

RESOLUTION NO. 13-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING AN EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION OF RESIDENTIAL AND COMMERCIAL SOLID WASTE FOR THE PERIOD MARCH 1, 2011 TO SEPTEMBER 30, 2016 WITHIN THE CITY LIMITS OF RIVIERA BEACH, FLORIDA TO WASTE MANAGEMENT OF FLORIDA, INC.; PROVIDING FOR ONE FIVE (5) YEAR RENEWAL OPTION BASED UPON THE MUTUAL CONSENT OF THE PARTIES; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FRANCHISE AGREEMENT TERMINATING THE EXISTING CONTRACT EXTENSION UPON EXECUTION BY THE PARTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City issued RFP No. 246-09 on February 19, 2010 for the collection of solid waste and recycling within the City's incorporated limits; and

WHEREAS, the City Council, in response to an ongoing bid protest related to said RFP, had all RFP respondents give presentations regarding submitted proposals on November 8, 2010, during a special council meeting; and

WHEREAS, based on presentations, City Council selected Waste Management of Florida Inc. (hereinafter "Waste Management") as the number one contractor and directed staff to begin contract negotiations with Waste Management; and

WHEREAS, staff held numerous negotiation sessions with Waste Management to finalize the terms and conditions of the agreement; and

WHEREAS, based on outcome of the negotiations and benefits previously included in the proposed contract, staff recommends approval of the agreement with Waste Management to provide solid waste and recycling collection; and

WHEREAS, the City Council finds that it is in the best interests of the City to enter into a new franchise agreement with Waste Management.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA as follows:

SECTION 1. That the City Council hereby awards an exclusive franchise agreement to Waste Management to provide solid waste and recycling collection services within the incorporated limits of Riviera Beach.

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SECTION 2. That the Mayor and City Clerk are authorized to execute the Franchise Agreement, attached hereto, on behalf of the City. Said Franchise Agreement to be in effect from March 1, 2011 to September 30, 2016, with one time option to renew for a five (5) year term based upon the mutual consent of the parties.

SECTION 3. That the Contract extension entered into with Waste Management on October 1, 2010 will terminate on March 1, 2011.

SECTION 4. That this Resolution shall take effect upon its passage and approval by City Council.

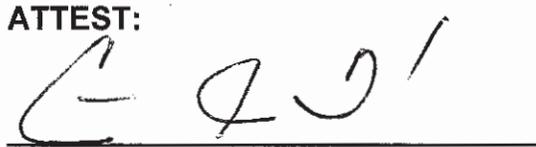
PASSED and APPROVED this 2ND day of FEBRUARY, 2011.

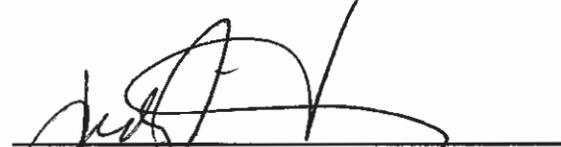
APPROVED:


THOMAS A. MASTERS
MAYOR

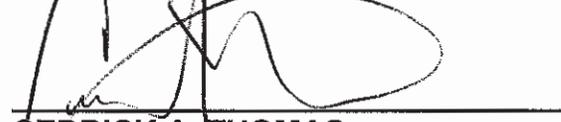

DAWN S. PARDO
CHAIRPERSON

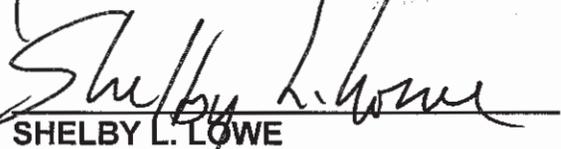
ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


JUDY L. DAVIS
CHAIR PRO TEM


BILLIE E. BROOKS
COUNCILPERSON


CEDRICK A. THOMAS
COUNCILPERSON


SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: C. Thomas

SECONDED BY: S. Lowe

D. PARDO aye

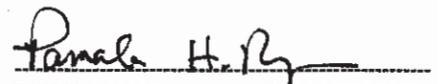
J. DAVIS aye

B. BROOKS aye

C. THOMAS aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 1/26/11

**SOLID WASTE AND RECYCLING
COLLECTION FRANCHISE AGREEMENT**

THIS AGREEMENT is hereby made and entered into this 2nd day of February, 2011, by and between the CITY OF RIVIERA BEACH, FLORIDA, a municipal corporation existing under the laws of the State of Florida, (hereafter referred to as "City") and WASTE MANAGEMENT INC. OF FLORIDA, a Florida Corporation (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, in February 2010, the City issued a Request for Proposals number 246-09 for solid waste collection and disposal services ("RFP"); and

WHEREAS, the Contractor, along with three other proposers, responded to the RFP, and Contractor was selected by the City Council; and

WHEREAS, City staff was directed to negotiate a new Solid Waste and Recycling Collection Franchise Agreement ("Agreement") with the Contractor; and

WHEREAS, the City Council finds that it is in the best interests of the City to enter into this Agreement with Contractor.

NOW, THEREFORE, in consideration of the mutual benefits provided for herein, the parties hereby agree as follows:

1.0 TERM:

The term of this Agreement shall be for the period beginning March 1, 2011, and expiring September 30, 2016. This Agreement is renewable for a single additional five (5) year term upon mutual approval of both parties. It is the intent of the parties that negotiations for the renewal term shall commence at least nine (9) months prior to the expiration of the initial term and concluded 180 days prior to the expiration of the initial term. Should the Agreement expire due to an inability to finalize negotiations or any other unforeseen conditions, the Contractor shall continue to provide collection service beyond the expiration date at the collection rate as modified pursuant to Exhibit III had the term not have expired; such service will be provided on a month to month basis until a new Agreement is entered into by the Parties.

2.0 DEFINITIONS:

To the extent the definitions contained herein conflict with similar definitions contained in any federal, state or local law, the definition herein shall prevail.

However, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct that is contrary to federal, state, or local law.

- 2.1 Authority shall mean the Solid Waste Authority of Palm Beach County.
- 2.2 Biohazardous or Biomedical Wastes shall mean those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included, but not limited to, waste resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing and surgical gloves.
- 2.3 Bulk Trash shall mean any non-vegetative item which cannot be containerized, bagged, or bundled; including, but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bath tubs, water heaters, sinks, bicycles, and other similar domestic appliances, household goods and furniture. Bulk Trash shall not be commingled with Vegetative Waste. There shall be no weight limit for any item of Bulk Trash. Bulk Trash does not include vehicles, boats or their respective parts and components.
- 2.4 Chlorofluorocarbons (CFC's) shall mean a series of hydrocarbons containing both chlorine and fluorine. These have been used as refrigerants, blowing agents, cleaning fluids, solvents, and as fire extinguishing agents. They have been shown to cause stratospheric ozone depletion and have been banned for many uses.
- 2.5 City shall mean the City of Riviera Beach, Florida.
- 2.6 Collection shall mean the process whereby solid waste (Garbage, Trash, Bulk Trash), Vegetative Waste or Recyclable Material is removed and transported to a Designated Facility.
- 2.7 Commercial Recycling Collection Service shall mean the Collection of Recyclable Materials by the Contractor for entities within the City service area that are not serviced by a Residential Recycling Collection Service.
- 2.8 Commercial Solid Waste shall include any Garbage, Bulk Trash, Trash or Vegetative Waste that is not Residential Solid Waste. Substantial effort shall be made not to commingle Garbage, Trash or Bulk Trash with Vegetative Waste.
- 2.9 Commercial Solid Waste Collection Service shall mean the collection of Commercial Solid Waste within the City service area. Such service includes both Containers and Compactors including permanent rolloff compactors, but does not include Roll-off Collection Services as defined in Section 2.38.

- 2.10 Compactor shall mean any container that has an all inclusive compaction mechanism(s), whether stationary or mobile.
- 2.11 Construction and Demolition Debris (C&D) shall mean materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project. Mixing of a small amount of waste other than C&D from the construction site will not automatically cause it to be classified as other than C&D.
- 2.12 Container shall mean and include any container designed or, intended to be, mechanically dumped into a loader packer type truck or recycling vehicle. All Containers must be of the specifications as designated by the Contract Administrator, in writing.
- 2.13 Containerized Residential Recycling Collection Service shall mean the collection of Recyclable Materials by the Contractor from Dwelling Units in the Service Area that require the use of Containers for the collection of Recyclable Materials, which also receives Residential Containerized Solid Waste Collection Service, and the delivery of those Recyclable Materials to the Materials Recycling Facility.
- 2.14 Containerized Residential Solid Waste Collection Service shall mean solid waste collection service of all Dwelling Units whose Garbage, Trash, Bulk Trash or Vegetative Waste is collected by means of a central or shared Container (with or without compactor) and not by means of a Garbage Can. Vegetative Waste shall not be commingled with Garbage, Trash, or Bulk Trash.
- 2.15 Contract shall mean this Agreement or agreements entered into between the Contractor and customers.
- 2.16 Contractor shall mean that person or entity set out initially above that has entered into this Agreement to provide the services described herein for the City.
- 2.17 Contract Administrator shall mean the person designated by the City who shall act as the City's representative during the term of this Agreement. This person shall be the Director of Public Works as designated by the City Manager.
- 2.18 Contract Monitoring for Quality Assurance shall mean the program set up by the City at the expense of the Contractor to ensure that pickup schedules, cleanup practices and reasonable quality control measures are adhered to

by the Contractor during the term of this Agreement. Annually, contractor shall pay a lump-sum fee in the amount of \$45,000 in support of the contract monitoring program. Lump-sum payment shall be paid to the City prior to October 15 of each contract year. The program shall be under the general direction of the Contract Administrator.

- 2.19 County shall mean Palm Beach County.
- 2.20 Curbside Residential Recycling Collection Service shall mean the collection of Recyclable Materials by the use of bins by the Contractor from all residential Dwelling Units in the City's service area who receive Curbside Residential Solid Waste Collection Service. This service also includes the delivery of those Recyclable Materials to a Designated Facility.
- 2.21 Curbside Residential Solid Waste Collection Service shall mean Residential Solid Waste and Vegetative Waste Collection service for all Dwelling Units whose garbage is collected by means of a garbage can, rollout cart or bag at curbside or roadway.
- 2.22 Designated Facility shall mean the facility or facilities operated by or licensed by the Solid Waste Authority of Palm Beach County for disposal of solid waste, vegetative waste and recyclable materials.
- 2.23 Dwelling Unit shall mean any type of structure or building unit intended for or capable of being utilized for residential living other than a licensed Hotel or Motel unit or Adult Congregate Living Facility (as defined by Florida Statute or Florida Administrative Code).
- 2.24 Fiscal Year shall mean the period between October 1 of a given year and September 30 of the following year during this Agreement.
- 2.25 Garbage shall mean all putrescible waste which generally includes, but is not limited to, kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Vegetative Waste shall not be commingled with Garbage in the same collection vehicle. Garbage shall not include any material that falls within the definition of Special Waste.
- 2.26 Garbage Can/Cart shall mean any commonly available wheeled, heavy duty gauge plastic, non-absorbent material, closed at one end and open at the other, furnished with a closely fitted top or lid and handle(s) and designed for automated pickup. This cart is used for curbside pickup and this cart shall be Ninety-Six (96) gallons unless special conditions as determined by the Contract Administrator (Section 5.3) permit the use of a smaller cart of 60 gallons or 36 gallons.

- 2.27 Hazardous Waste shall mean solid waste as defined by the State of Florida Department of Environmental Regulation as a hazardous waste in the State of Florida Administrative Code, or by any future legislative action or by federal, state or local law.
- 2.28 Hotel or Motel shall mean a structure or building unit(s) capable of being utilized for residential living where such a unit or a group of such units is regularly rented to transients or held out or advertised to the public as a place regularly rented to transients for periods of seven days or less. To meet this definition, the Hotel or Motel must be licensed to operate as such. "Transient" has the meaning as defined in Chapter 509, Florida Statutes (1987), or its successor law.
- 2.29 Materials Recycling Facility (MRF) shall mean any facilities operated or managed by, for or on behalf of the Authority for the purpose of receiving, sorting, processing, storing, and/or preparing Recyclable Materials for sale.
- 2.30 Mixed Paper shall be defined as a mixture of paper products including magazines, catalogues, phone books, cereal boxes, soda and beer can boxes, chipboard, file folders, envelopes, letter paper, junk mail, notebook paper and any other clean paper products.
- 2.31 Public Awareness Program shall mean that program developed by the City to inform and encourage residential and commercial solid waste collection customers to use all solid waste and recycling collection services offered by the City through the Contract. It shall also mean information concerning level of service and changes in scope of service.
- 2.32 Qualified Riviera Beach Business shall mean a company which has a permanent, physical place of business within the municipal limits of the City of Riviera Beach and a valid business tax receipt applicable to the required goods, services, or construction items being procured. Post office boxes or locations at a postal service center are not verifiable and shall not be used for the purposes of establishing said physical address. **The business shall have the burden of demonstrating that it meets this definition.**
- 2.33 Recyclable Materials shall mean newspapers (including inserts), aluminum, plastic containers, glass bottles and jars, milk and juice cartons, aseptic containers, corrugated cardboard, brown paper bags, Mixed Paper, tin and ferrous cans, household dry cell batteries (no wet cell batteries), and other solid waste materials added by the Authority, when such materials have been either diverted from the remaining solid waste stream or removed prior to their entry into the remaining solid waste stream.
- 2.34 Recycling Container shall mean a rigid container made of plastic or other

suitable substance that is used for the storage of Recyclable Materials.

- 2.35 Residential Recycling Collection Service shall mean Curbside Residential Recycling Collection Services and Containerized Residential Recycling Collection Service.
- 2.36 Residential Solid Waste shall mean Garbage, Trash and Bulk Trash resulting from the normal housekeeping activities of a Dwelling Unit, but shall not include Vegetative Waste.
- 2.37 Residential Solid Waste Collection Service shall mean Curbside Residential Solid Waste Collection Service and/or Containerized Residential Solid Waste Collection Service.
- 2.38 Roll-off Collection Service shall mean the Collection of C&D only roll-off containers or the Collection of C&D by other mechanical means, within temporary locations in the Service Area, limited to new construction sites and remodeling or refurbishment sites. Roll-off Collection Service shall also mean the collection of horticultural or agricultural wastes at horticultural or agricultural nurseries, but only when the customer chooses to use roll-off containers for horticultural or agricultural waste, and horticultural and agricultural waste shall not include any other type of waste, including, but not limited to, Special Waste, Garbage or Recyclable Material.
- 2.39 Service Area shall mean that portion of the incorporated area of the City as described in the City map provided, for which the Contractor has been granted an exclusive franchise.
- 2.40 Sludge shall mean a solid or semi-solid, or liquid generated from any waste water treatment plant, water supply treatment plant, air pollution control facility, septic tank, grease trap, portable toilets and related operations, or any other such waste having similar characteristics or effects.
- 2.41 Special Services shall mean any services requested or required by the customer which are in addition to, or a change in, Residential Solid Waste Collection Service, Residential Recycling Collection Service, Commercial Recycling Collection Service and Commercial Solid Waste Collection Service as set out or similar to those listed in Exhibit I.
- 2.42 Special Waste shall include automobiles, boats, internal combustion engines, non-automobile tires, Sludge, dead animals, septic tank waste, Biohazardous or Biomedical Waste, liquid waste, and Hazardous Waste. Special Waste may also include items determined by the Contract Administrator to be reasonably unmanageable.
- 2.43 Trash shall mean all refuse, accumulation of paper, rags, wooden or paper

boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than Garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, but shall not include Vegetative Waste.

2.44 Uncontrollable Forces shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

2.45 Vegetative Waste shall mean any vegetative matter resulting from yard and landscaping maintenance by any party and shall include materials such as tree and shrub materials, grass clippings, palm fronds, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards. All grass clippings, leaves, pine needles, and similar small loose items must be bagged or containerized. Vegetative Waste, except palm fronds, must be no more than six (6) feet in length and no single item shall weigh more than 50 pounds, and shall be placed neatly at the curb. Natural Christmas trees will be collected as Vegetative Waste and must not be more than 8 feet in length and must be less than 50 pounds.

3.0 RESPONSIBILITY OF THE CONTRACTOR: It is the responsibility of the Contractor to become familiar with and to determine for itself the nature and conditions affecting the collection of solid waste and recyclables in the City of Riviera Beach, and the disposal of same. The Contractor shall comply with the requirements of the Florida Solid Waste Management Act, and is responsible for determining the impact of this legislation on its solid waste operations. In addition, the Contractor shall comply with the requirements of chapter 17.5 of the City's Code of Ordinances.

4.0 SERVICES PROVIDED BY CONTRACTOR: Contractor shall provide exclusive and mandatory Residential Solid Waste Collection Services, Residential Recycling Collection Service and Containerized Residential Solid Waste in the City's service area. The right to provide such Collection Services in the City's service area shall be exclusive to the Contractor. The City will be responsible for the billing and collection of payments for the Residential Solid Waste Collection Service and the Residential Recycling Collection Service. No disposal costs are to be billed to residential customers by the City since they are billed on the tax bills by the Authority.

4.1 The Contractor shall provide exclusive and mandatory Commercial Solid Waste Collection Services in the City's service area, which service can consist of containers or compactors and shall be an exclusive right to the Contractor. The Contractor shall be responsible for the billing and collection

of Commercial Solid Waste Collection Services and disposal costs not being billed and collected by the Solid Waste Authority or its designee.

4.2 Exclusivity of Roll-Off Collection Services shall be included with the franchise for exclusive residential and commercial solid waste disposal services.

4.3 The Contractor shall provide Commercial Recycling Collection Services in the City service area upon request by the Customer or the City, or through the solicitation efforts of the Contractor. Commercial Recycling Collection Services are not exclusive to the Contractor in the City service area.

4.4 The Contractor shall use good faith and its best efforts to cooperate with any commercial recycling firms providing recycling services to customers in the City's service area.

5.0 SOLID WASTE AND VEGETATIVE WASTE COLLECTION SERVICE: Curbside Residential Solid Waste and Curbside Vegetative Waste Collection Services: The initial Curbside Residential Collection Service provided by this Agreement shall be as set forth in this Section 5 and shall continue until such time as the Agreement is terminated.

5.1 Conditions and Frequency of Service: All Curbside Residential Solid Waste shall be properly containerized or otherwise prepared for collection. Vegetative Waste shall be separated from Residential Solid Waste. Vegetative Waste must be placed curbside at an accessible pick-up location. All Curbside Residential Solid Waste Collection Service, except for permitted holidays, shall be provided twice per week with collections at least seventy-two (72) hours between regularly scheduled pick-up days. The Contractor shall provide a ninety-six (96) gallon garbage can/cart to each individual homeowner and said containers shall be new initially and shall be kept in good condition. Garbage Cans/Carts used for multi-family buildings (e.g., Duplexes, Triplexes and Quadriplexes) shall bear the address of the intended user on the container (3" lettering in grease pencil). The cost of the containers shall be included in the monthly cost of collections rate charged to the customer and there shall be no separate container rental charge. Contractor shall be responsible for timely repair or replacement of containers damaged by the Contractor-equipment or labor crew. Solid Waste garbage cans/carts are to be of the automated type.

5.2 Vegetative / Bulk Waste Picked Up by Clamshell Bucket: Vegetative Waste and Bulk Trash will be collected curbside, a minimum of one time per week. To accommodate area or neighborhood cleanup programs, two (2) roll off containers for vegetative/bulk waste day per quarter shall be provided to the City at no extra charge.

Residential Vegetative Waste shall be placed within six (6) feet of the curb or edge of pavement and shall be collected with clamshell bucket equipment. There shall

be no limit on Residential Vegetative waste collection. In the event Bulk Trash contains Chlorofluorocarbons (CFC's), the Contractor shall collect the Bulk Trash item separately with every attempt not to release the CFC's into the atmosphere, to the Solid Waste Authority landfill or to a scrap dealer located in Palm Beach County. There shall be no weight limit for any Bulk Trash items.

- 5.3 Accessibility: The edge of all Residential Solid Waste and Vegetative Waste to be collected Curbside must be placed within six (6) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location agreed to by the Contractor that will provide a safe and efficient accessibility to the Contractor's collection crew and vehicle. In the event there is insufficient space between the curb and the sidewalk to place Residential Solid Waste and Vegetative Waste, the edge of all Residential Solid Waste and Vegetative Waste to be collected shall be within two (2) feet of the sidewalk.

Where the resident of a dwelling unit is physically unable to deliver Residential Solid Waste or Vegetative Waste to curbside and this is certified by the Contract Administrator, or the residential structure is located in such a manner as to provide no accessibility to the Contractor's crew or vehicle, an alternative location may be arranged between the customer and the Contractor at no extra cost to the customer. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pick-up.

Where the resident of a dwelling unit is physically unable due to disability or age to deliver the Residential Solid Waste to the curbside due to the size and weight of specified ninety-six (96) gallon container and this is certified by the Contract Administrator, the contractor, at no additional costs, shall provide the resident with a smaller sixty (60) gallon or thirty-six (36) gallon container suitable for automated pickup.

- 6.0 CONTAINERIZED RESIDENTIAL SOLID WASTE COLLECTION SERVICES: The Contractor shall provide Containerized Residential Solid Waste Collection Service to all Dwelling Units in the Service Area that are suitable to receive such service. Normal Collection service, not including Bulk Trash collection, shall be twice per week. However, the customer may elect to receive three times per week Collection service, as required, at an additional cost to the customer. The size and location of the Container and frequency of collection (more than the minimum of twice per week) shall be determined by the Contractor and the residential complex in accordance with this Agreement. In case of an unresolved dispute, the Contract Administrator shall resolve such issue. Any service requested by the residential complex above two times per week, shall also be paid in accordance with the "commercial solid waste collection" rates in Exhibit I.

The frequency of collection of Bulk Trash outside the container shall be no less than once per week. Any disputes as to the frequency of Bulk Trash collection shall

be resolved by the Contract Administrator. In the event Bulk Trash contains Chlorofluorocarbons (CFC's), the Contractor shall collect the Bulk Trash item separately, in a non-compacting vehicle, and deliver the item, with every attempt not to release the CFC's into the atmosphere, to the Solid Waste Authority landfill or to a scrap dealer located in Palm Beach County. There shall be no weight limit for any Bulk Trash item.

6.1 Conditions and Frequency of Service: A minimum of twice a week service is required of all customers, or such other minimum frequency as provided by law. As an exception, those customers using a mechanical container with a compactor may be serviced no less than once per week. Such service shall be provided by mechanical Container as defined herein. However, where a customer generates less than two cubic yards per week of waste, alternate Containers may be utilized. The size of the Container and the frequency (above the minimum) of collection shall be determined between the customer and the Contractor. However, size and frequency shall be sufficient to provide that no Residential Solid Waste need be placed outside the Container. Storage capacity shall be suitable for the amount of waste generated by the customer. The Contractor shall provide Containers as necessary and said containers shall be in good condition. The cost of the containers shall be included in the monthly cost of collections rate charged to the customer and there shall be no separate container rental charge. Disputes over replacement or repair of the containers between the contractor and the customer shall be resolved by the Contract Administrator or designated representative. All Residential Solid Waste shall be placed in a Container provided by the Contractor. Vegetative Waste shall not be commingled with Garbage. Where Garbage Cans are used, they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers or Compactors shall be kept in a safe, accessible location agreed upon between the Contractor and the customer. Any Container or Compactor damaged by the Contractor shall be repaired or replaced by the Contractor within five (5) business days. All containers and compactors provided by the Contractor shall be in good condition. The Contractor shall have a regularly scheduled replacement program for all containers to ensure containers are in good condition. The Contractor shall replace any container reported as in poor condition by the customer within five (5) business days at no charge. All containers and compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of container.

6.2 Method of Collecting: Collection shall occur on a regular basis with a frequency of pick-up as provided herein and the size of the Container to be agreed upon between the Contractor and the customer.

7.0 COMMERCIAL SOLID WASTE COLLECTION SERVICE: The Contractor shall collect and dispose of all Commercial Solid Waste in the Service Area, except Special Waste. Such Commercial Collection Service shall be governed by the following material terms:

7.1 Conditions and Frequency of Service: Commercial solid waste shall be offered Monday through Saturday. A minimum of twice a week service is required of all customers with food or other such putrescible wastes or from businesses generating or selling food, or such other minimum frequency as provided by law. Such service shall be provided by mechanical Container as defined herein. However, where a customer generates less than one (1) cubic yard per week of waste, alternate mechanical Containers may be utilized (e.g., Garbage Can/Cart). Commercial Customers utilizing a ninety-six (96) gallon or smaller Container shall be charged the monthly Residential Curbside Collection rate, as set out in Exhibit I plus the cost of disposal. The size of the Container and the frequency of collection shall be determined between the customer and the Contractor. However, size and frequency shall be sufficient to provide that no Commercial Solid Waste need be placed outside the Container. Storage capacity shall be suitable for the amount of waste generated by the customer. The Contractor shall provide Containers as necessary and said containers shall be in good refurbished condition. Disputes over replacement or repair of contractor-owned containers between the Contractor and customer shall be resolved by the Contract Administrator or his designated representative. All Commercial Solid Waste shall be placed in a Container, Compactor or acceptable other Garbage Can in a manner that will not allow garbage to spill out of the container. Vegetative Waste shall not be commingled with Garbage. Where Garbage Cans are used, they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers or Compactors shall be kept in a safe, accessible location agreed upon between the Contractor and the customer.

Any damaged Container or Compactor - shall be repaired or replaced with a refurbished container by the Contractor within five (5) business days of the request.

Compactor frequency of collection shall be sufficient to contain the waste without spillage, and not less than once per week.

All Containers and Compactors provided by the Contractor shall be in good refurbished condition, painted and neatly labeled with the Contractor's name, phone number and size of Container.

7.2 Method of Collecting: Collection shall occur on a regular basis with a frequency of pick-up as provided herein and the size of the Container to be agreed upon between the Contractor and the customer.

7.3 Level, Type and Disclosure of Rates for Commercial Collection and Other Services: Commercial Collection Service: The Contractor shall only charge rates as set out in Exhibit I or as otherwise allowed by this Agreement. A separate written contract between the Contractor and the customer shall be entered into regarding the level and type of service to be provided and manner of collection of fees. The Contractor

may not bill the customer more than thirty (30) days in advance unless otherwise requested by the customer. The terms and conditions of such a contract shall be in compliance with all provisions of this Franchise Agreement and the term shall not extend beyond the term of this Agreement as stated in Section 1. The customer shall subscribe to a level of service sufficient to meet the needs of the customer in a sanitary and efficient manner.

However, upon failure of the parties to reach such an Agreement, the Contract Administrator or designee shall establish the level and type of service to be provided including the location, size of the Container and number of pick-ups per week and the "TOTAL RATE" to be charged within the approved rate limits contained in Exhibit I. The Contractor will be responsible for the billing and collection of Commercial Solid Waste Collection Services, disposal-tipping fees, special service fees and Container rental charges except as otherwise provided in this Agreement.

- 7.4 Disclosure: By October 1st of each year of this Agreement, the Contractor shall provide the customer an annual disclosure statement, with a copy sent to the City, which includes the following language and which conforms for the most part with the "Rates for Service" as outlined below:

"REGULATION BY THE CITY OF RIVIERA BEACH"

The terms and conditions of this Commercial Solid Waste and Recycling Collection Service Agreement are regulated by a franchise granted by the City of Riviera Beach. Should the customer have any questions relating to the terms and conditions of this Agreement, the customer may call the Contract Administrator at 561-845-4080.

"COMMERCIAL COLLECTION CONTAINERS"

The commercial collection container shall be of a type that can be serviced by the Contractor's collection equipment. If the customer chooses to use a Compactor, the customer may contact the Contractor for such services. Commercial collection Containers and Compactors shall be maintained in a serviceable, safe and sanitary condition by the Contractor. Damaged Containers or Compactors shall be repaired or replaced at no cost to the customer.

"SPECIAL SERVICES"

If the customer requests, the Contractor is required to provide special services for collection of solid waste such as rolling Containers out of storage areas, opening doors or gates for access, or other such special services. However, such special services may be provided by the customer, through its own or other personnel. If the Contractor provides special services, such charge must be separately stated under the "RATES FOR SERVICES" disclosure statement. The maximum for these special service rates are fixed by the City at Exhibit I. A copy of these rates can be obtained from the Contractor or Contract Administrator.

"RATES FOR SERVICE"
 March 1, 2011 - September 30, 2011

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

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

Total Monthly Cost:

THESE SERVICES ARE PROVIDED UNDER A FRANCHISE AGREEMENT REGULATED BY THE CITY OF RIVIERA BEACH. SHOULD YOU HAVE ANY QUESTIONS RELATING TO THESE RATES, PLEASE CALL THE CONTRACT ADMINISTRATOR AT (561) 845-4080.

The "RATES FOR SERVICE" statement above shall incorporate or have attached a rate schedule which specifies the Collection Rate based on size of container and frequency of service; TYPE DISPOSAL based on a cost per cubic yard; CONTAINER RENTAL expressed in a monthly flat rate based on the size of the Container; and the cost per month for each SPECIAL SERVICE REQUIRED BY THE CUSTOMER AND AUTHORIZED BY THE CITY. The notification shall specify the size of container and frequency of collection of each container for each business, distinguishing between solid waste and recycling collection service.

8.0 METHOD OF PAYMENT: The City or its designee will be responsible for the billing and collection of payments for Residential Solid Waste Collection Service. Contractor shall submit an invoice by the 10th of each month for services rendered during the preceding month and payments from the City to the Contractor will be due and paid within 20 calendar days upon the receipt and verification of the invoice submitted. The initial collection rate per unit per month shall be as set out in Exhibit I. This rate shall be adjusted in subsequent years in accordance with the Payment Adjustment Schedule (Exhibit III). All payments by the City shall be reduced by franchise fees as provided in this Agreement.

9.0 HOURS OF COLLECTION: Residential, mixed residential and commercial occupancy Solid Waste Collection Service shall be provided between the hours of 6:00 a.m. and 6:00 p.m. Monday through Saturday. Extended times for extraordinary circumstances or conditions shall have the prior consent of the Contract Administrator. Commercial Solid Waste Collection Service (nonresidential commercial areas) shall be provided between the hours of 6:00 a.m. and 8:00 p.m.

Monday through Sunday.

10.0 **ROUTES AND SCHEDULES:** For Residential Solid Waste Collection Service, the Contractor shall provide the Contract Administrator, in a format acceptable to the Contract Administrator, the schedules for all Collection routes and keep such information current at all times. If any changes in the Collection routes occur, then the Contract Administrator shall be immediately notified in writing for approval, not less than three (3) weeks prior to change. In the event of a permanent change in routes or schedules that will alter the day of pick-up, the Contractor shall immediately notify the customer(s) affected in writing or other manner approved by the Contract Administrator not less than two (2) weeks prior to the change, at no cost to the City. Notification of day changes for Curbside Residential customers shall be by door hanger, and Container Residential and Commercial customers shall be by flyer, unless otherwise approved by the Contract Administrator, and distributed by the Contractor at no cost to the City and the customer. Notification includes any day changes to the customer prior to the beginning of this Agreement on March 1, 2011. Notification to Curbside customers shall be done twice - once two (2) weeks prior to the change and once one (1) week prior to the change.

11.0 **RECYCLING COLLECTION SERVICE:** The Contractor shall provide Residential and Commercial Recycling Collection Service in the Service Area, as provided within the Agreement. The City or its designee shall be responsible for the billing and collection of payments for Residential Recycling Collection Services. The Contractor shall be responsible for billing and collection of Commercial Recycling Collection Service cost not being billed and collected by the City or its designee.

11.1 Curbside Residential Recycling Collection Services will be governed by the following terms and conditions:

11.1.1 **Conditions and Frequency of Service:** The Contractor shall provide Curbside Residential Recycling Collection Services to all Dwelling Units receiving Residential Solid Waste Collection Service (e.g. single family homes, multi-family units, and individual mobile homes and mobile home parks) located in the designated Service Area and to other such Dwelling Units as determined appropriate by the Contract Administrator. This service shall be provided once every week, unless otherwise specified by the City, on a scheduled route basis that shall coincide with one of the two regularly scheduled solid waste collection days.

The Contractor shall collect all newspaper, glass, aluminum cans, aseptic containers (e.g., milk and juice cartons, magazines and corrugated cardboard), and high density polyethylene (HDPE) bottles set out for the purpose of recycling.

As it becomes beneficial, other items may be added to the list at the

direction of the City Manager or as prescribed by the Palm Beach County Solid Waste Authority. Where an increase in the items collected affects the operational costs of the Contractor, the Contractor and the City or its designee shall negotiate an appropriate adjustment in the rate paid to the Contractor per household.

- 11.1.2 Accessibility for and Manner of Curbside Recycling Collection: All Recyclable Materials to be collected shall be in a Recycling Container and shall be placed within six (6) feet of the curb; paved surface of the public road, closest accessible public right-of-way, or other such location agreed to by the Contractor that will provide a safe and efficient accessibility to the Contractor's collection crew and vehicle. The Contractor shall collect Recyclables that have been properly prepared for collection and placed in recycling containers.

Where the resident is physically unable to deliver Recycling Containers to curbside and this is certified by the Contract Administrator, or the Dwelling Unit is located in such a manner as to provide no accessibility to the Contractor's crew or vehicle, an alternative location may be arranged between the customer and the Contractor at no extra cost to the customer. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pick-up and that decision shall be final.

- 11.1.3 Recycling Containers: The Contractor shall ensure distribution of Recycling Containers as procured by and supplied by Solid Waste Authority to each unit that is to receive Residential Recycling Collection Service in the Service Area. The title to these Recycling Containers shall be vested with the Solid Waste Authority upon delivery to the customer. Each curbside residential recycling customer shall be provided two plastic containers, each approximately 18 gallons in size. One shall be blue in color and one yellow in color. Recycling Containers used for multi-family buildings (e.g. Duplexes, Triplexes and Quadriplexes) shall bear the address of its intended user on the container (3" lettering in grease pencil).

The Contractor shall maintain an adequate supply of containers to provide for new residents or to replace those lost, stolen, broken, or faded beyond recognition. First-time replacement of containers will be made free of charge to the customer. After consulting with the City, the Contractor may bill the customers for subsequent replacement cost.

All recycling containers provided or replaced by the Contractor shall be identical in type, color and size. Additional containers shall be

provided to the Contract Administrator for distribution to any customers as needed.

11.1.4 Containerized Residential Recycling Collection Service will be governed by the following terms and conditions:

11.1.5 Conditions and Frequency of Service: The Contractor shall provide this service to Dwelling Units as are designated by the City that are located in the Service Area. This service shall be provided at least once every week on a scheduled route basis as set out in paragraph 2 below.

For containerized residential solid waste customers, new unused containers shall be provided by the franchise contractor. The Contractor shall not be allowed to recoup the cost of new containers by charging the customer or the City. The number of recycling carts and replacements shall be determined by the Solid Waste Authority, the City, the contractor and the customer.

All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container. Any Container or Recycling Container damaged by the Contractor shall be repaired or replaced by the Contractor within five (5) business days. Any Container or Recycling Container needing replacement, as requested by the customer or the City, shall be replaced within five (5) business days.

11.1.6 Accessibility and Schedule for Containerized Residential Recycling Collection: All Recyclable Materials, with the exception of cardboard, are to be collected in a Recycling Container or Container designated for Recyclable Materials which shall be located in such location and shall be collected on a schedule as mutually agreed to by the owner or governing association (of the multiple residential complex or development being serviced) and by the Contractor that will provide a safe and efficient accessibility to the Contractor's collection crew and vehicle.

Cardboard shall be collected if placed next to, or inside, the Recycling Container or Container. If there is a large amount of cardboard placed outside of the Container (such as a 96-gallon Container), an alternate, larger Container shall be provided by the Contractor, upon agreement by the customer and the City. In the event an appropriate location cannot be agreed upon, the Contract Administrator shall mediate the dispute and designate the location for pickup and that decision shall be final.

11.2 Commercial Recycling Collection Service: Contractor shall have the right to solicit Commercial Recycling Collection Service contracts with any business in the Service Area upon terms and conditions consistent with this Agreement.

11.2.1 Conditions and Frequency of Service: The Contractor shall provide Commercial Recycling Collection Services to all business or commercial entities located in the designated Service Area resulting from its own solicitation, by request of the customer, or where a contract meeting the terms and conditions of this Agreement is arranged by the Contract Administrator or designee. The size and frequency of service of the Container designated for Recyclable Materials shall be determined by a waste audit and agreed to by the customer and the Contractor. However, size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the Container. Storage capacity shall be suitable for the amount of recyclable materials generated by the customer. The Contractor shall provide Containers as necessary; however, customers may own their Container provided that the customer is completely responsible for its proper maintenance. Such Containers shall be of a type that can be serviced by the Contractor's equipment. A Compactor may be obtained by customers from the Contractor and the Contractor shall be completely responsible for its proper maintenance. Compactor frequency of collection shall be sufficient to contain the waste without spillage. All Commercial Recyclable Materials shall be placed in a Container, Compactor or other acceptable Recycling Container. All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container.

Recyclable Material shall not be commingled with other solid waste. Where Recycling Containers are used, they shall be placed at an accessible location or at such other single collection point as may be agreed upon between the Contractor and the customer. All Containers shall be kept in a safe, accessible location agreed upon between the Contractor and the customer. Any Container or Recycling Container damaged by the Contractor shall be repaired or replaced by the Contractor within five (5) business days.

11.2.2 Level, Type and Disclosure of Rates for Commercial Recycling Collection and Other Services: A written contract between the Contractor and the customer shall be entered into regarding the level and type of service to be provided and manner of collection of fees. The terms and conditions of such contract shall be in compliance with

all provisions of this Franchise Agreement.

11.2.3 Ownership: Notwithstanding any other provision of this Agreement, a commercial generator of Recyclable Materials retains ownership of those materials until he or she donates or sells, or contracts for the donation or sale of those materials to another person or entity. Nothing in this Agreement shall prevent a person or entity engaged in the business of recycling, whether for profit or nonprofit, from accepting and transporting commercially generated, source separated Recyclable Materials from such commercial generator. Provided however, that such activities are subject to applicable state and local public health and safety laws, and provided that the transporter must report such information to the City as may be necessary for the documentation of state mandated recycling or reduction goals.

12.0 METHOD OF PAYMENT: The City or its designee will be responsible for the billing and collection of payments for Residential Solid Waste Collection Service. Contractor shall submit an invoice by the 10th of each month for services rendered during the preceding month and payments from the City to the Contractor will be due and paid within 20 calendar days upon the receipt and verification of the invoice submitted. The initial collection rate per unit per month shall be as set out in Exhibit I. This rate shall be adjusted in subsequent years in accordance with the Rate Adjustment method detailed in Exhibit III. All payments by the City shall be reduced by franchise fees as provided in Section 23B of this Agreement.

The Contractor shall be responsible for billing and collection of payments for Commercial Recycling Collection Service.

13.0 HOURS OF COLLECTION: Residential, mixed residential and commercial occupancy Recycling Collection Service shall be provided between the hours of 6:00 a.m. and 6:00 p.m. Monday through Saturday. Extended times for extraordinary circumstances or conditions shall have the prior consent of the Contract Administrator. Commercial Recycling Collection Service (nonresidential commercial areas) shall be provided between the hours of 6:00 a.m. and 8:00 p.m. Monday through Saturday.

14.0 ROUTES AND SCHEDULES: The Contractor shall provide and keep current with the Contract Administrator or designee, in a format acceptable to the Contract Administrator, an up-to-date route schedule map for all Residential Recycling Collection Service routes. The Contractor shall immediately notify the Contract Administrator in writing of any change in any route schedule for approval by the Contract Administrator three weeks prior to change. In the event of a permanent change in a route or schedule that will alter the pick-up day, the Contractor shall immediately notify the affected customer in writing or other method approved by the Contract Administrator not less than two (2) weeks prior to the change, at no cost to

the City. Notification of day changes for Curbside Residential customers shall be by door hanger, Container Residential and Commercial customers by flyer, unless otherwise approved by the Contract Administrator, distributed by the Contractor at no cost to the City and the customer. Notification includes any day changes to the customer prior to the beginning of this Agreement on March 1, 2011. Notification to Curbside customers shall be done twice - once two (2) weeks prior to the change and once one (1) week prior to implementation of the change.

15.0 REPLACEMENT OF RECYCLING CONTAINERS FOR RESIDENTIAL DWELLING UNITS: The Contractor will replace at its expense any Container or Recycling Container damaged through the fault or negligence of the Contractor or its employees. Replacement Recycling Containers or Containers designated for Recycling for Residential Dwelling Units will be provided by the Contractor. The cost of replacement containers are a cost of doing business for the Contractor. The Contractor shall replace the Recycling Container within five (5) business days of request by the customer or the City.

The Contractor will distribute to the customer, replacement Recycling Containers or Containers that are lost or damaged by the occupant of a Dwelling Unit free of charge. The Contractor shall replace the Recycling Container or Containers within five (5) business days of the request by the customer or the City.

The Contractor shall promptly deliver replacement Recycling Containers, or Containers damaged by its employees, or when notified by the Contract Administrator, or designee, or the occupant of a Dwelling Unit where a Recycling Container or Container is damaged or missing, and shall monthly report all such replacements to the City. The Contractor shall also promptly deliver Recycling Containers or Containers as requested by the City on behalf of the residential customers for new residential customers within five (5) business days of the request by the customer or the City.

16.0 MANNER OF COLLECTION: The Contractor shall collect Recyclable Materials with as little disturbance as possible and shall leave the Recycling Container or Container housing Recyclable Materials at the same point it was collected. To be eligible for Curbside Residential Recycling Collection Service, Recyclable Materials must be put in a Recycling Container at the usual accessible pick-up location for Curbside Residential Solid Waste Collection. All Recyclable Materials set out by the customer that meet these criteria shall be collected. In the event the customer places Solid Waste in the Recycling Container(s) or Container(s), the Contractor must collect all Recyclable Materials and leave the Solid Waste in the Recycling Container(s) or Container(s). The Contractor must then place a contamination sticker advising the customer of the reason the Solid Waste was not picked up on the Recycling Container(s) or Container(s).

17.0 MATERIAL RECYCLING FACILITY: The Contractor shall deliver all Recyclable Materials collected from the Service Area to the Authority or a facility designated, in

writing, by the Contract Administrator.

- 18.0 CHANGE IN SCOPE OF RECYCLING COLLECTION SERVICE: From time to time, at the sole option of the City, it may be necessary to modify the scope of Recyclable Materials that will be included in Recycling Collection Service. Should this occur, the City and the Contractor agree to enter into good faith negotiations to amend this Agreement to reflect the impact of any such modification.
- 19.0 CHARGES, RATES AND LEVEL OF SERVICES: Solid Waste and Recycling Collection Rate Adjustments: For all Collection services, the charges shall be initially based on the rates established in Exhibit I, and as subsequently adjusted pursuant to this Agreement. The Contractor shall receive an annual adjustment in the Residential Solid Waste Collection Service, Residential Recycling Collection Service, Commercial Solid Waste Collection Service rates. The adjustment shall be made to the combined category of Residential Solid Waste Collection Service and to Residential Recycling Collection Service and, separately to the combined category of Commercial Solid Waste Collection Service.

At the end of the first year, and each subsequent year, the collection portion of the rates in this Agreement shall be adjusted solely based on the rate adjustment method detailed in Exhibit III. Annual rate adjustments shall be effective October 1st of each year.

- 20.0 CITY OF RIVIERA BEACH OBLIGATION - BILLING, COLLECTION, AND PAYMENTS: The City will be responsible for the billing and collection of payments for those units included in the City's mandatory Residential Solid Waste Collection Services and the Residential Recycling Collection Services programs. The City shall make monthly payments in arrears to the Contractor for the Residential Solid Waste Collection Service and Residential Recycling Collection Services provided pursuant to this Agreement. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the City collects from customers for such service.

On or before October 1, and before commencement of work by the Contractor under the terms of this Agreement, the City's Finance Department shall provide to the Contractor the estimated total number of units to be serviced. Thereafter and for the duration of this Agreement, the City shall promptly notify the Contractor of new residential units to be served and/or deleted and payments will be adjusted monthly for the following month. For example, the unit count as of October 31 shall be used to compute the payment for November. The unit count on November 30 shall be used for the payment in December, and so forth. New Dwelling Units, which are added for service during a month, will be added to the customer service list and payment will be rendered the following month. Payment shall not be prorated based upon the day of Certificate of Occupancy nor verification of the beginning of actual service for the first month of service. The payments from the City to the Contractor for units added by Certificate of Occupancy are paid the first

full month following the month in which the Certificate of Occupancy is issued.

Unit count shall be based on the number of occupied units, as determined by water service contracts (e.g. the water is turned on). Payment only stops for single family residential units that have the water turned off.

The City reserves the right to correct any errors of omission or commission for a period of one year after discovering same. Upon determination of any underpayment or overpayment, the Contract Administrator will verify the error and make appropriate adjustment to the Contractor's payment to correct the error.

21.0 SOLID WASTE DISPOSAL COSTS: Collection service costs and solid waste disposal costs shall be treated separately for the solid waste Collection services being provided pursuant to this Agreement. The Contractor's payments for Collection are set out in Exhibit I. Residential and commercial solid waste disposal costs shall be separated from residential and commercial collection service costs as shown in Exhibit I. Residential disposal costs will be part of the special assessment billed by the Authority except as otherwise provided in this Agreement. The Contractor will be given a disposal credit for each residential dwelling unit as determined by the Authority and as calculated in Exhibit I. The non-assessed portion of the commercial disposal costs will be part of the service charge billed by the Contractor.

The Contractor shall pay the Solid Waste Authority for all solid waste disposal costs incurred for disposing of all solid waste at the Authority facilities except for the portion of disposal costs, which have been separately assessed by the Authority on the property tax bills of the customer.

22.0 RATE ADJUSTMENTS:

A. Agreement Price Adjustments. Commencing on October 1st, 2011 and each year thereafter on October 1st, the Residential Rates, the Commercial Rates, Roll-off Rates and the Debris Removal Rates shall be adjusted utilizing the rate adjustment method provided for in Exhibit III of the Agreement.

B. Extraordinary Rate Adjustment. The Contractor may petition the City no more often than once annually, as part of the rate adjustment process, for an additional rate adjustment on the basis of extraordinary and unusual changes in the cost of operations that could not reasonably be foreseen by a prudent operator. Such petition must be received by the City not later than July 31 of each year to be effective October 1. Petitions received after July 31 shall be considered for the following year rate adjustment. The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The City may request from the Contractor, and the Contractor shall provide, such further information as may be reasonably necessary in making its determination. The City Council may approve or deny the request, in whole or in part, within sixty (60) days

of receipt of the request and the receipt of all other additional information required by the City.

23.0 FRANCHISE FEE, ADMINISTRATIVE FEE AND COMMUNITY BENEFITS:

23.1 The terms of the City's current agreement for solid waste disposal services includes a monthly administrative fee to compensate the City for the cost of administering, billing, supervision, code enforcement, bad-debts and customer service activities rendered for the effective performance of this Agreement, as well as other costs related to the Billing/Collection process. Additionally, the current agreement provides for a Franchise Fee to compensate the City for the exclusive right conveyed to the Contractor to serve the entire City.

23.2 On a monthly basis, the City shall deduct \$117,000 per month for administrative and franchise fees, which shall be adjusted annually effective October 1st of each agreement year by the same "rate adjustment method" that is applicable to annual adjustments of Residential Curbside rates. The amount shall be withheld monthly from the City's payment of fees collected on the Contractor's behalf for Residential Curbside Service.

23.3 As a community benefit to the City, Contractor agrees to contribute the sum of \$90,000 to the City per year for use by elected officials for public purposes. The City Council shall determine by resolution what types of community services will qualify for the program. Forty-five thousand dollars (\$45,000) will be made available for use on October 1st and April 1st of every year until expiration of this Agreement and any renewals. Payment will be made by the Contractor, on behalf of the City, directly to the entity designated by the City Council. On an annual basis, Contractor will provide a written report and an oral presentation to the City Council of all community benefits and any additional monetary and in-kind services, made by Contractor.

23.4 Household Hazardous Waste Collection. Annually, upon request of the City, the Contractor shall coordinate with the City a household hazardous waste collection event. The collection location, schedule and duration of the event shall be mutually determined by the City and Contractor. Residents will bring acceptable items to the location which shall have an attendant employed by or under the control of Contractor on duty at all times during the duration of the event. Collection shall be limited to residents of the City and shall not be open to commercial or industrial establishments. Items that may be accepted will include paints, pesticides, waste tires, cleaning fluids, and similarly regulated materials. Radioactive, biohazardous, and biomedical wastes will not be collected. This collection is not intended for yard trash or bulk items and they will not be accepted. Contractor shall

provide appropriate containers for the waste materials and Contractor's attendant shall assist with separation and placement of materials in proper containers. Contractor will transport or arrange for transport of the collected materials to a permitted disposal facility. There shall be no charge to the City or its residents for the services set forth herein.

24.0 HOLIDAYS: The Contractor shall not be required to collect Commercial Solid Waste, Commercial Recycling, Residential Solid Waste, Vegetative Waste and Residential Recyclable Material or maintain office hours on Thanksgiving Day, Christmas Day and New Years Day. Residential Solid Waste, Recyclable Material and Vegetative Waste not collected on Thanksgiving Day, Christmas Day and New Year Day shall be collected on the next scheduled service day. The Contractor shall not be required to maintain office hours on Labor Day and Independence Day, but shall provide collection services. However, on all holidays except Thanksgiving Day, Christmas Day and New Years Day, the Contractor shall provide for operations personnel to accept calls from the City and the Contractor's customers.

25.0 VACANT LOT / ILLEGAL DUMPING PICKUPS – The Contractor shall be required for the term of the Agreement to perform vacant lot and illegal “fly” dumping cleanups within City limits provided that same can be accomplished by Contractor with its equipment from a hard service roadway. The Contractor shall provide such services at the request of the City's Contract Administrator or designee. Said services shall include the cleanup of illegally dumped materials in vacant lots or any area within the City's Right of Way. The Contractor shall provide the first five hundred (500) Cubic Yards of requested material pickup free of charge to the City annually. Any additional pickups required over five hundred (500) CY annually shall be billed by the Contractor to the City at a flat rate of \$15/cy which includes equipment, labor, dumping fees and any other costs incurred as a part of providing this service.

Vacant lot and illegal dumping cleanups shall be completed within 24 hours of notification to the Contractor. Any failure to comply shall be subject to penalties per Section 38.

26.0 HOMEOWNERS NOTIFICATION OF COLLECTION ISSUES – In the event that complete collection cannot be achieved for any single residence for Solid Waste Collection or Recycling (i.e. collection container overflow, excess garbage placed outside of the collection container, etc.) the Contractor shall place a non-compliance tag on the garbage pile explaining the non-compliance issue. The Contractor shall then report the non-compliance issue to the City Contract Administrator or designee for further action and correction.

27.0 PUBLIC AWARENESS PROGRAM: The Contractor shall assist the City with the Public Awareness Program by distributing door hangers, stickers, flyers or other medium to residential and commercial customers as requested by the City.

Additionally, it is the Contractor's responsibility to provide information about those customers who repeatedly do not prepare or set out their Recyclable Material or solid waste as specified within this Agreement to the Contract Administrator.

At least twice per year, the Contractor shall distribute to all recycling customers a newsletter with information explaining and supporting a recycling program. The Contractor shall also comply with all provisions of the "Interlocal Agreement for Municipal Recycling" between the City and the Solid Waste Authority.

28.0 PERSONNEL OF THE CONTRACTOR:

28.1 Contractor shall at all time assign a qualified person or persons to be in charge of the operations within the service area and shall provide the name(s) and phone numbers of the person(s) to the Contract Administrator.

The Contractor shall provide the Contract Administrator or designee with a full written explanation of the disposition of any complaint involving a claim of damage to private or public property as a result of actions of the Contractor's employees, agent, or sub-contractors. Any damage shall be repaired within five (5) business days.

28.2 Contractor's solid waste collection employees shall wear a uniform or shirt bearing the company's name during operations. All employees must have an employee identification card with picture identification in their possession at all times while performing duties under this contract.

28.3 Each driver of a collection vehicle shall at all times carry a valid Florida driver's license for the type of vehicle that is being driven.

28.4 Contractor's name, vehicle number, and office telephone number shall be properly displayed on all solid waste and recycling collection vehicles. All vehicles utilized for the collection of Recyclable Material shall be clearly identified for that purpose.

28.5 The Contractor shall provide operating and safety training for all personnel.

28.6 Contractor's employees shall treat all customers in a polite and courteous manner.

28.7 The Contractor shall provide emergency contact numbers for all key personnel for contact twenty-four hours a day, seven days a week.

29.0 QUALIFIED LOCAL RIVIERA BEACH BUSINESS PARTICIPATION: Qualified local Riviera Beach Businesses shall have the opportunity to participate directly in the execution of the services provided under this Agreement. Contractor agrees to make a good faith effort to maintain Riviera Beach Business participation of at least 10%

throughout the term of the Agreement. The City has a right at anytime to monitor the records of Contractor to ensure compliance with this section. Failure to comply with this section will be considered a breach of the Agreement.

30.0 MANNER OF COLLECTION: The Contractor shall collect Residential Solid Waste, Vegetative Waste and Recyclable Materials and Commercial Solid Waste, Recycling and Vegetative Waste with as little disturbance as possible and shall leave any receptacle at the same point it was collected. Any Solid Waste Container or Recycling Container damaged by the Contractor will be replaced by the Contractor within five (5) business days at no cost to the customer, unless otherwise provided within this Agreement. The replacement must be similar in style, material, quality, capacity and color. The Contractor shall neatly replace the Container, Recycling Container, and Garbage Can to the point of collection.

31.0 SPILLAGE: The Contractor shall not litter or cause any spillage to occur upon the premises, roadway or the right-of-way wherein the collection shall occur. During hauling, all solid waste, vegetative waste and recyclable material shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. In the event of any spillage or leakage by the Contractor, for any reason or source, **the Contractor shall clean up all spillage and leakage at no cost to the City or the customer within four (4) hours** of notification by the Contract Administrator or designee unless otherwise specified within this Agreement.

Spillage of fluids fewer than 50 gallons shall be reported to the Contract Administrator and cleaned according to City standards below. Spillage of fluids over 50 gallons shall be immediately reported to the Contract Administrator and the Palm Beach County Health Department. This larger spillage will be cleaned according to City standards below.

- Clean all debris from the roadway or affected area and place in Contractor vehicle. Do **not** merely move material by broom or water, flushing to side of roadway.
- Place oil dry on all affected areas.
- Compact oil dries onto affected area to inhibit absorption into the pavement.
- Remove all contaminated material and dispose of according to Authority guidelines.
- If spillage is on asphalt blacktop pavement, place powdered Portland cement on affected areas to retard emulsification process.

32.0 SOLID WASTE AND MATERIAL RECYCLING FACILITIES: All Residential Solid Waste, Commercial Solid Waste, Vegetative Waste and Recyclable Material shall be hauled to the facilities operated by or licensed by the Authority.

In the event that a load of Recyclable Materials delivered to the designated facility contains more than 3.5%, by weight of the total load, material which is not Recyclable Material or that there is more than 3.5% paper products within the other commingled Recyclable Material or vice versa, the Authority has the right to reject the load and to charge the Contractor the full disposal fee for each ton within the load. The Contractor may pass this cost through to a commercial customer in the event that the Contractor can prove that the customer caused the contamination to the satisfaction of the customer. In no event will this cost be passed on to the City. In the event of a dispute, the Contract Administrator will determine whether the Contractor or the customer will absorb the disposal fee. It is the responsibility of the Contractor to notify the City of any customer who has on more than three occasions contaminated the Recyclable Materials. The Contractor shall also comply with all provisions of the "Interlocal Agreement for Municipal Recycling" between the City and the Solid Waste Authority.

33.0 COLLECTION EQUIPMENT: The Contractor shall have on hand at all times and in good working order such equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Agreement. Upon execution of this Agreement and semi-annually thereafter, the Contractor shall provide in a format specified by the Contract Administrator a list of the equipment to be used by the Contractor to provide services relating to this Agreement. Solid Waste collection equipment shall be of the enclosed loader packer type, or other equipment that meets industry standards and is approved by the Contract Administrator, unless otherwise provided within this Agreement. All Equipment shall be kept in good repair, appearance and in a sanitary, clean condition at all times. Recycling Materials collection equipment shall be dual compartment equipment (one compartment for paper products; one compartment for other Recyclable Material), separate trucks or other equipment that meets industry standards and is approved by the Contract Administrator, and must be compatible for unloading at the designated MRF or transfer station. In the event a compacting vehicle is used for the collection of Recyclable Materials, compaction pressure may not exceed 50 pounds per square inch for the commingled non-paper Recyclable Materials to avoid glass breakage. Equipment utilized for the collection of Recyclable Materials shall be clearly identified for that purpose. The Contractor shall have available reserve equipment that can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. All vehicular equipment used by the Contractor in the performance of this Agreement shall be not older than five (5) years of age at any time during the performance of this Agreement.

34.0 VEGETATIVE WASTE: All Vegetative Waste shall be collected separately from Residential Solid Waste, Commercial Solid Waste and Recyclable Materials. All grass clippings, leaves, pine needles or other similar loose waste shall be bagged, otherwise, Vegetative Waste must be no more than five (5) feet in length, with the exception of palm fronds and Christmas trees, and under 50 pounds per piece and

placed neatly at the curb.

35.0 SPECIAL WASTE, HAZARDOUS WASTE, BIOHAZARDOUS OR BIOMEDICAL WASTE AND SLUDGE: The Contractor shall not be required to collect and dispose of Hazardous Waste, Biohazardous or Biomedical Waste, or Sludge, but may offer such service in the Service Area. All such collection and disposal for those types of waste in this Section are not regulated or exclusive under this Agreement, but if provided by the Contractor shall be in strict compliance with all federal, state and local laws and regulations.

36.0 OFFICE AND EQUIPMENT YARD: The Contractor shall maintain an office within Palm Beach County, Florida, where complaints shall be received. It shall be equipped with sufficient telephones, with no less than two phone lines, and shall have responsible persons in charge during collection hours and shall be open during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. The Contractor shall provide a fax machine and computer to receive complaints from the City. The Contractor shall provide an answering machine during non-office hours for customer requests and questions to be responded to during the following business day. The Contractor shall provide a contact person for the City to reach during all non-office hours.

The contact person must have the ability to authorize Contractor operation in the case of City direction or situations requiring immediate attention. An Equipment Yard must be established within Palm Beach County, Florida. Equipment Yard means a real property location that shall be utilized by the Contractor for the storage and keeping of all equipment needed by the Contractor to provide services required by this agreement.

37.0 COMPLAINTS: All service complaints shall be directed to the Contract Administrator or designee. The complaint will be forwarded to the Contractor by telephone, computer or electronic media at least daily where it shall be recorded on a complaint log by the Contractor. The complaint shall be resolved within twenty-four (24) hours after it is received by the Contractor. When the complaint is received on a Saturday or the day preceding Thanksgiving Day, Christmas Day and New Years Day, it shall be resolved by the Contractor no later than the next regular working day. If a complaint cannot be resolved within twenty-four (24) hours, the Contract Administrator shall be notified. Complaints received by Contractor from the public shall be forwarded to the Contract Administrator within four (4) hours.

The Contractor shall notify all customers in writing about complaint procedures, route changes, rates, regulations, and the days of collection, at least annually.

38.0 QUALITY OF PERFORMANCE OF CONTRACTOR: It is the intent of this Franchise Agreement to ensure that the franchisee provides a quality level of solid waste and recycling collection services. To this end, all complaints received by the

Contract Administrator (or such other official of the City as shall be designated by the City Manager), or designee, and reported to the franchisee shall be promptly resolved pursuant to the provisions of this franchise. In the event legitimate complaints, as determined by the Contract Administrator or designee shall exceed two percent (2%) of the total customers within the City served by the franchisee during any City fiscal year, or one-half of one percent (.5%) of the total residential customers billed by the City during any one (1) calendar month, the Contract Administrator may levy an administrative charge of Two Hundred Dollars (\$200.00) per incident which exceed either or both thresholds above for those actions related to services as listed within this franchise including:

- A. Commingling Garbage and Trash Solid Waste with Vegetative Waste and/or Recyclable Materials, except as provided for in section 5 A1, herein.
- B. Damaged container not replaced within five (5) days.
- C. Throwing of garbage cans or recycling containers.
- D. Failure to repair damage of customer property.
- E. Failure to collect recyclable materials, solid waste or vegetative waste on schedule.
- F. Failure to replace garbage cans, containers, and recycling containers at the point of collection.

A complaint not resolved within 24 hours, unless otherwise provided in this Agreement shall count as two complaints.

The Contract Administrator may also levy administrative charges for all other infractions of this Agreement at Two Hundred Dollars (\$200.00) per day per incident without regard to the percentage of customer complaints including:

- A. Failure to provide clean, safe, sanitary equipment.
- B. Failure to maintain office hours as required.
- C. Operator not licensed.
- D. Failure to provide documents and reports in a timely and accurate manner.
- E. Damaged container not replaced within five business days.
- F. Failure to clean spillage other than the cleanup required by the Palm Beach County Health Department, as provided below.
- G. Failure to repair damage to property, resulting from Contractor's (including agents, employees or subcontractors) equipment failure or negligence, to include damage to dumpster enclosures, within five (5) business days of notification by the Contract Administrator.
- H. Failure to cover materials on collection vehicle(s).
- I. Collection employees out of uniform.
- J. Name and phone number, truck number, and if applicable, size not displayed on equipment or Containers.
- K. Not providing schedules and route maps.
- L. Speeding, upon conviction.
- M. Using improper truck to service commercial or residential customer.

- N. Failure to submit disclosure notice to either customer or Contract Administrator.
- O. Failure to report recycling activity monthly (on or before the 10th day of the following month), in the format determined by the City, for the purpose of tracking and verifying countywide recycling activity.
- P. Failure to collect recyclable materials, solid waste or vegetative waste on schedule for any customer who has been missed more than five times per Fiscal Year.
- Q. Failure to respond to customer calls, including commercial recycling and solid waste collection service customers, and residential containerized residential solid waste and recycling collection service customers, in a timely and appropriate manner.
- R. Failure to place a contamination sticker in Recycling Containers, as necessary.
- S. Failure to replace or provide Containers or Recycling Container(s) within five (5) business days.
- T. Failure to submit any report to the City as required by this franchise agreement.
- U. Failure to tag any trash that is non-compliant with material accepted for disposal by the Authority.
Failure to properly tag any category of solid waste, to include, garbage, trash, bulk trash, or vegetative waste as material not acceptable for disposal by facilities operated or licensed by the Authority.
- V. Failure to timely submit "Quarterly Report of Contract Revenues and Expenditures"

Changing routes without proper notification will result in a Two Thousand Dollar (\$2,000.00) fine per incident.

Failure to clean up spillage of any substance required to be cleaned up by and in accordance with the Palm Beach County Health Department will result in a Two Thousand Five Hundred Dollar (\$2,500.00) fine per day, per incident.

Failure to deliver any Commercial or Residential Solid Waste, Vegetative Waste or Recyclable Materials to the Authority or another facility directed by the Contract Administrator will result in the following penalties:

1. First offense, One Thousand Dollar (\$1,000.00) fine
2. Second offense, Two Thousand Five Hundred Dollar (\$2,500.00) fine
3. Third offense, Ten Thousand Dollar (\$10,000.00) fine
4. Fourth offense, loss of franchise

Failure to complete, either partially or totally, a route on the regular scheduled pick-up day shall be a fine of One Thousand Dollars (\$1,000) for

each route per day not completed. Failure to complete a route shall mean that more than 10 houses on the same route on the same collection day were missed.

For the purpose of this Section, the Contract Administrator may deduct any charges from payments due or to become due to the Contractor. In the event the Contractor fails to repair damages as a result of the Contractor's equipment failure or negligence within the time provided within this Agreement, the Contract Administrator may arrange for the repairs and assess the Contractor for the cost of the repairs and any applicable administrative charges. The Contract Administrator may assess administrative charges pursuant to this Section on a monthly basis in connection with this Agreement and shall, at the end of each month during the term of this Agreement, notify the Contractor and the City, in writing, of the charges assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment it shall, within five (5) days after receiving such monthly notice, request in writing an opportunity to be heard by the City Manager and present its defense to such assessment.

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

39.0 FILING OF REQUESTED INFORMATION AND DOCUMENTS:

- A. In addition to any other requirements of this Agreement, the Contractor shall be required to file pertinent statistical and aggregate cost information pertaining to solid waste collection and recycling collection services that is requested by the City. The results of all recycling activity conducted by the Contractor in the Service Areas during each month, whether residential or commercial, shall be reported accurately to the City, in a format and with such dates as specified by the City, on or before the 10th day of the following month.
- B. The Contractor shall provide to the Director of Finance of the City not later than December 31 of each year, such information for the prior fiscal year required to allow correct calculation of information required to comply with Florida State Statutes 403.7049 and Florida Administrative Code 62-708, as amended in order to publish the annual Notice of Full Cost Accounting for Solid Waste.
- C. The Contractor shall file and keep current with the City all documents and reports required by this Agreement. By September 1st of each year this Agreement is in effect, the Contractor shall ensure and certify to the City that all required documents such as, but not limited to, certificates of insurance, audits, performance bond or letter of credit, route schedule and maps, drivers license certifications, and list of collection equipment vehicles, are

current and on file with the City. Route maps shall be provided in a format as provided by the City.

- D. Failure to file any document or report within five (5) business days of the required filing date, except where granted an extension by the Contract Administrator, may result in the levy of an administrative fine as provided in Section 38.

40.0 NATURAL DISASTERS: In the event of a hurricane, tornado, major storm or other natural disaster, the Contract Administrator may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such natural disaster, the Contractor shall advise the Contract Administrator when it is anticipated that normal routes and schedules will be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed. The cleanup from some natural disasters may require that the Contractor procure additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster. The Contractor shall receive extra compensation above the normal compensation contained in this Agreement to cover the costs to include rental equipment, additional personnel, overtime hours, and other documented expenses provided the Contractor has first secured written authorization and approval from the Contract Administrator prior to the work being performed. All such costs shall be audited by the City's Contract Administrator and Director of Finance prior to payment.

41.0 UNCONTROLLABLE CIRCUMSTANCES: Neither the City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid.

Neither party shall, however, be excused from performance if non-performance is due to forces that are preventable, removable, or remediable if the non-performing party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

42.0 PERMITS AND LICENSES: The Contractor shall obtain, at their own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect. Any changes of the licenses or permits shall be reported to the City within ten (10) working days of the change.

43.0 PERFORMANCE BOND: The Contractor shall furnish to the City a performance bond, executed by a surety company licensed to do business in the State of

Florida, and/or a clean irrevocable letter of credit issued by a bank within Palm Beach County, Florida to ensure the faithful performance of this Agreement and all obligations arising hereunder in the appropriate amount which shall be an amount equal to the gross annual revenue received by the Contractor for services rendered under the Agreement net of disposal and administrative/franchise fees. The clean irrevocable letter of credit or bond provided hereunder may be substituted for the other upon approval by the City. The form of this bond or letter of credit, and the Surety Company, shall be acceptable to the City Attorney and the Contract Administrator and shall be maintained during the term of this Agreement as provided in Section 1. The bond(s) shall be endorsed to show the City, a municipal corporation of the State of Florida, to provide that bonds shall not be canceled, limited or nonrenewal until after thirty (30) days written notice has been given to the City. Current performance bonds evidencing required coverage must be on file at all times.

44.0 EMPLOYEE WAGES AND BENEFITS: The Contractor shall comply with all applicable Local, State and Federal laws relating to wages, hours, overtime and all other applicable laws relating to the employment or protection of employees, now or hereinafter in effect.

45.0 INSURANCE:

- A. **Worker's Compensation Insurance:** Worker's Compensation coverage must be maintained in accordance with statutory requirements as well as Employer's Liability Coverage in an amount not less than \$100,000.00 per each accident, \$100,000.00 by disease and \$1,000,000.00 aggregate by disease.
- B. **Comprehensive General Liability Insurance:** The Contractor shall, during the term of this Agreement, and any extensions hereof maintain in full force and effect commercial general liability insurance policy and automobile liability insurance policy, which specifically covers all exposures incident to the Contractor's operations under this Agreement. Such insurance shall be with a company acceptable to the City and each policy shall be in an amount of not less than \$1,000,000.00 Combined Single Limit for personal bodily injury, including death, and property damage liability and the general liability shall include but not be limited to coverage for Premises/Operations, Products/Completed Operations, Contractual, to support the Contractor's Agreement or indemnity and Fire Legal Liability. In addition to the above liability limits, the Contractor shall maintain a \$5,000,000.00 umbrella and/or excess liability coverage. Policy(ies) shall be endorsed to show the City, a municipal corporation in the State of Florida, as an additional insured as its interests may appear: and shall also provide that insurance shall not be canceled; limited or non-renewed until after thirty (30) days' written notice has been given to the City. Current certificates of insurance evidencing required coverage must be on file with the City at all times. Contractor

expressly understands and agrees that any insurance protection furnished by Contractor shall in no way limit its responsibility to indemnify and save harmless City under the provisions of Section 46 of this Agreement.

- 46.0 **INDEMNIFICATION:** The Contractor will indemnify, defend and hold the City, its agents, officers, and employees harmless from any and all liabilities, causes of actions, losses or damages the City may suffer as a result of claims, demands, costs or judgments against the City arising out of any negligent act, recklessness, or the intentional wrongful acts or omission of the Contractor or its employees, agents or officers in the performance of the matters that are the subject of this Agreement and the work to be performed thereby. The Contractor shall not be responsible for nor be required to indemnify or hold the City harmless for any act, omission, negligence or other liability to the extent caused by the sole negligence of the City or the City's employees or agents.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

Nothing herein shall be construed as a waiver of the City's sovereign immunity beyond the limits set forth in Section 768.28 Florida Statutes.

- 47.0 **ACCESS AND AUDITS:** The Contractor shall maintain within Palm Beach County, Florida adequate records of the solid waste collection and/or recycling services including commercial solid waste during the Fiscal Year and for one year following the end of each Fiscal Year of the Contract. The City or its designee shall have the right to review, at any time, all records maintained by the Contractor upon 48 hours written notice. Such review and audit of the records shall be made during normal business hours at the contractor's office where such records are maintained. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the City, shall be reported to the Contractor.

- 48.0 **POINT OF CONTACT:** Any dealing, contact, notice etc. shall be directed by the Contractor to the Contract Administrator.

- 49.0 **NOTICE:** Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to the City:

**City of Riviera Beach
Attention: Director of Public Works
2391 Avenue L**

Riviera Beach, Florida 33404

With a copy to:

**City Attorney
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, Florida 33404**

As to the Contractor:

**Tim Hawkins, Vice President
Waste Management Inc. of Florida
2700 Wiles Road
Pompano Beach, FL 33073**

With copy to:

**Ronald Kaplan
Senior Counsel
Waste Management Inc. of Florida
2700 Wiles Road
Pompano Beach, FL 33073**

Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by written notice. Facsimile transmission is deemed not to be acceptable notice.

50.0 DEFAULT OF CONTRACT:

A. The City may cancel this Agreement, except as otherwise provided below in this section, by giving Contractor thirty (30) days advance written notice, to be served as hereafter provided, upon the happening of any one of the following events:

1. Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the re-adjustment of its indebtedness under the Federal bankruptcy laws or under any other law or state of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
2. By order or decree of a Court, Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or

by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of cancellation shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

3. By or pursuant to or under authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or

4. The Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by the City pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto, whether such default is considered minor or major, and said default is not cured within thirty (30) days of receipt of written notice by City to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by Contractor of written demand from City to do so, Contractor fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with Contractor having the burden of proof to demonstrate [a] that the default cannot be cured within thirty (30) days, and [b] that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time).

B. However, notwithstanding anything contained herein to the contrary, for the failure of Contractor to provide collection service for a period of five (5) consecutive scheduled working days, the City may secure the Contractor's billing records (at the request of the City, the Contractor shall provide such records) on the sixth working day in order to provide interim collection services until such time as the matter is resolved and the Contractor is again able to perform pursuant to this Agreement; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) working days all liability of the City under this Agreement to the Contractor shall cease and this Agreement may be deemed immediately terminated by the City.

C. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Section, in the event that Contractor's record of performance shows that Contractor has frequently,

regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by Contractor, in the opinion of City and regardless of whether Contractor has corrected each individual condition of default, Contractor shall be deemed a "habitual violator", shall forfeit the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively, shall constitute a condition of irredeemable default. The City shall thereupon issue Contractor final warning citing the circumstances therefore, and any single default by Contractor of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of this Agreement. In the event of any such subsequent default, City may terminate this Agreement upon the giving of written Final Notice to Contractor, such cancellation to be effective upon the fifteenth consecutive calendar day following the date of Final Notice, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and Contractor shall have no further rights hereunder. Immediately upon receipt of said Final Notice, Contractor shall proceed to cease any further performance under this Agreement.

- D. In the event of any of the aforesaid events specified in paragraphs A, B, and C above and except as otherwise provided in said paragraphs, termination shall be effective upon the date specified in City's written notice to Contractor and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the City under this Agreement to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other Contractors for the operation of the herein specified services. The Contractor for failure to perform shall reimburse the City all direct and indirect costs of providing interim collection service.

51.0 **PUBLIC WELFARE:** The City shall have the power to make changes in, or to impose new and reasonable rules and regulations on, the Contractor under this Agreement relative to the method of collection and disposal of Garbage, Trash, Bulk Trash, Vegetative Waste or Recyclable Materials as shall from time to time be necessary and desirable for the public welfare. However, any such rule or regulation shall be delivered to and receipted for by the Contractor, or if the Contractor is a corporation, by an officer thereof. The City shall give the Contractor reasonable notice of any proposed change and an opportunity to be heard concerning those matters. The method of collection and disposal of solid waste and recyclables set out herein shall also be liberally construed to include, but not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. The Contractor shall be reasonably and appropriately compensated as determined by negotiation and Agreement between the City and the Contractor for any additional services or other obligations required of the Contractor due to any modification in the Agreement under this Section.

52.0 RIGHT TO REQUIRE PERFORMANCE: The failure of the City at any time to require performance by the Contractor of any provisions hereof shall in no way affect the right of the City thereafter to enforce the same. Nor shall waiver by the City of any breach of any provisions hereof be taken or held to be waived of any succeeding breach of such provisions or as a waiver of any provision itself.

53.0 TITLE TO WASTE AND COLLECTION CONTAINER EQUIPMENT:

A. Title To Waste: The City shall at all times hold title and ownership to all Commercial and Residential Solid Waste, Vegetative Waste, Trash, Recyclable Material and all other waste collected by the Contractor pursuant to this Agreement and the Contractor shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials without specific written authorization from the Contract Administrator.

B. Title to Collection Containers: Title of all collection and recycling containers of 96 gallons or smaller size shall pass to the City upon delivery to customers by the Contractor. Upon termination of this contract or any succeeding contract, such containers shall remain in place in the City for future use by a successor contractor. Nothing in this paragraph shall negate the requirements elsewhere in this agreement for the Contractor to maintain such containers in good state of repair and to replace damaged or destroyed containers on a one for one basis.

54.0 GOVERNING LAW AND VENUE: The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County and the Agreement will be interpreted according to the laws of Florida.

55.0 COMPLIANCE WITH LAWS: The Contractor shall conduct operations under this Agreement in compliance with all applicable laws.

56.0 SEVERABILITY: The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

57.0 ASSIGNMENT AND SUBLETTING: No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the City. The City shall have full discretion to

approve or deny, with or without cause, any proposed assignment or assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Contractor, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the City under this Agreement to the Contractor shall cease, and City shall have the right to call the performance bond and shall be free to negotiate with other contractors or any other person or company for the service of the franchise area which is the subject of this Agreement. In the event of any approved assignment, assignee shall fully assume all the liabilities of the Contractor.

58.0 MODIFICATION: This Agreement constitutes the entire contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto. Such modification shall be in the form of an Amendment executed by both parties.

59.0 INDEPENDENCE OF AGREEMENT: It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners between the parties hereto, or as constituting the Contractor as the agent, representative or employee of the City for any purpose whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

60.0 ANNEXATIONS: Adjustments to Service Area boundaries and the rights of the parties to this Contract due to municipal annexation or contraction will be as provided by Florida Statutes Section 171.062, as amended, or its successor.

61.0 CHANGE OF LAW: The parties understand and agree that the Florida Legislature from time to time has made comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future, whether federal, state or local, which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law.

To the extent that any law effective after the opening and awarding of bids for this Agreement is in conflict with, or requires changes in, the provisions of collection service or exclusive rights set out in this Agreement, the parties agree to enter into good faith negotiations for the resolution of any such changes in this Agreement as a result of change in law.

62.0 OTHER RATE ADJUSTMENTS: The City will strictly enforce all of the provisions of the Franchise Agreement including penalty clauses for any performance quality

problems.

- 63.0 **PUBLIC ENTITY CRIMES:** No Contractor may be a person or affiliate identified on the Department of General Services "convicted vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from public contracting and purchasing process because they have been found guilty of a public entity crime. The Contractor is required to comply with Florida Statutes Section 287.133, as amended, or its successor.
- 64.0 **SUBSTANTIAL COMPLIANCE:** The Contractor shall promptly collect all materials disposed of by the customer, provided the materials are prepared and placed within substantial compliance with the guidelines as set forth herein. Any clarification as to the standards of substantial compliance shall be determined by the Contract Administrator.
- 65.0 **INCORPORATE BID CONDITIONS:** The General Terms and Conditions and the Special Terms and Conditions presented in the original bid package are hereby made part of this Agreement as additional conditions.
- 66.0 **SOLID WASTE COLLECTION AND DISPOSAL SERVICES PROVIDED TO THE CITY AND NO ADDITIONAL FEE:** The following municipal locations shall be supplied with appropriate waste containers in the sizes indicted below:

	<u>Location</u>	<u>Quantity</u>	<u>Container Size</u>
a)	City Beach	(2)	4 YD
b)	City Marina		8 YD
c)	City Hall		4 YD
d)	Central Fire Station		2 YD
e)	Police Station		6 YD
f)	Water Department		4 YD
g)	Wells Recreation	(2)	8 YD and 6 YD
h)	Barracuda Bay		6 YD
i)	Public Works	(2)	6YD and 20 YD Roll Off
j)	Lindsay Davis Center		6 YD
k)	Tate Gym	(2)	6 YD

All locations shall be serviced a minimum of twice weekly. All cost associated with this service shall be provided by the contractor at no additional fee to the City.

- 67.0 **REQUIREMENT TO PROVIDE QUARTERLY REPORTS FOR ALL CONTRACT RELATED REVENUES AND EXPENDITURES:** On a quarterly basis, Contractor shall provide to the City Finance Director, in a format acceptable to the City, a detailed summary of all contract revenues and expenditures. Quarterly reports

shall be due no later than sixty (60) days after the end of the quarterly reporting period.

Failure to provide said report within the prescribed period shall result in the levy of a one-hundred and fifty dollar (\$150.00) per day administrative charge until said report is submitted. Any resulting penalty shall be deducted from Contractor's monthly residential service fees.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties unto this Agreement have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH

WASTE MANAGEMENT INC. OF FLORIDA

BY: 
THOMAS A. MASTERS
MAYOR

BY: 
TIM HAWKINS
VICE PRESIDENT

ATTEST:

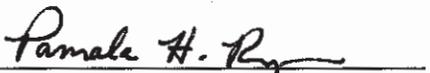
CORPORATE SEAL

BY: 
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS
AND CONDITIONS

BY: 
BRYNT D. JOHNSON
INTERIM PUBLIC WORKS DIR.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: 
PAMALA H. RYAN
CITY ATTORNEY

Date: 2/10/11



**RFP/AGREEMENT
EXHIBITS**

- EXHIBIT I: APPROVED RATE SCHEDULE
- EXHIBIT II: APPROVED RATE SCHEDULE (FIXED FOR TERM)
- EXHIBIT III: COLLECTION RATE ADJUSTMENT SCHEDULE

EXHIBIT I: PAGE 1 OF 1

SOLID WASTE COLLECTION FRANCHISE AGREEMENT

MONTHLY RATES

March 1, 2011 to September 30, 2011

Rates to be adjusted annually using schedule detailed in Exhibit III

Residential Collection (Per Unit)

Services	Curbside 1 Per Week	Containerized Curbside 2 Per Week	Total Monthly Service Rate
Solid Waste Collection		\$5.28	
Vegetative Waste Collection (Includes bulk waste with clamshell pick-up.	\$2.50		
Recycling Collection	\$2.50		
Total/ Month/Unit	\$5.00	\$5.28	\$10.28

Commercial Solid Waste Collection Rates

Container Collection Rate	\$7.44 per cubic yard + disposal
Compactor Collection Rate (8 cubic yards or less)	\$9.29 per cubic yard + disposal at 3:1 ratio
Compactor Collection Rate (more than 8 cubic yards.)	\$225.00 per pull + disposal
Roll-off Services: Collection Rate per Pull)	\$ 185.00 per pull + disposal

FRANCHISE AGREEMENT

**EXHIBIT II: PAGE 2 OF 2
SOLID WASTE COLLECTION FRANCHISE AGREEMENT**

Approved Rate Schedule

March 2011 to September 2016

**RATES DETERMINED BY THE CITY
(NOT TO BE ADJUSTED DURING TERM)**

SPECIAL SERVICES

Service	Rate per service or month
Rolling Out Customer Owned Container (and returning it to original location) charges for Contractor furnished container shall be included in container rental rate.	2 x Week \$14.00 Per Month 3 x Week or more \$21.00 Per Month
Opening (and closing) Doors or Gates	No Charge
Locks for Containers	\$9.00 (one time) Charge for Replacements based on cost +10%
Supplying (and retrofitting) locking mechanism on container	\$55.00
Adding wheels to or changing wheels on Containers	No Charge
Adding lids to or changing lids on Containers (all lids shall be plastic or another light weight material approved by Contract Administrator)	No Charge
Moving Container Location Per Customer Request	No Charge
Changing Out Sizes (above twice per year)*	\$25.00
Additional <u>Scheduled</u> Pick-ups for Residential Containerized Customers	Same as Applicable Commercial Collection Rates (No Disposal Charges)

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

**FRANCHISE AGREEMENT
EXHIBIT II: PAGE 2 OF 2**

SOLID WASTE COLLECTION FRANCHISE AGREEMENT

**Approved Rate Schedule
March 2011 – September 2016**

Monthly Rate

**RATES DETERMINED BY THE CITY
(NOT TO BE ADJUSTED DURING TERM)**

MONTHLY CONTAINER RENTAL RATES

CONTAINERS	
SIZE	RATE
Less than 2 cu YD	\$18.70
2 cu YD	\$32.95
3 cu YD	\$34.99
4 cu YD	\$35.76
6 cu YD	\$39.08
8 cu YD	\$40.64
10 cu YD	\$46.34

COMMERCIAL SOLID WASTE AND VEGETATIVE DISPOSAL CHARGE

The City will determine the commercial disposal fee rates (\$/cubic yard) each Fiscal Year based on a calculation supplied by the Authority and the tipping fee. The calculation for non-compacted Garbage and Trash is 134 lbs./cubic yard times the Authority's tipping fee (\$/ton) times 1 ton/2000 lbs. = ____\$/cubic yard. Commercial non-compacted Vegetation is calculated at 275 lbs./cubic yard times the Authority's tipping fee (\$/ton) times 1 ton/2000 lbs. = ____\$/cubic yard. The compacted rate for commercial solid waste or vegetative waste may be billed at 1.25 times the rate for non-compacted solid waste or vegetative rate, respectively. For purposes of computing monthly billing rates, each month shall be considered to have 4.33 weeks times the number of pickups per week times the cubic yards computed above.

**FRANCHISE AGREEMENT
EXHIBIT III: PAGE 1 OF 2**

**SOLID WASTE COLLECTION FRANCHISE AGREEMENT
Collection Rate Adjustment Schedule**

The Collection Rate Adjustment (which applies to the Collection portion of Rates) shall be applied on October 1, 2011, and every subsequent October 1 thereafter for the term of this Contract, as described in more detail below. The Collection Rate Adjustment shall be calculated in the following manner:

By agreement the parties have established the Contractor's initial Operating Cost Statement, as described in Exhibit 16.6 A. For the Contract Year beginning March 1, 2011, the Collection Rate components shall be determined by the weight factors as shown in the Contractor's initial Operating Cost Statement. For every subsequent Contract Year thereafter for the term of this Contract, an Operating Cost Statement will not be required; the components of the Collection rate will be used as the basis for the Collection Rate Adjustment. However, the City reserves the right to require the Contractor to provide an Operating Cost Statement prior to each renewal period in order to recalculate the weight of each cost component, at the City's sole discretion.

1. The Operating Cost Statement shall be prepared as described herein. Operating costs are for Contractor's collection business in Palm Beach County.
2. The expenses of operations for the Service Area shall be broken down into one of the following five cost component categories: Labor, Fuel, Vehicle Replacement, Vehicle Maintenance, and Other. Each cost component category is assigned a weighted percentage factor based on that cost component's percentage total of all cost component categories.
3. The following indexes are used to calculate the adjustment for each cost component category. Each component's adjustment shall become effective on October 1, 2011 and every October 1 thereafter for the term of this Agreement

CPI: The change in the CPI shall be calculated as the percentage change from the 12 month average ending June of each year compared to the 12 month average of the preceding year to June.

Fuel and Oil: The change in the average price of diesel fuel for the Lower Atlantic No 2 Diesel Retail Sales by all sellers (reported by the Energy Information Association as series DDR01Z) will be used to adjust the fuel and oil cost component. The fuel and oil component shall be adjusted effective October 1, 2011, calculated based on the average of each monthly change in series DDR01Z from June of the preceding year to June of the current year.

COST COMPONENT	INDEX	SOURCE
Other than Fuel and Oil	CPI (Unadjusted), US City Average, All Urban Consumers, All Items	CPI detailed report, published by BLS.
Fuel and oil	Series DDR01Z (Average), Lower Atlantic No. 2 Diesel Retail Sales	EIA, published monthly.

EXHIBIT III: PAGE 2 OF 2

SOLID WASTE COLLECTION FRANCHISE AGREEMENT

Collection Rate Adjustment Schedule

If either of these indexes becomes obsolete during the term of this Contract, an alternative, related index may be used, as agreed upon between the Contractor and the Contract Administrator.

- The percentage weight for each cost component is multiplied times the existing Collection Rate to calculate the cost associated with each component, as shown in the "Weight Applied to Rate" column in the table below. This computation will be performed only once, in order to establish the baseline cost component values, but could be repeated at the sole discretion of the City should the City require of the Contractor an updated Operating Cost Statement at the time of each contract renewal. The percentage change in each index is multiplied times the Collection Rate Component to calculate the Adjusted Rate for each respective portion of the Collection Rate Adjustment. The table below is intended for demonstration purposes only, and should not be interpreted as actual Collection Rate Adjustments.

Collection Rate Adjustment Example-Initial Adjustment

Collection Rate Component	Weight	Collection Rate (\$13.84)	Source	% Change of Index	Adjusted Rate	Change Effective
Other than Fuel and Oil	87.5%	\$12.11	CPI-All Items	3.20%	\$12.50	October 1
Fuel and Oil	12.5%	\$ 1.73	Series DDR01Z (Average), Lower Atlantic, No. 2 Diesel Retail Sales by All Sellers	5.42%	\$ 1.82	October 1

Collection Rate Adjustment Example-Subsequent Periods

Collection Rate Component	Actual Rate	Source	% Change of Index	Adjusted Rate	Change Effective
Other	\$12.50	Same	2.0%	\$12.75	Oct. 1
Fuel and Oil	\$ 1.82	Same	2.5%	\$ 1.86	Oct. 1

RESOLUTION NO. 14-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE CITY CLERK TO NOTICE AND PREPARE FOR THE GENERAL MUNICIPAL ELECTION TO BE HELD TUESDAY, MARCH 8, 2011; AND RUN-OFF ELECTIONS IF NECESSARY, TUESDAY, MARCH 22, 2011; ALL ELECTIONS SHALL BE HELD WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY BETWEEN THE HOURS OF 7:00 AM UNTIL 7:00 PM TO FILL THE EXPIRED SEATS TO WIT: MAYORAL SEAT; CITY COUNCIL DISTRICT ONE (1); CITY COUNCIL DISTRICT THREE (3); AND CITY COUNCIL DISTRICT FIVE (5); PROVIDING FOR THE USE OF VOTING EQUIPMENT; PROVIDING BALLOTS, ABSENTEE BALLOTS, AND PROVISIONAL BALLOTS IN SUCH ELECTIONS; APPOINTING THE CITY OF RIVIERA BEACH CANVASSING BOARD; CONTINUING THE AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS OFFICE FOR VOTE PROCESSING EQUIPMENT USE AND ELECTIONS SERVICES COMMENCING JANUARY 1, 2011 THROUGH DECEMBER 31, 2011; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the amendment to the Charter and the Code of Ordinances of the City of Riviera Beach, provides for Elections to be held on the second Tuesday in March of each year for the electorate to fill the vacant offices at such time; and

WHEREAS, if such offices are not filled at such time, the City Clerk shall continue Run-off Elections to be held on the fourth Tuesday in March, and the Candidate obtaining a majority in each district shall be deemed elected to such office; and

WHEREAS, in the year 2011 four (4) offices are necessary to be filled at the General Municipal Election to be held in the City of Riviera Beach, Tuesday, March 8, 2011.

WHEREAS, in 2010 the Palm Beach County League of Cities on behalf of its municipal members met with the Ad Hoc Committee and the Palm Beach County Supervisor of Elections and finalized a negotiated agreement spelling out all duties, responsibilities, and fees associated with hosting local municipal elections.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. That the Municipal Election shall be held and is hereby ordered to be held in the City of Riviera Beach, Palm Beach County, Florida, between the hours of 7:00 AM and 7:00 PM on the 8th day of March, 2011 for the purpose of electing qualified candidates as provided by law to fill Mayoral seat; City Council District One (1); City Council District Three (3); and City Council District Five (5).

SECTION 2. Candidates for City Council District One (1) and City Council District Three (3), shall file within the district which they have continuously resided for one year, as of January 25, 2011.

SECTION 3. Candidates for the office of Mayoral and City Council Group Five (5) shall file and have resided within the Municipal boundaries continuously for one year as of January 25, 2011.

SECTION 4. The City Clerk is authorized to enter into agreements to establish polling locations for the March 8th General Municipal Election; and the March 22nd Municipal Run-off Election, if necessary and she is hereby authorized to designate polling locations within the municipal boundaries in accordance with applicable laws and state guidelines.

SECTION 5. The City Clerk is hereby authorized to assign sufficient poll workers to facilitate the 17 precincts within the municipal boundaries; schedule training for poll workers and to establish a pay scale applicable to the duties and responsibilities of the Election staff.

SECTION 6. The Palm Beach County's Supervisor of Elections shall provide for use of the voting equipment and process absentee ballots for said Elections and she is hereby authorized to provide the necessary training to the pollworkers as approved by the City Clerk.

SECTION 7. Immediately after closing of the polls on the day of said Elections, the clerks of each precinct shall present the returns thereof to the City Clerk at the Municipal Complex. The City Clerk of the City of Riviera Beach shall deliver to the Palm Beach County Supervisor of Elections returns for official results to be processed at the Riviera Beach Tabulating Center.

SECTION 8. The City Council hereby announces the appointment of City Clerk Carrie E. Ward; Deputy City Clerk Claudene Robinson, Councilperson Dawn S. Pardo and Councilperson Judy L. Davis as the City of Riviera Beach Canvassing Board. The

Palm Beach County Supervisor of Elections shall be appointed as an additional member to the Riviera Beach Canvassing Board for certain functions.

SECTION 9. The City Clerk is hereby authorized to call the City's Canvassing Board to convene to accept the certified results of the March 8, 2011 Municipal Election. The City Clerk hereby announces the convening of the City of Riviera Beach Canvassing Board for Wednesday, March 16, 2011 at 6:00 pm. at the Municipal Complex, providing a Run-off Election is not necessary to complete the process. If a Run-off Election is necessary, the Canvassing Board shall convene its meeting at 6:00 p.m. on Wednesday, April 6, 2011 for same purposes.

SECTION 10. The City of Riviera Beach opt out of early voting for the 2011 General Municipal Election.

SECTION 11. The City of Riviera Beach City Council hereby approves continuing the agreement with the Palm Beach County Supervisor of Elections Office for vote processing equipment use and election services commencing January 1, 2011 through December 31, 2011 with subsequent renewals being done by way of resolution.

SECTION 12. This resolution shall take effect immediately upon its approval.

PASSED AND APPROVED this 2ND day of FEBRUARY, 2011.

APPROVED:


THOMAS A. MASTERS
MAYOR


DAWN S. PARDO
CHAIRPERSON

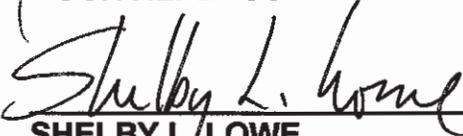
(MUNICIPAL SEAL)


JUDY L. DAVIS
CHAIR PRO-TEM

ATTEST: 
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


BILLIE E. BROOKS
COUNCILPERSON


CEDRICK A. THOMAS
COUNCILPERSON


SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: J. DAVIS

SECONDED BY: B. BROOKS

D. PARDO: AYE

J. DAVIS: AYE

B. BROOKS AYE

C. THOMAS AYE

S. LOWE: AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____

SUPERVISOR OF ELECTIONS
RECORDED 24 JAN 10 58
PALM BEACH COUNTY FL

**AGREEMENT FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES
BY AND BETWEEN
THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS
AND THE CITY OF RIVIERA BEACH**

THIS AGREEMENT, is made and entered into this 20 day of January, 2010, effective January 1, 2010, by and between the Palm Beach County Supervisor of Elections, an elected county officer pursuant to Article VIII, Sec.1(d) of the *Florida Constitution*, hereinafter referred to as the "SOE", and the City of Riviera Beach, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Chapters 97 to 106, *Florida Statutes*, constitute the Florida Election Code (the "Code") which applies to municipalities where expressly so stated; and

WHEREAS, Sec 100.3605, *Florida Statutes*, states that "[T]he Florida Election Code, chapters 97-106 shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision"; and

WHEREAS, the Municipality and the SOE desire to work together to provide for municipal elections and to allocate certain responsibilities and expenses between the two parties to ensure that the provisions of the Code are followed during municipal elections; and

WHEREAS, the SOE and the Municipality wish to enter into this Agreement to set out the terms of this coordinated program.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the Municipality, its constituents and the SOE, it is agreed as follows:

1. **PURPOSE:**

The purpose of this Agreement is to set forth the terms and conditions under which services will be provided by the SOE and staff to the Municipality for municipal elections and to set forth the responsibilities of both parties so that there is a clear understanding of the rights and responsibilities of all parties. Such rights and responsibilities shall apply to the General, Run-Off, Special and Recount elections as necessary as well as the Post Election Audit, unless otherwise stated hereinbelow.

2. **DATE OF GENERAL MUNICIPAL ELECTION:**

The date of City of Riviera Beach General Municipal election is March 9, 2010. It is hereby acknowledged and agreed that if the date listed is the same as most other municipalities in March or November, there will be a cost sharing among municipalities for costs incurred by the SOE. Such costs shall be allocated on a pro-rata share basis; otherwise, it is hereby acknowledged and agreed upon by the municipality that it is responsible for all costs

of the election, incurred by the office of the SOE.

3. FEES AND CHARGES TO BE PAID BY THE MUNICIPALITY:

The SOE hereby agrees not to charge Municipality for taxpayer purchased equipment and supplies; (i.e. voting machines, tables, chairs, etc.) and associated maintenance and contract fees related to such equipment in return for which the Municipality hereby agrees not to charge the SOE for polling places within its dominion and control. Examples of municipal elections charges related to certain services performed by the SOE to be passed through to the Municipality on a shared pro rata basis for all municipalities holding elections on a general election day (i.e. 2nd Tuesday in March or November) are attached hereto as Exhibit A; Examples of total costs to small, medium and large municipalities are attached hereto as Exhibit B.

4. RESPONSIBILITIES OF BOTH THE MUNICIPALITY AND THE SOE FOR MUNICIPAL ELECTIONS:

A. Notice and Advertisement

(1) Municipality

- (a) Properly call and advertise the election according to statutes and charter at its own expense.
- (b) Issue a resolution or ordinance to the SOE requesting that the Supervisor of Elections conduct the municipality's election and act as a member of the Municipality's Canvassing Board.

(2) SOE

- (a) Publish legal notices for Logic & Accuracy testing, absentee ballot canvass, Post Election Audit and news releases on book closing.

B. Qualifying Candidates

(1) Municipality

- (a) Provide qualifying packets to candidates and accept and process all qualifying papers and fees.
- (b) Collect Name and Pronunciation Guides from the candidates at the time of qualifying and submit to SOE.
- (c) Respond to all candidate inquiries and questions.
- (d) Respond to all legal inquiries and questions.
- (e) Respond to all media inquiries.

(2) SOE

- (a) Verify signatures on any qualifying petitions submitted by candidates and notify the Municipality of such results upon the close of the candidate qualifying deadline.

- (d) Pay the ballot printer directly for the cost of said ballots.
- *(e) Reimburse the SOE for costs incurred for translation and audio recording of ballot.
- *(f) Reimburse SOE for preparation of Absentee Ballot, Edge layout and Sample Ballot.

(2) SOE

- (a) Layout, check, proof and delivery ballot layout to the printer.
- (b) Receive, securely store and account for all ballots until disbursed to polling places.
- (c) Contract to have audio recorded for Touch Screen ballot.
- (d) Control all access to unvoted ballots while in the possession of the SOE.

D. Equipment Testing

(1) Municipality

- (a) Provide that a representative will be present during the Logic and Accuracy testing as noticed by SOE.

(2) SOE

- (a) Develop a unique test script and manually mark ballots to be used in public Logic & Accuracy test.
- (b) Conduct public Logic & Accuracy test.

E. Early Voting – Optional

(1) Municipality

- *(a) Reimburse the SOE for staff overtime hours due to weekend and/or evening hours for Early Voting, if initiated by the municipality.
- *(b) Pay SOE for Early Voting supplies.
- (c) Contract with, schedule and pay poll workers directly.
- (d) Deliver voted ballots to SOE daily at a location designated by SOE.
- (e) Designate Early Voting sites thirty (30) days prior to each Election and notify SOE in writing of locations.

(2) SOE

- (a) Prepare and provide all supplies needed for each Early Voting site.
- (b) Provide the Municipality with a list of poll workers that have been trained.
- (c) Train poll workers.
- (d) Provide staffing to accept voted ballots daily at a location designated by SOE.

F. Absentee Voting

(1) Municipality

- *(a) Reimburse SOE for all postage costs incurred at the current postal rate.
- *(b) Pay SOE for materials and handling of each absentee ballot.
- *(c) Pay SOE \$.10 per absentee ballot for verifying signatures on returned voted ballot

certificates.

(d) Refer all requests for absentee ballots to SOE.

(2) SOE

- (a) Determine eligibility and compile Absentee Ballot file.
- (b) Accept all requests for Absentee Ballots by telephone, mail or in person.
- (c) Prepare and mail Absentee Ballots.
- (d) Deliver Absentee Ballots to the Post Office.
- (e) Receive voted Absentee Ballots.
- (f) Verify signatures on returned voted Absentee Ballot certificates.
- (g) Prepare and open Absentee Ballots for tabulation.
- (h) Account for all Absentee Ballots.
- (i) Notify Absentee Ballot voter and provisional voters of the disposition of the Canvassing Board as required by law.
- (j) Record Absentee Ballot returns to voter history.
- (k) Conduct public testing of Logic and Accuracy for Absentee Ballot tabulating equipment.
- (l) Provide qualified staff to operate tabulation equipment to count Absentee Ballots.

G. Polling Places

(1) Municipality

- (a) Arrange for the use of an adequate number of polling places.
- (b) Confirm polling place accessibility and ADA compliance.
- (c) Notify SOE in writing thirty (30) days prior to election of the need for tables and chairs if necessary.
- (d) Notify SOE of polling locations to be used.
- (e) Notify the SOE not less than 30 days prior to the election that a polling place will be moved to another site.
- (f) Notify voters, as required by law, if their regular polling place is to be temporarily relocated.

(2) SOE

- (a) Provide the Municipality with a list of polling places and SOE contract.
- (b) Provide tables and chairs upon written notice from the Municipality when required.
- (c) Provide polling place supplies, i.e. signs, cones, etc.
- (d) Notify voters and the Municipality of permanent polling place change.

H. Precinct Supplies

(1) Municipality

- *(a) Pay SOE for precinct supplies provided.
- *(b) Provide a secure place for precinct clerks to return supplies and voted ballots on election night.

- *(c) Pay SOE for the production of Precinct Registers.
- *(d) Pay directly to the SOE's contracted moving company to have voting equipment delivered and picked up from polling place no later than the day before the election and returned after the election.

(2) SOE

- (a) Provide Precinct Registers for each polling place location.
- (b) Provide Master CD compilation of registered voters for precinct advisors.
- (c) Provide certification of registered voters after book closing.
- (d) Prepare equipment, cabinets and routing of voting equipment delivery.
- (e) Provide laptop computer at each polling place.
- (f) Provide CD of voter file database for each polling place.
- (g) Provide poll worker Clerks with cell phones.
- (h) Provide Provisional Ballot envelopes and affidavit forms for each polling place.
- (i) Provide secrecy sleeves in a number and amount appropriate for each polling place.

I. Poll Workers

(1) Municipality

- (a) Contact, contract with and pay poll workers directly.
- (b) Schedule and notify poll workers of training classes.
- *(c) Reimburse SOE for expenses incurred for delivery and pick up of equipment to training locations.
- *(d) Reimburse SOE for expenses incurred in printing training material.
- *(e) Reimburse SOE for expenses incurred for trainers to train poll workers.
- *(f) Reimburse SOE for expenses incurred for contracted training locations.

(2) SOE

- (a) Provide the Municipality with a list of current poll workers.
- (b) Develop poll worker training schedule.
- (c) Plan and contract for training classes and locations.
- (d) Contract with and pay trainers to train poll workers.
- (e) Provide printed training materials for poll workers.

J. Election Day Support

(1) Municipality

- (a) Verify that all polling places are available to poll workers no later than 6:00 a.m. and open for voting promptly at 7:00 a.m. on Election Day.
- (b) Ensure that all polling places remain open until 7:00 p.m. or until all voters who are in line to vote at 7:00 p.m. have completed voting
- *(c) Reimburse SOE for all phone bank costs.

(2) SOE

- (a) Assist in finding poll worker replacements if needed.
- (b) Provide technical support personnel as needed.

- (c) Provide phone bank support to respond to poll workers and voters on Election Day.

K. Ballot Tabulation/Counting of Election Results

(1) Municipality

- (a) Deliver all voted ballots and other necessary election related items to a place designated by the SOE after the polling places have closed on Election Day.
- (b) Deliver all voting machine cartridges to a place designated by the SOE after the polling places have closed on Election Day.
- * (c) Reimburse the SOE for any staff overtime and other expenses in relation to the tabulation and processing of ballots on Election Day.
- (d) Act as member of Canvassing Board.

(2) SOE

- (a) Provide technical staff and required equipment to administer tabulation and election results.
- (b) Assist and act as a member of the Municipality's Canvassing Board (optional).
- (c) Post election results on SOE WEB site and provide the same to Channel 20.
- (d) Provide the Municipal Clerk with unofficial election results upon conclusion of tabulation and canvassing of ballots cast on Election Day.

L. Post Election Day

(1) Municipality

(2) SOE

- (a) Provide the Municipal Clerk with an official certification of election results.
- (b) Store all necessary election records and ballots until the expiration of retention period prescribed by statutes.
- (c) Process polling place affirmation forms.
- (d) Sort, inventory, pack and store all election materials for retention and disposition.
- (e) Notify voters of the disposition of their Absentee or Provisional Ballots after the determination by the Canvassing Board, as required by law.
- (f) Respond to public records requests regarding records kept on behalf of the Municipality.
- (g) Record voting history for each voter who voted on Election Day.

M. Audit

(1) Municipality

- (a) Provide that the Municipal Clerk will be responsible for the administration of the audit.
- * (b) Reimburse SOE for any staff overtime or other related expenses as may result from conducting the manual audit.

(2) SOE

- (a) Organize precinct information to allow the Municipal Clerk to randomly select the

race and precinct(2) that shall be audited.

- (b) Organize and prepare ballots for manual audit.
- (c) Provide SOE staff to conduct manual audit.
- (d) Ascertain and publically post manual audit result to SOE WEB site.

N. Recount

(1) Municipality

- (a) Provide that the Municipal Clerk will be responsible for the administration of the Recount, with support and guidance from the SOE.
- (b) Act as a member of the Canvassing Board.
- (c) Notify the candidates of the time and date of the Recount.
- (d) Post public notice(s) of the Recount with the time and location.
- (e) Cause to have the Recount recorded and minutes kept and approved by the Canvassing Board.
- (f) Review with the Canvassing Board and the counting teams the statutes and rules of the Division of Elections, specifically Rule 1S-2.031. Recount Procedures; and Rule 1S-2.027. Standards for Determining Voter's Choice on a Ballot.
- *(g) Reimburse the SOE for all staff salaries/overtime, facility and other expenses required to conduct the Recount.

(2) SOE

- (a) Post public notice(s) of the Recount with the time and location.
- (b) Test tabulating equipment as required by Sec. 101.5612, *Florida Statutes*.
- (c) Provide counting teams for examining out stacked ballots.
- (d) Prepare and organize ballots for Recount processing.
- (e) Tabulate ballots and provide professional staff for equipment operations.
- (f) Provide official certification as determined by the Canvassing Board.

* all items to be paid or reimbursed to the SOE will be paid by the Municipality within thirty (30) days of receipt of an invoice from the SOE with documentation verifying the charges.

5. INDEMNITY:

Each party to this agreement shall be liable for its own actions and negligence. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless SOE against any actions, claims or damages arising out of the Municipality's negligence in connection with its performance under this Agreement; and the SOE shall indemnify, defend and hold harmless the Municipality against any actions, claims or damages arising out of the negligence of the office of the SOE in connection with its performance under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth at Sec. 768.28, *Florida Statutes*. In no case shall such limits for the Municipality extend beyond \$100,000 for any one person or beyond \$200,000 for any judgment which, when totaled with all other judgments, arises out of the same incident or occurrence. These provisions shall not be construed to constitute agreement by either party to indemnify the other for such other's negligent, willful or intentional acts or omissions. Notwithstanding the above, the Municipality shall defend legal challenges relating to its municipal election and shall be fully responsible for all legal costs for such defense of the Municipality and the SOE. The Municipality shall be

responsible for damages, if any, assessed by virtue of such a lawsuit, up to the monetary limits provided for hereinabove without recourse to the SOE.

6. **TERM:**

This Agreement shall begin on the effective date January 1, 2010 and continue for a term of one year in order to cover Special Elections, if any. It shall be automatically renewed in accordance with the same terms and conditions as set forth herein upon the adoption of a Resolution by the Municipality requesting the SOE to conduct the municipality's election for the applicable year or may be modified by mutual agreement of the parties.

7. **CHANGE IN LAW:**

In the event any change in law abrogates or modifies any provisions or applications of this Agreement, the parties hereto agree to enter into good faith negotiations and use their best efforts to reach a mutually acceptable modification of this Agreement.

8. **NOTICES:**

All formal notices affecting the provisions of this Agreement may be delivered in person or be sent by facsimile, registered mail, or by a recognized overnight courier such as FedEx, to the individual designated below, until such time as either party furnishes the other party written instructions to contact another individual.

For the SOE:	For the Municipality:
Supervisor of Elections 240 S. Military Trail West Palm Beach, Florida 33415 Attention: Susan Bucher	City of Riviera Beach 600 W Blue Heron Boulevard Riviera Beach, FL 33404 Attention: Carrie E. Ward, MMC City Clerk

9. **SEVERABILITY:**

If any clause, section, or provision of this Agreement shall be declared to be unconstitutional, invalid or unenforceable for any cause or reason, or is abrogated or negated by a change in law, the same shall be eliminated from this Agreement, and the remaining portion of this Agreement shall be in full force and effect and be valid as if such invalid portions thereof had not been incorporated herein.

10. **NO MODIFICATION EXCEPT IN WRITING:**

This is the complete and final agreement between the parties. No representations other than those set forth herein shall be binding upon the parties. No modification of this agreement shall be effective unless submitted in writing and signed by both parties, or their duly authorized representatives.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective January 1, 2010.

As to the SOE:

SUPERVISOR OF ELECTIONS
PALM BEACH COUNTY

Susan Bucher
Susan Bucher

Date: 2/24/10

As to the MUNICIPALITY:

CITY OF RIVIERA BEACH

Thomas A. Masters
THOMAS A. MASTERS, MAYOR

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala Hanna Ryan
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 1/13/10

WITNESSES:

Rachel A. West
Rachel A. West

ATTEST:

C. E. Ward
CARRIE E. WARD, MMC

Palm Beach County Supervisor of Elections Office

Summary of Activity For Municipal Elections

	<u>Costs</u>	
<u>ABSENTEE BALLOTS</u>	<u>\$3.75</u>	Cost per AB Ballot processed
* Process Absentee Ballot Requests	0.45	
* Prepare and mail Absentee Ballots (machine use, staff time, voter file, postage), record/verify absentee ballot returns, prepare/opening of absentee ballots for tabulation	2.25	
* Provide absentee voting - prep and mailing	1.00	
* Notification to Absentee Ballot and provisional voters on the disposition of Canvassing Board	0.05	
<u>MUNICIPAL PACKAGE</u>	<u>\$2,338</u>	Cost per Municipal
* Arrange for translating, printing and recording of audio ballot	127	
* Provide polling place supplies – signs, cones, tables, chairs, etc.	25	
* Assist in finding poll worker replacements	54	
* Develop master CD compilation for precinct advisors	72	
* Provide certification of registered voters after book closing	60	
* Prepare Absentee Ballot, Edge layout and Sample Ballot	264	
* Publish legal notices for L&A testing, canvass and post elections and news releases on book closing, absentee ballots and other election related news	180	
* L&A test - development of a unique test script, manual ballot marking, pretesting for comparisons and pulling equipment for public tests	193	
* Election Day support (SOE staff and phone bank)	133	
* Election night support (SOE staff, vote tabulation and vote certification)	710	
* Assist municipality with canvass of Absentee Ballots, schedule canvass and act as member of Canvassing Board	290	
* Post election results on WEB site and Channel 20	94	
* Interface with candidates, press, city staff, city attorneys regarding Election Law	121	
* Conduct mandatory audit post election	14	
<u>PRECINCT SERVICES</u>	<u>\$155</u>	Cost per precinct
* Copy of current polling place contract	0.15	
* Provide Clerks with cell phone, precinct registers, affidavits, bags, etc.	20.00	
* Delivery and Pick up of voting equipment to training locations	8.46	
* Prepare precinct scanners and ADA Touch screen equipment	3.32	
* Prepare equipment cabinets and routing of voter equipment	14.65	
* Copy of current poll workers	0.15	
* Create and retain voting history (post elections)	25.61	
* Plan training class locations/train pollworkers/provide printed training materials	68.33	
* Provide laptop computers for Precinct Advisors	13.93	
* Provide CD of voter file database for Precinct Advisors	0.50	
<u>OPTIONAL SERVICES</u>		
* Registered Voters List, Mailing Labels, checks and verifications		
* Petition Signatures		
* EV Ballot printing costs (Runbeck BOD)		
* Early voting support		
* Run-offs, re-counts, costs, location, procedures,		
* Court challenges, legal expenses		
* Hire temporary staff as required		

PALM BEACH COUNTY SUPERVISOR OF ELECTIONS

Municipal Elections Charges

EXAMPLE OF MUNICIPAL COSTS *

MUNICIPALITY	MUNICIPAL PACKAGE	ABSENTEE BALLOTS		PRECINCTS		TOTAL COST
		# ballots	@3.75	# precincts	@ \$155	
HAVERHILL	\$2,338	40	\$150	4	\$620	\$3,108
RIVIERA BEACH	\$2,338	1,209	\$4,534	16	\$2,480	\$9,352
BOCA RATON	\$2,338	3,304	\$12,390	47	\$7,285	\$22,013

* The volume of Absentee Ballots and precincts is based on 2009 election data

* Costs do not include costs currently absorbed by municipalities i.e.: pollworker payroll, precinct rentals, advertising, security, and equipment delivery

RESOLUTION NO. 15-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, DIRECTING THE CITY CLERK TO PLACE A REFERENDUM QUESTION ON THE OFFICIAL BALLOT FOR THE MARCH 8, 2011 MUNICIPAL ELECTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE AND OTHER PURPOSES.

WHEREAS, the Committee for a Better Riviera Beach ("CBRB" hereafter) circulated a referendum petition to amend the City of Riviera Beach's Charter by repealing changes made to Article VII, Section 3.5, which were approved at the November 2, 2010 General Election; and

WHEREAS, on January 25, 2011, the Supervisor of Elections certified that the CBRB's petition received 2,207 signatures of qualified electors of the City of Riviera Beach (a copy of said certification is attached hereto and incorporated herein as Exhibit "A"); and

WHEREAS, on February 1, 2011, the City Clerk certified the CBRB's petition as insufficient for the reasons stated in said certificate (a copy of said certificate is attached hereto and incorporated herein as Exhibit "B"); and

▪ **WHEREAS**, on February 1, 2011, the CBRB submitted a written request for the City Council to review the petition and certificate from the City Clerk; and

• **WHEREAS**, on February 2, 2011, the City Council reviewed the CBRB's petition and certificate of the City Clerk; and

WHEREAS, the City Council has determined that the CBRB's petition is consistent with Florida Statutes, Chapters 166 and 101 and therefore, the City Clerk's certificate of insufficiency is hereby disapproved; and

WHEREAS, the City Council has determined that placing the proposed charter amendment from CBRB's petition on the March 8, 2011 Municipal Election ballot serves a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. That the foregoing WHEREAS recitals are hereby adopted as true and correct and specifically made part of this Resolution.

SECTION 2. That on the January 26, 2011, the CBRB presented a legally certified petition signed by at least ten (10) percent of the registered electors as of the last preceding municipal general election.

SECTION 3. That pursuant to section 166.031, Florida Statutes, the City Clerk and the Supervisor of Elections for Palm Beach County are hereby directed to take all action necessary to have the CBRB's referendum Charter amendment placed on the March 8, 2011 official ballot for the Municipal Election and have printed the necessary absentee ballots for use.

SECTION 4. That pursuant to section 101.161, Florida Statutes, the substance and title of the CBRB's referendum Charter amendment shall appear on the March 8, 2011 official ballot for the Municipal Election as follows:

CHARTER AMENDMENT QUESTION

Repeal of November 2010 Charter amendment which imposed restrictions on use of City Marina

Shall the City of Riviera Beach's Charter be amended to repeal the changes made to Article VII, Section 3.5, which were approved at the November 2, 2010 General Election?

Yes _____
No _____

SECTION 5. Should any section or provision of this Resolution or portion hereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remainder of this Resolution.

SECTION 6. That this resolution shall take effect immediately upon its passage and approval by the City Council.

PASSED AND APPROVED this 3 day of February, 2011.

[Signatures on following page]

APPROVED:

Thomas A. Masters
THOMAS A. MASTERS
MAYOR

Dawn S. Pardo
DAWN S. PARDO
CHAIRPERSON

ATTEST:

Carrie E. Ward
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

Judy L. Davis
JUDY L. DAVIS
CHAIR PRO TEM

Billie E. Brooks
BILLIE E. BROOKS
COUNCILPERSON

Cedrick A. Thomas
CEDRICK A. THOMAS
COUNCILPERSON

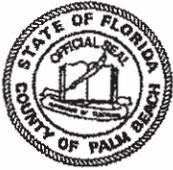
Shelby L. Lowe
SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: Davis
SECONDED BY: Brooks
D. PARDO Aye
J. DAVIS Aye
B. BROOKS Aye
C. THOMAS Aye
S. LOWE Nay

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala H. Ryan
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 2/2/11



Palm Beach County

SUSAN BUCHER
Supervisor of Elections

240 SOUTH MILITARY TRAIL
WEST PALM BEACH, FL 33415
POST OFFICE BOX 22309
WEST PALM BEACH, FL 33416

TELEPHONE: (561) 656-6200
FAX NUMBER: (561) 656-6287
WEBSITE: www.pbcelections.org

RECEIVED

JAN 27 2011

CITY ATTORNEY'S OFFICE

CERTIFICATION

I, SUSAN BUCHER, SUPERVISOR OF ELECTIONS, for Palm Beach County, Florida, do hereby certify that 2761 signatures were submitted on the Petition Calling for An Initiative Election to decide should the City of Riviera Beach Charter be amended.

BALLOT SUMMARY: Shall the City of Riviera Beach's Charter be amended to repeal the changes made to Article VII, Section 3.5, which were approved at the November 2, 2010 General Election?

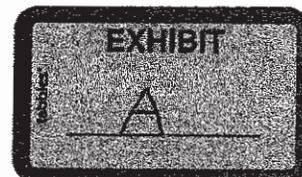
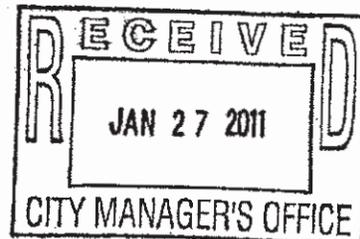
Of the 2761 signatures submitted, 2207 are qualified electors of the City of Riviera Beach, Florida.

Signed, this the 25th, day of January, 2011.

Susan Bucher

SUSAN BUCHER
SUPERVISOR OF ELECTIONS
PALM BEACH COUNTY, FLORIDA

(SEAL)





CITY OF RIVIERA BEACH

600 WEST BLUE HERON BLVD. • RIVIERA BEACH, FLORIDA 33404
(561) 845-4090 WWW.RIVIERABCH.COM FAX (561) 840-3438

DESK OF
CITY CLERK
CARRIE E. WARD,
MASTER MUNICIPAL CLERK

CERTIFICATION

I, Carrie E. Ward, do hereby certify of the 2207 qualified signatures as certified by the Palm Beach County's Supervisor of Elections on January 25th to place an amendment to the City's Charter to repeal the changes made to Article VII, Section 3.5 which were approved at the November 2, 2010 General Election — 758 are deemed to be insufficient due to non compliance with the procedure as intended which is outlined under the City's Charter Article IV Initiative Referendum Section 2.

Furthermore, it is found that 20 individuals, other than the five sworn petition committee members, also took an oath and had their signatures notarized affirming them as a petition committee member.

Done this 1st day of February, 2011.

CARRIE E. WARD, MMC
CITY CLERK
CITY OF RIVIERA BEACH
PALM BEACH COUNTY, FL

