee during the second Contract term, if renewed or extended, to twenty percent (20%). The Town also reserves the right to adjust the franchise fee from time to time after

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

written notification and negotiations with Contractor. The Town will also deduct the amount monthly from the Contractor for the cost of the online tracking system known as "Trac Ez" during the term of this Contract. The Contractor agrees and understands the present cost to the Town for this system is two hundred fifty dollars (\$250.00) per month subject to annual CPI increases. Note: The contractor will bill separately for all roll off accounts and additional charges allowed under the Contract. The Contractor will remit to the Town, on a monthly basis, by the fifteenth of the month following in which the work is performed, a report of all gross revenues which will include pull charges, lease or rental fees, delivery charges as well as any other billing within the Town, along with a payment equal to fifteen percent (15%) of the gross revenues less disposal cost as a franchise fee or as adjusted from time to time.

K. **CANCELLATION OR ANNULMENT OF CONTRACT**

The Contractor and the Town recognize that it is of paramount importance that the Contract be performed and the individual customers receive service. If the Contractor fails to begin work at the time specified, or fails to perform the work with sufficient number of workmen and sufficient and adequate equipment to ensure the proper and substantial performance of said refuse collection work, or performs the work unsuitably, or discontinues the prosecution of the work or any portion thereof, or for any other cause whatsoever, excepting only acts of God, does not carry on the work as aforesaid, or if the Contractor becomes insolvent or declares bankruptcy or commits any act of bankruptcy or insolvency, or allows any final judgment for the payment of money to stand against him unsatisfied, and if the Town, through its Town Manager, gives notice of such default, and the Contractor or his surety fails to cure such default within seven (7) days after giving of such notice by the Town, then the Town may thereupon, by action of the Town Commission, declare the Contract cancelled. Upon declaration of cancellation, the Town may, at no cost to the Town or compensation to the Contractor, take over the work and take possession, without further notice to the Contractor and without judicial proceedings, of any and all equipment of the Contractor and operate the same in performance of the work and services described in this Contract for the unexpired term of the Contract, or for a period of three (3) months, whichever the Town elects, or the Town may enter into contracts with others for their performance of the work and services herein contracted for. Such cancellation of the Contract shall not relieve the Contractor or the surety of liability for failure to faithfully perform this Contract, and in case the expense incurred by the Town in performing or causing to be performed the work and services provided for in this Contract shall exceed the proposal price of the Contractor, as provided in this Contract, then the Contractor (and the surety to the extent of its obligation) shall be liable to the Town for said amount. Contractor's surety or security will not be released until such time as the term of this Contract would otherwise have expired.

L. **OPERATION DURING DISPUTE**

In the event the Town has not cancelled the Contract in accordance with the terms provided above, and there remains a dispute between the Contractor and the Town, the Contractor agrees to continue to operate and perform under the terms of this Contract while said dispute is pending, and agrees that in the event a suit is filed for injunction or other relief, to continue to operate the system until the final adjudication of the court. In the case of a dispute between the Contractor and the Town, the Contractor agrees to continue to operate and perform under the terms of this Contract while said dispute is pending, and agrees that in the event a suit is filed for injunction or other relief, to continue to operate the system until the final adjudication of the court.

SECTION 7 - QUALITY OF SERVICE

A. **CHARACTER OF WORKMEN AND EQUIPMENT**

The direction and supervision of refuse collection and disposal and salvage operations shall be by competent, qualified and sober personnel, and the Contractor shall devote sufficient

personnel, time and attention to the direction of the operation to assure performance satisfactory to the Town. No person convicted of a crime, crimes and/or repeated non-criminal violations of traffic laws which demonstrate a propensity to unfaithfully fulfill the duties of his employment such as, but not limited to, larcenous activity, aggravated battery or other violence, those relating to the operation of motor vehicles, and any crime for which civil rights have been removed within two (2) years, shall be employed by the Contractor. All subcontractors, superintendents, foremen and workmen employed by the Contractor shall be careful and competent. It is mandatory that the Contractor shall also provide uniforms with either a reflective safety vest or reflective safety shirt and name tag or badge. All employees utilized by the Contractor during the term of this Contract, shall be of a standing or affiliation that will permit the Contractor's performance herein to be carried on harmoniously and without delay, and in no case, or in any circumstances, will such employees cause any disturbance, interference or delay to any work or service rendered to the Town or by the Town and in no case or in any circumstances will the employees conduct themselves negligently, disorderly or dishonestly in the due and proper performance of the employees' duties. The Contractor shall see to it that his employees serve the public in a courteous, helpful and impartial manner. Contractor's employees collecting garbage will be required to follow the regular walk for pedestrians while on private property. No employee shall meddle with property that does not concern him. Care shall be taken to prevent damage to property, including shrubs, flowers and other plants. After emptying containers, employees shall return them to the same location from which they were taken, in an upright or inverted position, whichever is appropriate.

B. TEMPORARY WORKMAN PROHIBITED

Due to safety risks involved with the employment of temporary laborers as drivers and helpers, no temporary labor force will be allowed under this Contract without prior written authorization by the Town Manager. Only employees covered by the Contractor's workers' compensation policy will be authorized to work within the Town.

C. COOPERATION OF CONTRACTOR REQUIRED

The Contractor shall cooperate with authorized representatives of the Town in every reasonable way in order to facilitate the progress of the work contemplated under this Contract. The Contractor shall have at all times a supervisor in the Town during the days the Contract work is being performed. This person shall be competent and able to communicate with the public. The Contractor will supply the Supervisor with mobile communication with a published phone number for direct contact with the Town Manager as well as Residential and Commercial accounts for any situation that may arise. A daily roster of employees and equipment will be supplied to the Town Manager on an "as requested" basis.

D. HANDLING COMPLAINTS

The Contractor shall perform a service of high quality and keep the number of legitimate complaints to a minimum. The Contractor shall maintain a telephone listing in the name in which he is doing business as a Contractor and provide adequate employees for those customers needing to contact him during collection hours Monday through Saturday and after hours, an answering service will be provided. An electronic telephone answering machine will not be acceptable.

In order that the Town may be informed of the quality of service, the Contractor must enter into the electronic tracking system all calls regarding complaints, requests and compliments from the residential and commercial customers. The Contractor agrees that the Town shall deduct the monthly cost for the Town's web based tracking system from the payments due the Contractor. This system is provided for the Town and the Contractor to record all complaints and resolution of said complaints or inquiries of service for inspection by the Town. The Contractor also agrees to

provide a single point of contact in order for the Town or more specifically the Town Manager to have immediate access to Contractors personnel to deal with various situations which may arise from time to time. The Contractor agrees to furnish a monthly report of all complaints, listing the name and address of the person complaining, the nature of the complaint, and disposition of such complaint. All complaints whether received in person, by mail or telephone, shall be recorded into the electronic tracking system as received. Complaints received before noon shall be serviced the same day and complaints received after twelve noon shall be serviced by twelve noon of the following day. Complaints not serviced and resolved satisfactorily within these time frames shall be considered as un-serviced legitimate complaints. For each month in which the number of un-serviced legitimate complaints reaches twenty (20) or more, whether for garbage, trash, recycling or any other cause, the Town shall be entitled to claim liquidated damages of one hundred (\$100) dollars per complaint including the first twenty. Each complaint shall be considered legitimate unless satisfactory disposition of the claim is furnished. The decision of the Town Manager shall be final.

E. **GUARANTEES OF PERFORMANCE**

SURETY BOND: The Contractor hereby deposits with the Town a performance bond in the amount of fifty percent (50%) of the total annual proposal for the first year as a guarantee to the Town as faithful performance under the terms of this Contract. In the second and subsequent years of the Contract, the surety bond shall be reduced to twenty five percent (25%) of the total estimated annual revenue as faithful performance under the terms of this Contract if the Contractor has complied with the Contract and the reduction has been approved by the Town Manager. In no event shall the bond be less than \$ 300,000.00. This performance bond shall be written by a company with an A, Class 10, or higher financial rating as shown in Best's Key Rating Guide.

SECTION 8 - EQUIPMENT

A. **TYPE**

The Contractor agrees at the start date of this Contract that all primary equipment used to provide the services as per the Contract within the Town will be new. Back up equipment is not required to be new. The Contractor shall during the term of this Contract, use vehicles, one (1) per route, with equipment used during the first year of the Contract to be model year 2009 or newer, during the second year of the Contract all primary equipment used to provide the Contract services shall not be more than one year old in the third year of the Contract the primary equipment will not be more than two years old. The age of the primary equipment used in providing the Contract services shall be determined further each year of the Contract on a descending basis for years 4,5,6 and 7. Prior to any renewal or extension term of this Contract, all equipment and conditions of such equipment is subject to negotiations between the Town and the Contractor. All equipment must be maintained and freshly painted, with bodies which are water tight to a depth not less than eighteen (18) inches, with solid sides, using pneumatic tires. All vehicles shall be equipped with operational radio transceiver capable of communicating with the Contractor's dispatcher from anywhere within the Town of Melbourne Beach.

Prior to purchasing equipment it shall be the responsibility of the Contractor to determine the available space, turning radius, ceiling heights, etc. of the likely buyers or processors of the recyclable materials. Replacement and additional vehicles shall be comparable equipment unless otherwise agreed by the Town. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. See Section 8, Paragraph A, Page 29.

B. **AMOUNT**

The Contractor shall provide sufficient equipment, in proper operating condition, so regular schedules and routes of collection can be maintained. This will include a vehicle for the

supervisor overseeing the Town operations, a "rat pack" or other small vehicle with a lift assembly to service areas inaccessible to the larger equipment and one (1) "clam" shell truck available to the Town at all times.

C. CONDITION

Equipment is to be maintained in a reasonable, safe, working condition, to be painted uniformly, the company name, telephone number, and the number of the vehicle printed in letters not less than five(5) inches high, on each side of the vehicle, and vehicles shall be numbered and a record kept of the vehicle to which each number is assigned. No advertising other than Contractor's standard company logo shall be permitted on vehicles, totes, dumpsters, or roll off containers servicing Melbourne Beach. The Contractor is required to keep collection vehicles and commercial containers emptied by mechanical means, cleaned and painted to present a pleasing appearance. The Contractor shall submit, as part of the proposal, a schedule showing the frequency of the cleaning and painting of the vehicles. The Contractor shall at the beginning of the seventh month of the Contract, December, 2010, begin a program which will provide for each commercial customer to receive a reconditioned or new container during the succeeding twelve(12) month period and each twelve (12) month period thereafter. It is the intent of this subsection to provide each customer who uses a container emptied by mechanical means, a new or renovated container on a regular schedule. This will include permanent roll off open top containers.

The Contractor will submit to the Town Manager, prior to the start date of this Contract, for the Town Managers approval, a schedule showing how the change-out of containers is to be accomplished during the Contract term.

D. OPERATION

Each non-packer trash vehicle shall be equipped with a cover which may be a net with mesh not greater than one and one-half inches, or tarpaulin, or fully enclosed metal top. Such cover shall be kept in good order and used to cover the load going to and from the disposal facility during loading operations or when parked, if the contents are likely to be scattered if not covered. Vehicles shall not be overloaded so as to scatter refuse; however, if refuse is scattered from the Contractor's vehicle for any reason, it shall be picked up immediately. Each vehicle shall be equipped with a spill kit, pitch fork, rake, shovel and broom for this purpose. Safety equipment is also required, such as a fire extinguisher and reflectors. The Town Manager will have the authority to spot inspect the equipment during route operations for compliance. The Contractor's vehicles are not to interfere unduly with vehicular or pedestrian traffic and vehicles are not to be left standing on streets unattended except as made necessary by loading operations, and shall move with the traffic flow. To the extent practical, the Contractor shall avoid pickup on major travel ways during the morning and evening rush hours.

E. SAFETY STANDARDS

The Contractor warrants that the product(s) supplied to the Town shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970 as amended, and shall be in compliance with Chapter 442, Florida Statutes as well as any industry standards, if applicable. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this order must be accompanied by a completed Material Safety Data Sheet (MSDS).

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

**SECTION 9 - EMPLOYMENT AND WORKING
CONDITIONS**

The Contractor shall comply with all applicable state and federal laws relating to wages and hours, and all other applicable laws relating to the employment or the protection of employees now or hereafter in affect. The Contractor is required and hereby agrees by accepting this Contract, to pay all employees not less than the federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act as amended and changed from time to time.

SECTION 10 - DISPOSAL OF REFUSE

Refuse collected by the Contractor is currently disposed of at the Brevard County disposal sites located at, Central Disposal Facility Landfill 2250 Adamson Road, Cocoa, Florida 32926, Transfer Station 3379 Sarno Road, Melbourne, Florida 32935 and a Transfer Station located at 4366 South Street, Titusville, Florida 32780. The Sarno Road Transfer Station facility is the closest County Disposal location to the Town of Melbourne Beach. The Town will not be responsible for disposal fees charged by the County or other disposal operators for the Contractor to use any facility. Currently both residential units and commercial units using either garbage cans, toter/carts or containers emptied by mechanical means, front end load (FEL) or rear end load (REL) are assessed disposal fees through the County by way of the tax collector. Therefore, the Contractor is not charged a disposal tipping fee for those units.

SECTION 11 - COMPLIANCE WITH LAWS & REGULATIONS

The Contractor hereby agrees to abide by all applicable federal, state, county and Town laws and regulations. The Contractor and his surety indemnify and save harmless the Town, all its officers, representatives, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, order or other decree, whether by himself, his employees or his subcontractor. This clause shall apply not only during the term of this Contract, but also as to any claim, liability, or damages which are based on the Contractor's conduct during the term of this Contract and in the event the Town is charged with the responsibility, jointly or severally, for the aforementioned conduct as a successor to the Contractor.

SECTION 12 - INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this Contract and such insurance coverage has been approved by the Town Manager of the Town of Melbourne Beach, nor shall the Contractor allow any subcontractor or sub-subcontractor to commence work on subcontracts or sub-subcontracts until similar insurance of the subcontractor or sub-subcontractor has been obtained and approved in writing by the Town Manager or the Town. All insurance required by this Section shall be with a company licensed to do business in the State of Florida, and be otherwise satisfactory to the Town. All insurance shall issued by companies rated by A. H. Best's Rating Guide as A+ or better with a financial quality rating of VII or better. Insurance shall not be claims made insurance but shall be occurrence based.

A. WORKERS' COMPENSATION INSURANCE

The Contractor shall provide and maintain during the life of this Contract, at the Contractor's own expense, Workers' Compensation Insurance for all of his employees, who are employed in connection with the work, and in case the work is sublet or sub-sublet, the Contractor shall require the subcontractor or sub-subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this Contract are not protected under the Workers' Compensation Statute, the Contractor shall provide and shall cause each subcontractor or sub-subcontractor to provide adequate insurance coverage for the workers' compensation protection of his employees not under or otherwise protected.

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

B. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall provide and maintain during the life of this Contract, at its own expense, such public liability and property damage insurance, with the Town of Melbourne Beach being named as an additional insured, as shall protect the Contractor and any subcontractor or sub-subcontractor performing work covered by this Contract, from claims for property damage, which may arise from operations under this Contract, whether such operations be by itself or by a subcontractor or sub-subcontractor, or anyone directly employed by the Contractor, or subcontractor, or sub-subcontractor and the amount of such insurance shall be as follows:

1. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, contractual, broad form property damage, and personal injury on an "occurrence" basis insuring the Contractor and any other interests, including but not limited to any associated or subsidiary companies involved in the work.

Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Contractor or in any way connected with the Work which is the subject of this Contract. The insurance shall include coverage for owned, hired, and non-owned vehicles.

THE LIABILITY INSURANCE SHALL NAME THE TOWN AS AN ADDITIONAL INSURED.

The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$5,000,000. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$5,000,000.

C. PROOF OF INSURANCE

The Contractor shall furnish the Town Manager, prior to the start of any operations under this Contract, satisfactory proof of carriage of the insurance required with a certified copy of the insurance policy with a completed and effective declaration page with an insurance company satisfactory and acceptable with the Town. Certificates of insurance are not acceptable proof of insurance coverage. All such policies shall be issued by companies of recognized responsibility licensed by the State of Florida Insurance Commissioner to do insurance business for the type of policy issued pursuant to this contract agreement in Florida and rated by Best's Insurance Reports or Best's Key Rating Guide or any successor publication of comparable standing as determined by the Town and carrying a rating of A+ or better with a financial quality of at least VII or better or the then equivalent of such rating. Insurance required by this contract agreement shall be continuously maintained by the Contractor and all sub-contractors and sub-subcontractors, if any, with current copies of all policies and active and effective copies of all declaration pages being maintained in the offices of the Town of Melbourne Beach. No policy is acceptable to the Town which can be canceled by the insurer in less than ten (10) days after the insured has received written notice of such cancellation provision of the policy. To be acceptable to the Town, each insurance policy shall contain a clause substantially as follows:

"This policy cannot be canceled or non-renewed by the insurer in less than thirty (30) days after the insured has received written notice of such cancellation or non-renewal, and equal notification to the Town of Melbourne Beach.

In the event that the Contractor should fail for any reason to procure or maintain insurance coverage at the minimum amounts required herein or otherwise consistent with this Contract, or at the written request of the Contractor, the TOWN, at the Town's sole discretion, may secure insurance coverage at the Contractor's expense, or may declare the Contractor in default. The Contractor shall reimburse the TOWN for the cost of such insurance coverage secured by the TOWN within thirty (30) days of Contractor's receipt of an invoice from the TOWN for such insurance coverage. The Contractor shall be responsible for the payment of any applicable deductibles set out in the insurance policy secured by the TOWN. Any bill for insurance by the TOWN shall be regarded as additional "Contractor Cost", which if not paid within said thirty (30) day time period shall bear interest at the rate of ten percent (10%) per year on the amount so paid by the TOWN; provided, that in no event shall the interest rate ever exceed the then lawful rate of interest. The Town also reserves the right to withhold from the monthly payment to the Contractor any amounts due the TOWN for securing such insurance.

**SECTION 13 - TOWN HELD HARMLESS FROM
INJURIES, DAMAGES AND CERTAIN OTHER ACTS OF
THE CONTRACTOR**

Indemnification: The Contractor shall indemnify and hold harmless the Town of Melbourne Beach and its agents, officers, volunteers, and employees, both in their official and individual/personal capacities, from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and paralegals' fees and court and witness fees whether in litigation, appeal or as a part of settlement negotiations, arising out of or resulting from the Work (or non-performance thereof); provided that the claim, damage, loss and expense is caused in whole or in part by any negligent act or omission or as an act of intentional misconduct of the Town, the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed or contracted by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, except the Contractor shall not have to indemnify and hold harmless the Town if such claim, damage, loss and expense is the result of the sole negligence or as an act of intentional misconduct of the Town or of anyone employed by the Town.

The Contractor agrees to indemnify and save the Town and its agents, officers, volunteers, and employees, both in their official and individual/personal capacities, harmless from all suits or actions arising from the Contractor's infringement of patent, trademark, or copyright, including any acts or non-acts of subcontractors or sub-subcontractors or those individuals under the control or direction of any of the foregoing.

The Contractor agrees to indemnify and hold harmless the Town and its agents, officers, volunteers, and employees, both in their official and individual/personal capacities, harmless from all suits or actions arising from any acts or non-acts by the Contractor, and subcontractors or sub-subcontractors or those individuals under the control or direction of any of the foregoing, without limitation, for any of the following:

Performance or the omission to perform the collection, transport, delivery, and disposal of Refuse, Bulk Waste, and Recyclable Materials, Vegetative Garden and Yard Trash with or without a "claw" truck, Refuse using Roll-Off Containers;

The furnishing or failure to furnish, deliver, or pick-up any Toters, Commercial Carts/Toters, Recycling Bins and Containers, Roll-Off Containers, and Recycling Carts/toters;

The administration of or failure to administer this contract agreement;

The hiring or omission to hire or supervise any employees or labor in or for the performance of the Work pursuant to this contract agreement;

The obtaining, use, maintenance, and operation of equipment in furtherance of the performance of Work pursuant to this contract agreement;

The employment of or failure to employ safety measures or equipment in the performance of the Work pursuant to this contract agreement;

The marketing or Recyclable Materials;

The establishment and operation of office facilities;

The compliance with or failure to comply with any laws, administrative rules or regulations, or ordinances in the performance of (or failure to perform) the Work pursuant to this contract agreement; and

The performance or non-performance of any requirements, duties, obligations, or tasks required to be performed by or for the Contractor pursuant to or as a result of this contract agreement.

The Town reserves the right to select its own attorneys and paralegals to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under this indemnification agreement, the cost and fees of which shall be timely and promptly paid for by the Contractor. Nothing contained herein is intended to nor shall it be construed to waive Town's rights and immunities under the common law, the U.S. or Florida Constitution, or Section 768.28 Florida Statutes as amended from time to time. The Contractor agrees that this contract agreement or any subcontract or sub-subcontract hereof, or agreement relating to the collection of Refuse or Construction and Demolition Debris shall not be construed to be an agreement subject to Section 725.06 or 725.08, Florida Statutes, and the Contractor hereby waives any such claim in the event of an action to enforce this contract agreement and this section hereof.

This section shall be in addition to and separate from any insurance or bond provided for by or pursuant to this contract agreement. This section relating to indemnification shall survive the termination of this contract agreement.

SECTION 14 - ADMINISTRATIVE CHARGES/LIQUIDATED DAMAGES

Should the Contractor fail to perform in accordance with the provisions of this Contract and/or refuse to pay liquidated damages upon receipt of invoice from the Town, the Town shall, in addition to the amounts provided in other provisions of this Contract, be entitled to claim against the performance bond of the Contractor as provided in Section 7-E page 29, or deduct from the next regularly scheduled payment to Contractor, the following amounts, not as a penalty, but as Administrative Charges/liquidated damages for such breach of the Contract:

- (a) Failure to collect missed customers by 7:00 P. M. the same day when given notice before noon, or by 12:00 noon the following day when given notice between 12:00 noon and 5:00 P. M. See Section 7,"D"

\$100 per incident, a maximum of
\$300 per truck per day

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

- (b) Legitimate complaints over twenty (20) in a single month.
See Section 7 "D"
\$100 per incident including the first twenty (20)

- (c) Collection of commercial, residential solid waste and/or recyclables before 7:00 A.M. or after 7:00 P. M. Exceptions stated in Section 4, "C", page 21.
See Sections 2,A.1. (A),(a) and Section 2, B, 4
\$100 per incident

- (d) Failure to clean spillage caused from residential or commercial route vehicles leaking from collected garbage.
See Section 8, EQUIPMENT, A. TYPE
\$150 per incident

- (e) Failure to replace damaged residential containers within seventy two (72) hours or damaged commercial containers within five (5) days. **See Section 2 "A"**
\$100 per incident

- (f) Failure to handle waste receptacles carefully, thoroughly empty and return containers or garbage receptacles in a vertical upright position to original location as per Contract. **See Section 1, (A), (d)**
\$250 per incident

- (g) Failure to repair damage to customer's property within seven (7) days. **See Section 7 and 13**
\$200 per incident

- (h) Failure to provide clean, safe and sanitary equipment at beginning of each work schedule
See Section 8, C
\$500 per incident

- (i) Failure to maintain office hours as required.
See Section 3
\$200 per incident

- (j) Equipment operator not properly licensed
See Section 7, A
\$500 per incident

- (k) Failure to provide documents and reports in a timely and accurate manner as per Contract.
See Section 6, I
\$100 per incident

- (l) Failure to cover materials, if appropriate, on all collection vehicles.
See Section 8, D
\$100 per incident

- (m) Name and phone number not displayed on all equipment and containers. **See Section 8, C**
\$100 per incident

- (n) Failure to comply with requested employee roster, proper uniforms and employee identification and safety equipment as per Contract. **See Section 7, C**
\$150 per incident

- (o) Failure to respond to complaints and customer calls in a timely and appropriate manner as per the "customer service policy" as agreed to by the Town and the Contractor.

See Section 7, D
\$200 per incident

- (p) Failure to complete a route on the regular pick-up day.
See Sections 4,A and 6, H

\$250 per day for each route not completed

- (q) Failure to provide proper notification prior to residential route changes.

See Section 4, A

\$250 for route day

- (r) **Causing skid marks, spillage marks on roadways, private driveways or any thoroughfare within the service area.**

See Section 7,A

\$150 per incident

- (s) Failure to follow established reporting operation or administrative procedures.

See Section 6, I

\$150 per incident

- (t) Failure to comply with the current schedules and routing maps.

See Section 4, A

\$250 per incident

- (u) Failure to provide monthly tonnage and recycling data reports. **See Section 6, I**

\$250 per incident

- (v) Failure to close gates on dumpster enclosures as well as container lids and locking all locks on commercial customer locations. **See Sections 2, 2, C, Commercial Units**

\$250 per incident

- (w) Causing hydraulic spills or leaks as well as any other fluids having potential to damage or stain asphalt, concrete or other roadway surfaces.

See Sections 7, A and 8, C

\$500 per incident

- (x) Failure to report accidents, damage, spillage to the Town immediately and provide a copy of a written report in the same day to the Town. **See Sections 6, I and 11**

\$250 per incident

- (y) Loaded vehicles left standing on street unnecessarily.

See Section 8, "D"

\$150 per incident

- (z) Failure to drive in the proper direction.

See Section 8 "D"

\$100 per incident

(aa) Commingling solid waste with vegetative waste, recyclable materials, c & d materials, or other waste material.

See Sections 1,H,(a) & (b) and 2(d)
\$250 per incident

(bb) Failure to report recycling activity monthly in the format determined by the Contractor, for the purpose of tracking and verifying Town-wide recycling activity.

See Section 2,B,1

\$100 per incident

(cc) Failure to have the required number of functioning "clam" trucks available within the Town at all times as required by **Section 2, A, 2, d**

\$250 per day

Each complaint shall be considered legitimate, unless satisfactory evidence to the contrary is furnished to the Town Manager by the Contractor. The decision of the Town Manager shall be final.

This provision shall not limit other claims of the Town arising against the Contractor under the terms of this Contract.

Note: The Contractor has the right to cure any and all service problems, which are stated guidelines within the Contract. Failure to cure in a timely manner and within the guidelines of the Contract shall constitute failure to perform in accordance with the provisions of this Contract and the Town may levy liquidated damages and shall have the right to other remedies and to termination as elsewhere provided.

SECTION 15 - TOWN ORDINANCES

Except as otherwise provided, nothing contained in any ordinance of the Town hereafter adopted, pertaining to the collection of garbage and trash shall in any way be construed to affect, change or modify or otherwise alter the duties, responsibilities and operation of the Contractor in the performance of the terms of this Contract. It is the intention hereof that the Contractor be required to strictly perform the terms of this Contract, regardless of the effect or interpretation of any municipal ordinances which in any way relate to garbage and trash and which are clearly inconsistent with this contract agreement.

SECTION 16 - AMENDMENTS

The Town shall have the right to amend this Contract from time to time as necessary to comply with federal, state and local laws and regulations, as amended from time to time. Such amendments shall take effect within thirty (30) days of the Contractor's receipt of the written amended Contract. Amendments which are consistent with the purposes of this Contract may be made with the mutual consent, in writing, of the parties and in accordance with the Town Charter and other applicable laws and ordinances.

SECTION 17 - NOTICES

Notices for purposes of the Contractor as called for under this Contract should be forwarded to:

District Manager

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

Notices to the Town should be forwarded to:

**Town Manager
Town of Melbourne Beach
507 Ocean Ave.
Melbourne Beach, Florida 32951-2523**

All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person; or dispatched by certified U.S. mail, postage prepaid, return receipt requested, addressed as set forth above; dispatched by nationally recognized overnight courier (*i.e.* – Federal Express, United States Postal Service, United Parcel Service, *etc.*), delivery paid for by the party giving notice, addressed as set forth above. Notice shall be interpreted as having been given upon delivery, if hand delivered, or upon deposit into the U.S. mail, or with an overnight courier, if given as set forth above. A party to this contract agreement may unilaterally change its address or addresses by giving notice in writing to the other party as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

SECTION 18 ASSIGNMENT AND CHANGE OF CONTROL

A. Assignment, Changes in Ownership and Subletting of Contract

- (1) Neither this Contract, nor any portion hereof or the duties set forth herein, shall be assigned or sublet. Any change in ownership shall be construed as an assignment of this contract. There will be no assignment of this contract except with the prior written consent of the Town Commission, which may be withheld for any reason. No such consent will be construed as making the Town a party of or to such transfer or assignment, or subjecting the Town to liability of any kind to any subcontractor. Assignment, changes of ownership or subletting of Contract shall be a direct or indirect, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of twenty five percent (25%) or more at one time within a one hundred and eighty (180) period of the ownership or controlling interest of Contractor, or fifty percent (50%) cumulatively over the term of the Contract of such interest to a corporation, partnership, trust, or association, or person or group of persons acting in concert or a change in control. A "transfer" shall include but not limited to any transfer or assignment to a person controlling, controlled by, or under the same common control as the Contractor at the effective date of this Contract. Moreover, transfer shall not mean a public offering issuance which either changes the Contractor status from a privately held corporation to that of a publicly held corporation or which is intended to provide additional capitalization for the Contractor, provided the public offering does not result in a change in Contractor's management personnel. Within the term of this Contract and any subsequent renewals if an assignment or transfer of this Contract is granted by the Town, the Contractor will pay the Town an assignment/transfer fee for the first assignment/ transfer in the amount of twenty five thousand dollars (\$25,000.00) for a second and all subsequent assignment/ transfers the Contractor will pay the Town fifty thousand dollars (\$50,000.00) upon such consent for said assignment or transfer.
- (2) No assignment or subcontract shall, under any circumstances, relieve the Contractor of the liabilities and obligations under this Contract, and despite any such assignment, the Town shall deal through the CONTRACTOR. Subcontractors shall be dealt with as employees and representatives of the CONTRACTOR and, as such will be subject to the same requirements as to character and competence as are other employees of the CONTRACTOR.

SECTION 19 - SEVERABILITY

If any article, section, provision, sentence, phrase, or word of this Contract or of any supplements or riders thereto, should be held invalid, unenforceable, unconstitutional, by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Contract and of any supplements or riders thereto or the application of such article or section to persons or circumstances other than those to which it has been held invalid, unenforceable, unconstitutional, or as to which compliance with or enforcement of has been restrained, shall not be affected thereby.

SECTION 20 – GOVERNING LAW

The laws of the State of Florida shall govern this Contract and the venue for any litigation arising out of the Contract shall be in Brevard County, Florida, or in the U.S. District Court for the Middle District of Florida, Orlando Division.

SECTION 21 – ATTORNEY'S FEES

In the event of litigation arising out of or interpreting the terms and conditions of this Contract, if the Town is successful, the Contractor shall pay the Town's attorneys' and paralegal fees and court costs.

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in duplicate original this _____ day of _____, 20____, effective as of the _____ day of _____, 20____.

WITNESSES:

THE TOWN OF MELBOURNE BEACH

By: _____
James D. Bursick, Town Manager

Attest: _____
Christina M. Hoffkins, Town Clerk

WITNESSES'

(company or individual)

By: _____
____ Print Name _____

APPROVED:

Attest: _____

Paul Gougelman, Town Attorney

STATE OF _____

COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of _____ before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____, well known to me to be _____ of _____ and that he/she executed the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

Notary Public

EXHIBIT A

RESIDENTIAL

Residential Information

1258 Estimated Single Family Or Duplex Accounts
_____ of these were active in September, 2009
_____ Multi-Family

3. NEW BUSINESS-ACTION REQUIRED 9. General Items for Discussion (2) Discussion regarding the privatization of Refuse Services

CITY COMMISSION OF THE CITY OF WILDWOOD

EXECUTIVE SUMMARY

SUBJECT: Tent Sales

Commission Direction on Ordinance Intent

REQUESTED ACTION:

- Work Session (Report Only)
 Regular Meeting

DATE OF MEETING: 6/7/10
 Special Meeting

CONTRACT:

N/A
Effective Date: _____
Managing Division / Dept: _____

Vendor/Entity: _____
Termination Date: _____

BUDGET IMPACT: _____

- Annual
 Capital
 N/A

FUNDING SOURCE: _____
EXPENDITURE ACCOUNT: _____

N/A

HISTORY/FACTS/ISSUES:

A few years ago, the City was having an issue with numerous temporary car sales events affecting local businesses. As a result, Ordinance 476 was adopted. The Ordinance (attached) relates to temporary uses and special events/special events sales. However, the Ordinance lacks definitions for the different types of uses and can be interpreted in different ways.

The Development Services Department recently received an application for temporary fireworks sale where the applicant requested the use of a tent. The application was denied due to previous applicants not being allowed to have the tent sales. For more than 3 years, other applicants have rented out empty commercial spaces for their temporary events.

There was a difference in interpretation of the Ordinance resulting in the permit being placed on hold until further direction from the Commission on what to allow.

To clarify the Ordinance, staff will need direction on:

- 1) If any type of tent sale will be allowed in the City limits. If so, time limits and locations.
- 2) Whether the Commission would consider temporary sales events such as RV sales and car sales from dealers not located in Wildwood/Sumter County the same as seasonal sales events such as fireworks sales and Christmas tree sales.
- 3) Temporary events such as carnivals, tent revivals, circuses, sporting events, concerts, etc.

Thank you.

Melanie Peavy
Development Services Director

ORDINANCE NO. 476

AN ORDINANCE OF THE CITY OF WILDWOOD; GOVERNING TEMPORARY USES AND SPECIAL EVENTS; PROVIDING FOR A PURPOSE; PROVIDING FOR APPLICABILITY; REQUIRING A PERMIT FOR TEMPORARY USES AND PERMITS; PROHIBITING TEMPORARY USES AND SPECIAL EVENTS FROM OCCURRING ON THE SAME PROPERTY MORE THAN TWICE IN A TWELVE (12) MONTH PERIOD; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY OF WILDWOOD CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Wildwood has determined that it is desirable under certain circumstances to allow for the occurrence of special events and gatherings; and,

WHEREAS, the City Commission of the City of Wildwood has determined that it is necessary to limit the duration of such special events and gatherings; and,

WHEREAS, the City Commission of the City of Wildwood has determined that the special events and gatherings need to be counted in a manner that protects the health and safety and welfare of the general public.

NOW THEREFORE, be it ordained by the City Commission of the City of Wildwood, Florida, as follows:

SECTION 1. Purpose.

a. The purpose of this section is to provide for the issuance of permits for temporary uses and special events which would otherwise be required to obtain site plan approval if such uses were permanent.

b. Temporary use and special event permits shall only be issued for events which do not normally occur on a year round basis, including but not limited to, traveling circuses, carnivals, sporting events, concerts, seasons sales events such as fireworks or Christmas trees, religious revivals, temporary sales events, or craft fairs.

c. Temporary use and special event permits shall not be issued for uses such as BBQ stands, restaurants, or flea markets. Anyone proposing these uses must seek appropriate permitting under City ordinances and code.

d. Special event sales such as automobile or recreational vehicle sales (tent or outdoor sales) shall be permitted if they meet all of the following criteria:

1. Site plan shall be submitted to in house site approval no later than three (3) weeks prior to the event.

2. The event shall occur on vacant property which is not a part of a shopping center or commercial.

3. Square footage not less than 1 acre.

4. Site shall be adjacent to egress and ingress and shall meet the requirements of the City of Wildwood Land Development Regulations for ingress and egress for. Egress and Ingress shall be clearly posed and marked on a 2 foot by 3 foot sign in contrast colors.

5. There shall be restroom facilities which meet Florida accessibility code. A minimum of no less than 2 for male and 2 for female shall be required. If the site exceeds one acre, then there shall be 1 more for male and 1 for female per each ½ acre.

6. Site plan shall reflect customer parking area which shall be clearly roped off.

7. This shall be in areas zoned commercial, industrial or agricultural only.

SECTION 2. Applicability.

a. This ordinance shall not apply to:

1. Agricultural stands that sell produce raised or produced on the farmland of which they are a part.

2. The sale of immediately consumable prepared food products, such as ice cream and non-alcoholic beverages, from a mobile vendor vehicle. Sales shall be oriented to pedestrians, not motorists, and the vehicle is to keep moving except for the purpose of making a sale and normal traffic operation considerations.

3. Property that has an approved site plan allowing temporary uses.

4. Motion photography production, musical or entertainment festivals, events permitted in public parks, and public forum uses.

b. The fact that this ordinance does not apply in no way relieves any person from complying with any other applicable ordinance.

SECTION 3. Permit Required. The City shall issue a permit for a temporary use or special event allowable under this ordinance if the following conditions and requirements are satisfied:

1. A completed application signed by all owners of the property along with any fee established for review by the City Commission shall be submitted. The application shall contain the following information:

a. The name and address of the property owner and the name and address of the operator/sponsor of the temporary use or special event, if different than the property owner.

b. The legal description of the property upon which the temporary use or special event will occur (copy of recorded deed and tax receipt or

property record card required).

- c. The date(s) on which the temporary use or special event will occur and the hours of operation.
- d. A general description of the activities to be conducted during the temporary use or special event together with the attendance estimates.
- e. Appropriate documentation that (1) all pyrotechnical items sold are consistent with state laws regulating same and all persons selling pyrotechnical merchandise are licensed by the State Fire Marshall; (ii) the County Fire Marshall has approved the location and sales of pyrotechnical items; and (3) electrical hook-up or fixtures meet the National Electrical Code as adopted by the State of Florida.

2. A sketch or site plan, drawn to an appropriate scale, shall be submitted demonstrating that adequate ingress, egress and parking exist for the site. Parking for the primary use shall not be effected by the proposed temporary vehicular ingress and egress and shall be from an approved driveway apron.

3. The sketch or site plan shall additionally show the location of all existing buildings on the property and the proposed structures, tents or other facilities that will be located on the property during the temporary use or special event. Setbacks shall be established in conformance with the zoning district within which the property is located.

4. The applicant shall demonstrate that adequate sanitary facilities will be provided at the site. Such demonstration may require a permit.

5. The applicant shall demonstrate that all other necessary licenses and permits have been or will be obtained, including but not limited to an occupational license and building permit for any tent or temporary structure.

6. The applicant shall demonstrate that security will be provided for the temporary use or special event.

SECTION 4. Signage. All signage shall comply with City of Wildwood Land Development Regulations.

SECTION 5. Duration and Frequency. Any permit issued pursuant to this section shall be valid for no more than twenty one (21) days from the date of issuance. A permit under this section shall not be issued for any parcel of property more than twice in any twelve (12) month period. No person or entity may apply more than 2 times per year.

SECTION 6. No commercial activity shall be permitted in a public right-of-way.

SECTION 7. Severability. If any section, sentence, clause, phrase or word of this ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

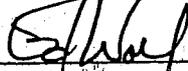
SECTION 8. Inclusion in Code. It is the intention of this City Commission that the provisions of this ordinance shall become and be made a part of the City of Wildwood Code and

the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article" or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 9. This ordinance shall take effect immediately upon its final adoption by the City Commission.

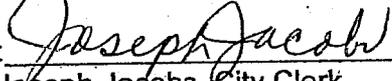
PASSED AND ORDAINED this 24th day of July, 2006, by the City Commission of the City of Wildwood, Florida.

CITY COMMISSION
CITY OF WILDWOOD, FLORIDA



Ed Wolf, Mayor

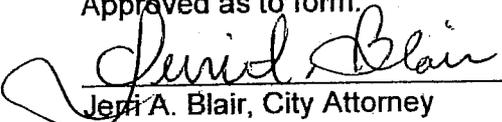
SEAL

ATTEST: 

Joseph Jacobs, City Clerk

First Reading July 10, 2006

Second Reading: July 24, 2006

Approved as to form:


Jerri A. Blair, City Attorney