



CITY OF HALLANDALE BEACH, FLORIDA

**Agreement for Transfer and Disposal of Solid Waste
and Processing of Single Stream Recyclables**

This Agreement is made and entered into this 6th day of December, 2010, by and between the City of Hallandale Beach, a political subdivision of the State of Florida (hereinafter referred to as "City"), and Choice Recycling Services of Broward, Inc. (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the City has the responsibility for the safe, environmentally sound disposal of Solid Waste; and

WHEREAS, on October 20, 2010 the City Commission authorized staff to consider the City's short-term disposal options for municipal solid waste and recycling and authorize the City Manager to execute a short-term agreement with the recommended vendor in the best interest of the City, recommended vendor for municipal solid waste being Choice Recycling Services of Broward, Inc.; and

WHEREAS, the City has selected the Contractor, pursuant to its offer and the Contractor's response thereto, in reliance on the skill, expertise, and past successful experience in conducting transport, disposal and processing services in accordance with the terms, conditions, and provisions of this Agreement; and

WHEREAS, the City desires to contract the services of the Contractor for the performance of transport, disposal and processing services and the Contractor desires to perform such services as provided herein;

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, the City and the Contractor mutually agree that they shall comply with and be bound by all of the terms of this Agreement.

CITY OF HALLANDALE BEACH, FLORIDA

**Agreement for Transfer and Disposal of Solid Waste
and Processing of Single Stream Recyclables**

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ARTICLE 1 DEFINITIONS

For the purpose of this Agreement, the definitions contained in this Section shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural shall include the singular, and use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

Acceptable Waste means commercial Solid Waste, household Solid Waste, C&D Debris, Yard Trash and recovered materials, excluding, at the City's option, Class III waste, C&D debris and Yard Trash diverted by the City to be managed otherwise. Acceptable Waste shall not contain any (A) infectious waste; (B) Hazardous Waste; or (C) garbage, refuse, rubbish or other waste material that is prohibited from being received, managed or disposed of at the Facility by federal, state, or local law, regulation, rule, code ordinance, order of by the applicable authorizations.

Administration Fee means the fee per ton paid by Choice to the City for all tons delivered by Licensed Haulers that originated within the municipal boundaries of the City.

Agreement means this legal agreement executed by the City and the Contractor, which describes the terms and conditions under which the Contractor will provide transport, disposal and processing services.

Applicable Law means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, Permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of the Agreement, and relate in any manner to the performance of the Contractor or City under this Agreement.

Commission means all the elected City Commissioners and Mayor of the City of Hallandale Beach, Florida.

Change in Law means (i) the adoption, promulgation or modification after the effective date of this Agreement of any Applicable Law that was not adopted, promulgated or modified on or before the effective date, or (ii) the imposition of any conditions in connection with the issuance, renewal or modification of any Permits, license or approval after the effective date, which in the case of either (i) or (ii) establishes requirements that directly and substantially affect the Contractor's cost of performance under this Agreement. Except as provided herein, a change in any federal, state, City or other tax law or workers' compensation law shall not be a Change in Law. A Change in Law does not include any increase in the amount of any host fee or similar fee paid by the Contractor to the community where the Facility, Materials Recovery Facility or Disposal Facility is located.

Class I Landfill means a permitted landfill that receives Class I Waste.

Class I Waste means Solid Waste that is not Hazardous Waste, and that is not prohibited from disposal in a lined landfill under Rule 62-701.300, F.A.C.

Class III Waste means Yard Trash, C&D Debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by FDEP that are not expected to produce leachate which poses a threat to public health or the environment.

Commencement Date means the date when the Contractor begins to perform the services required in this Agreement, or December 6, 2010.

Construction and Demolition (C&D) Debris is as defined by Rule 62-701.200(24), F.A.C.

Contractor means the person, business, firm, corporation, organization or agency with whom the City enters into this Agreement.

City means the City of Hallandale Beach, Florida, or its authorized representative.

City Administrator means the City Manager for the City or his or her designee.

Disposal Facility means the Waste Services, Inc. (DBA Omni Waste of Osceola County, LLC) J.E.D. Landfill located at 1501 Omni Way, St. Cloud, Florida 34773, the permitted facility to which the Contractor shall transport the City's Acceptable Waste for disposal or any other governmentally licensed/permitted Class I disposal site chosen by Contractor with prior written approval by the City Administrator, which shall not be unreasonably withheld.

Facility means the location at 1899 Southwest 31st Avenue, Pembroke Park, Florida 33009, which is owned and operated by the Contractor where the City's Acceptable Waste and Single Stream Recyclables shall be delivered to and accepted for transfer and disposal or processing.

FDEP means the Florida Department of Environmental Protection.

Force Majeure Event means any event or condition beyond the control of the Contractor that has a direct and material adverse effect on the obligations and duties of the Contractor under this Agreement; and which prevents the Contractor from fulfilling the Contractor's duties and/or obligations under this Agreement, in whole or in part; and which is not caused by the Contractor or the result of any willful act, negligence, or lack of reasonable diligence by the Contractor.

Hazardous Waste means a Solid Waste as defined by Chapter 62-730, F.A.C., or 40 Code of Federal Regulations 261, or both, as either may be amended from time to time to the extent either or both is applicable to the disposal of waste in Florida.

Licensed Haulers means those private haulers who are permitted to conduct collection and hauling within the City and that are directed to dispose of all Acceptable Waste that originated within the municipal boundaries of the City pursuant to this Agreement.

Materials Recovery Facility (MRF) means a facility at which recyclable materials are delivered for processing and marketing.

Operating Day means any day the Contractor's Facility is open for receipt of Acceptable Waste and Single Stream Recyclables.

Operating Hours means the hours during which the Contractor shall accept the City's Acceptable Waste and Single Stream Recyclables at the Facility.

Operating Month means each calendar month following the Commencement Date of this Agreement.

Per Ton Service Fee means the price per ton that will be paid to the Contractor for the transport and disposal of the City and Licensed Haulers' Acceptable Waste that is delivered to the Contractor.

Permits means any and all governmental permits, licenses, authorizations and approvals required for the performance of the City and Contractor's obligations under this Agreement.

Single Stream Recyclables means all residential plastic containers (#1-7); flint, amber and green glass bottles, jugs and jars; aluminum cans; steel cans; newspapers; corrugated cardboard; and mixed paper including, but not limited to, magazines, telephone books, junk mail and paperboard (cereal boxes, etc.) delivered as recyclables by the City and not Licensed Haulers delivery of the same.

Solid Waste means garbage, rubbish, refuse, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

Subcontractor means any separate corporation, firm, individual, joint venture or combination thereof (other than employees of the Contractor), who or which contracts with the Contractor to furnish or actually furnishes labor, materials or equipment for the performance of this Agreement.

Tare Weight means the weight of the delivering vehicle, including fuel.

Term means the term or duration of this Agreement.

Ton means 2,000 pounds.

Unacceptable Waste means any Solid Waste that cannot legally be disposed at a Class I Landfill under Applicable Laws. Unacceptable Waste includes: a) prohibited waste such as hazardous waste, asbestos, biomedical waste, mercury-containing devices, radioactive waste, sludge, tires and liquid waste as defined in Rule 62-701.300 and 62-701.520, F.A.C., or any waste not permitted to be accepted under the Facility's licensing.

Yard Trash means vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps.

ARTICLE 2 TERM

Services under this Agreement shall commence on December 6, 2010 ("Initial Term"). The Initial Term of the Agreement shall expire at the end of the day on December 31, 2011. At the option of the City, and with the concurrence of the Contractor, this Agreement may be renewed for a successive five (5) year term ("Renewal Term"), under mutually agreed upon terms and conditions, provided the Commission approves the renewal at least sixty (60) days prior to the end of the Initial Term.

ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES

3.1 Scope of Contractor's Services

In accordance with the requirements in this Agreement, the Contractor shall: (a) accept and weigh Acceptable Waste delivered by the City and Licensed Haulers for disposal at the Facility; (b) load and transport the City and Licensed Haulers' Acceptable Waste from the Facility; (c) dispose of that Acceptable Waste at the Disposal Facility; (d) accept and weigh Single Stream Recyclables from the City at the Facility; (e) load and transport the City's Single Stream Recyclables from the Facility; and (f) process and/or market those Single Stream Recyclables directly from the Facility or at a secondary MRF. Except as otherwise provided herein, the Contractor shall, at its expense, provide all labor, services, supervision, materials, and equipment necessary to accomplish these tasks throughout the Term.

3.2 Commencement of Services

Within fourteen (14) days of the Commencement Date, a joint meeting shall be held with representatives of the Contractor, the City, and other parties that may be affected by the Contractor's activities under this Agreement.

3.3 Prohibitions

Under no circumstances shall Contractor's activities under this Agreement cause: (a) pollution (b) litter; or (c) nuisance conditions.

3.4 Regulatory Compliance

The Contractor shall manage all of the City's Acceptable Waste and Single Stream Recyclables in strict conformance with the provisions of all Permits, Applicable Laws, and this Agreement. The Contractor shall respond promptly to all citations, warning letters, notices of violation, emergency orders and other enforcement actions (collectively "citations") concerning all of the Contractor's activities. The Contractor shall pay all costs of investigating and responding to all citations, shall pay all costs of correcting deficiencies and achieving compliance with all citations, and shall pay any fines and/or penalties assessed as a result of Contractor's non-compliance.

3.5 Customer and Community Relations

All customer and public complaints and inquiries (collectively "complaints") about the Contractor's operations shall be the sole responsibility of the Contractor.

3.6 Contractor's Personnel and Equipment

The Contractor shall provide all equipment and personnel necessary to perform the Contractor's duties in a safe, timely and efficient manner. The Contractor shall make arrangements for, or have access to, additional equipment and workers, as necessary, to ensure that the receipt, transport and disposal of Acceptable Waste and the receipt, processing and marketing of Single Stream Recyclables is not interrupted.

3.7 Subcontractors

The Contractor may utilize Subcontractors in the performance of the work required hereunder. The Contractor shall indemnify the City on behalf of the acts of its Subcontractors in the processing and transportation of Acceptable Waste. The Contractor shall be responsible for the acts and omissions of its Subcontractors and for all persons that are directly or indirectly employed by the Subcontractors.

Nothing in this Agreement shall create any contractual relationship between any Subcontractor and the City or any obligation on the part of the City to pay or see to the payment of any monies which may be due to any Subcontractor. No subcontract shall relieve the Contractor of its responsibilities under this Agreement.

3.8 Payment of Expenses

Except as otherwise specifically provided for herein, the Contractor shall be solely responsible for and shall pay all costs and expenses incurred in the performance of its duties under this Agreement.

3.9 Permits and Licenses

The Contractor shall secure, renew, modify if necessary, and pay for all Permits, licenses, inspections, and other governmental charges that are necessary for the Contractor's activities under this Agreement.

3.10 Taxes, Charges and Levies

The Contractor shall pay all sales, consumer, use, and other taxes and fees required by law for the Contractor's activities under this Agreement. The Contractor shall pay any host fee or similar fee imposed by the community where the Facility, MRF and/or Disposal Facility are located. The Contractor may pass through any of the fees referenced in this paragraph that are imposed as a result of a Change in Law as outlined in Section 5.7 of this Agreement.

3.11 Maintenance of Records

The Contractor shall develop and implement an organized system for keeping records concerning the Contractor's activities under this Agreement. At a minimum, the Contractor's records shall include copies of (a) all monthly reports; (b) scale house calibration reports; (c) all Permits required for the Contractor's activities under this Agreement; (d) all citations, as described in Section 3.4; (e) all correspondence to and from FDEP and other regulatory agencies directly or indirectly concerning the Contractor's activities under this Agreement; and (f) any other documents necessary to confirm that the Contractor has performed in accordance with this Agreement.

The Contractor's above records and documentation shall be retained by the Contractor for a minimum of five (5) years from the date of termination of this Agreement. The City and its authorized agents shall have the right, during normal business hours, to audit, inspect, and copy all such records and documentation as often as the City deems necessary during the Term of this Agreement and during the period of five (5) years after the final termination of this Agreement or such longer time as may be permitted by Applicable Law. The right to audit,

inspect and copy records and documents shall be at the City's sole expense and shall not extend to confidential or proprietary information.

3.12 Scale House Operations

The Contractor shall perform all required calibration of the scales or shall arrange for such services to be performed by an independent contractor. The scales shall be calibrated at least semiannually, or more frequently as required by law or permit. Documentation shall be recorded as outlined in Section 3.11 of this Agreement.

3.13 Tare Weights

The Contractor shall be allowed to use the Tare Weight of City and Licensed Hauler's vehicles to determine load weights.

The Contractor shall establish the Tare Weight of the vehicles at the beginning of the Contract Term and shall be able from time to time update such Tare Weights as appropriate or as requested by the City.

3.14 Monthly Reports

The Contractor shall provide monthly reports to the City under this agreement. The report shall include the following for all tons delivered to the Facility that originated within the municipal boundaries of the City:

1. The number of Acceptable Waste tons delivered for the month listed by the delivering party's name (i.e. City or Licensed Hauler by name) and the number of transactions for each delivering party,
2. The number of Single Stream Recyclables tons delivered for the month by the City and the number of transactions, and
3. The end markets and/or MRFs where Single Stream Recyclables were sold and/or delivered to.

3.15 Communications Between the City and Contractor

Working in cooperation with the City, the Contractor shall develop, implement and maintain a system that will allow the Contractor and the City to communicate with each other during Operating Hours. The Contractor's proposed communications system shall be subject to the City Administrator's prior approval.

3.16 Schedule of Operations

The Contractor shall accept the City's Acceptable Waste and Single Stream Recyclables at the Facility between 7:00 a.m. and 5:00 p.m., Monday through Friday and between 7:00 a.m. and noon on Saturdays, excluding New Year's Day, July 4th, Thanksgiving Day and Christmas Day. The Contractor and the City may mutually agree to adjust Operating Hours based on operational needs and/or regulatory requirements. Additional costs shall be negotiated and mutually agreed upon in advance.

The Contractor shall have adequate equipment and personnel at the Facility and appropriately trained personnel on duty or available at all times when the City and Licensed Hauler's Acceptable Waste and the City's Single Stream Recyclables are received at the Facility.

3.17 Disposal Facility

The Contractor shall accept all of the Acceptable Waste that originated within the municipal bounds of the City delivered by the City and Licensed Haulers and shall dispose of all such Acceptable Waste at the Disposal Facility. The Contractor shall not take the City or Licensed Hauler's Acceptable Waste to any other disposal facility unless the City gives its prior written approval for use of a different disposal facility. The City may not unreasonably withhold its approval of any other disposal facility.

In the event of an emergency at the Disposal Facility that prohibits the Contractor from disposing of Solid Waste at the Disposal Facility, the Contractor shall notify the City immediately and gain verbal approval by the City Administrator to dispose of the City's Solid Waste at an alternative Class I Landfill. If the emergency situation is not rectified within forty-eight (48) hours, the Contractor must obtain written approval by the City Administrator to continue disposing of the City's Solid Waste at the alternative Class I Landfill.

ARTICLE 4 CITY'S RESPONSIBILITIES

4.1 Delivery of Acceptable Waste

To the extent allowed by law, the City shall deliver, or direct delivery of, all Acceptable Waste within its lawful control to the Facility, excluding Class III waste, C&D debris and Yard Trash diverted by the City to be managed otherwise.

Nothing in this Agreement shall be construed to require the City to deliver or direct delivery of a minimum amount of Acceptable Waste to the Contractor.

4.2 Unacceptable Waste

The City shall not knowingly deliver any Unacceptable Waste to the Facility. If Unacceptable Waste is accidentally delivered to the Facility by the City, the Contractor shall notify the City Administrator immediately and the City shall be given the opportunity to remove the Unacceptable Waste at its expense. If the City is not able to remove the Unacceptable Waste within twenty-four (24) hours of notification, the Contractor may remove the Unacceptable Waste from the Facility and dispose of it in a lawful manner at the City's expense. The City is not responsible for Unacceptable Waste delivered to the Facility by Licensed Haulers.

All Unacceptable Waste claims made by the Contractor must be documented with a photograph and written summary including the truck number that delivered the load and the types of Unacceptable Waste found in the load.

4.3 Title to Waste

The City shall possess right, title, and ownership of all Solid Waste and Single Stream Recyclables that are delivered to the Facility by the City. All right, title, ownership, and responsibility for City-delivered Acceptable Waste and Single Stream Recyclables shall pass to the Contractor when the materials are deposited at the Facility.

ARTICLE 5 PAYMENT PROVISIONS

5.1 Contractor's Service Fees

After each Operating Month, the Contractor shall invoice the City and Licensed Haulers the Per Ton Service Fees as stipulated in Exhibit 1 of this Agreement. The Service Fees are intended to fully and completely compensate the Contractor for all of the Contractor's duties, obligations and responsibilities under this Agreement. The Per Ton Service Fees will be paid for each Ton of Acceptable Waste accepted, transported and disposed of by the Contractor pursuant to this Agreement, as recorded by the Contractor's scale house. The City is responsible only for payment of City-delivered materials. The terms and conditions of payment for materials delivered by Licensed Haulers is the sole responsibility of the Licensed Haulers.

5.2 Administrative Fee

The Contractor shall pay to the City an Administrative Fee per ton for all Licensed Hauler tons delivered to the Facility that originated within the municipal boundaries of the City, as stipulated in Exhibit 1 of this Agreement.

5.3 Service Fee Reductions

The amount of the Service Fee to be remitted to the Contractor by the City each month shall be reduced by the amount of any liquidated damages pursuant to Section 7.4.

5.4 Procedures for Payment of Service Fees

Each month, the Contractor shall calculate the amount of the Service Fee that is owed to the Contractor by the City, based on the provisions of this Agreement, and shall submit an invoice to the City for payment.

If the City disagrees with the amount stated in the invoice, the City shall notify the Contractor of such dispute. The existence of a dispute shall not delay payment of undisputed amounts. Payment to the Contractor of undisputed amounts will be made within thirty (30) days after the date the invoice is received by the City. In the event of a disputed amount, the parties shall attempt to discover the cause of any discrepancy between the parties' calculations, and if a resolution is not timely made, the parties shall resolve the dispute pursuant to Section 8.7 of this Agreement.

5.5 Procedures for Payment of Administrative Fee

The Contractor shall calculate the amount of the Administrative Fee that is owed to the City at the end of each month and shall pay the City that amount no later than forty-five (45) days from last day of every month for activity during that month,

5.6 Adjustments to Service Fees

The Per Ton Service Fees shall remain fixed for the initial term of this Agreement until the end of the day on December 31, 2011. If the Agreement is renewed, Service Fees shall be adjusted according to the terms hereunder for the Renewal Term.

5.7 Service Fee Adjustments

On January 1, 2012 and January 1 of each subsequent Contract Year of this Agreement, the Contractor's Per Ton Service Fees may be adjusted according to the following methodology as further explained in Exhibit 2: ninety-five percent (95%) of the Per Ton Service Fees shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index for All Urban Consumers South Urban for all items, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor, 1984-82 = 100 (CPI) for the twelve (12) months ending on the preceding September 30th.

Five percent (5%) of the Per Ton Service Fees shall be adjusted annually based on the percent change in the Lower Atlantic (PADD 1C) No. 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Sales by All Sellers (Cents per Gallon) Fuel Index, published by the U.S. Department of Energy (DOE) for the previous twelve (12) months ending on the preceding September 30th.

The total Per Ton Service Fee adjustments each year may not exceed three percent (3%) of the previous year's Per Ton Service Fees.

If the CPI or U.S. DOE Fuel Index is discontinued or substantially altered, the City and Contractor may mutually select another relevant price and/or fuel index published by the United States Government or by a reputable publisher of financial and economic indices.

5.8 Legal Changes Adjustment

After execution of this Agreement, if there is a Change in Law which has the effect of establishing requirements that have caused or will cause a direct increase or a direct decrease in the Contractor's cost of performing its obligations under this Contract that are encompassed within the Service Fees (in comparison to that cost that would otherwise have existed), then the Contractor shall notify the City and request an appropriate adjustment to the Service Fees. The Contractor shall provide the City with as much detail as possible as to the nature of the Change in Law, the basis for the assertion that such change has had or will have an effect on cost, the dollar amount per Ton of Acceptable Waste associated with such effect, and the underlying calculation of the change being sought in the Service Fees. Upon receipt of complete information, the City shall promptly review the information and, within sixty (60) days of such receipt, shall respond to the requesting party in writing, stating whether it agrees or disagrees with the Contractor's request. If the City agrees, then the City and Contractor shall promptly meet and adjust the Service Fees in accordance with the request. If the City disagrees with the Contractor's request, then the City and the Contractor shall promptly attempt to resolve the dispute pursuant to Section 8.7.

If the Contractor requests an increase in the Service Fees as a result of a Change in Law, the City shall be entitled to audit the Contractor's financial and operational records related to the Contractor's request in order to verify the impact of the Change in Law on the Contractor's costs.

If an adjustment to the Service Fees are made as a result of a Change in Law, the adjustment shall be applied commencing on the date the Service Fees change is agreed to by the parties or retroactively to the date when non-binding arbitration pertaining to the dispute is scheduled or a law suit pertaining to the dispute is filed, whichever date is earlier (the "adjustment date").

ARTICLE 6 DEFAULT AND TERMINATION

The occurrence of any one or more of the following shall constitute a breach of this Agreement by the Contractor:

- a) The Contractor fails to comply with any term, condition or provision of this Agreement;
- b) The Contractor fails to perform any of the duties, obligations or services required of the Contractor in this Agreement in the manner or within the time required by the Agreement, or the Contractor permits a breach of this Agreement or any of its duties, liabilities or obligations there under;
- c) The Contractor abandons this Agreement or the services to be provided under the Agreement;
- d) The Contractor, or any of the companies which make up the Contractor, file a voluntary petition in bankruptcy, or are adjudicated as bankrupt, or insolvent or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or any relief under any present or future statute or rule relating to bankruptcy, insolvency, or other relief for debtors, whether federal or state, or agree or consent to, or acquiesce in the appointment of, a trustee, receiver, conservator or liquidator, for the Contractor, or any of the companies which make up the Contractor;
- e) The Contractor violates any law, statute, rule, regulation, ordinance, decree or order applicable to this Agreement or the services and/or materials provided by the Contractor to the City pursuant to this Agreement; or
- f) The Contractor breaches any warranty in this Agreement, or any representation by the Contractor in the Agreement is materially untrue.

Each such default shall constitute a material breach of the Agreement. In the event of any such default by the Contractor, the City Administrator shall notify the Contractor in writing of the breach. If within a period of fifteen (15) days the Contractor has not cured the conditions considered to be a breach of this Agreement, the City has the authority to terminate this Agreement, in whole or in part, upon the giving of written notice to the Contractor specifying the nature of such default, which termination shall be "for cause." There shall not, however, be any default or breach of the Agreement if the default, failure to perform or breach by the Contractor is caused by the occurrence of a Force Majeure Event, so long as the Contractor used and continues to use reasonable efforts to overcome and/or minimize the effect of the Force Majeure Event, and so long as the Contractor promptly and diligently proceeds to cure the default or breach as soon as reasonably possible.

As to any monetary defaults by the Contractor under this Agreement, the Contractor shall have ten (10) days, from the date of receipt of written demand from the City, in which to cure any such monetary default(s), failing which, the City may immediately terminate the Agreement by giving the Contractor written notice of termination, as set forth above.

In the event of the termination of the Agreement, the City shall pay to the Contractor any and all sums due, owing and unpaid to the Contractor by the City through the date of termination, less any and all sums owed by the Contractor to the City, and less any and all offsets the City may have or claim, and the Contractor shall execute and deliver to the City in exchange for that final

payment a general release of the City, and its officers, employees, representatives and agents, and the Contractor shall have no right to receive any further payments pursuant to such Agreement and any such payment to the Contractor shall constitute Contractors full and final compensation under the Agreement.

ARTICLE 7 DAMAGES, INDEMNIFICATION AND DEDUCTIONS

The provisions of this Article 7 shall survive the termination of this Agreement.

7.1 Liability

The Contractor shall be liable for those injuries or conditions that are caused by or result from the Contractor's failure to transport or dispose of Solid Waste and Single Stream Recyclables in accordance with the terms of this Agreement.

7.2 Indemnification

To the fullest extent permitted by law, both parties shall indemnify and hold harmless each other, its officers and employees from liabilities, damages, losses and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the persons employed or utilized by each party in the performance of this Agreement.

7.3 Damages

Except where otherwise specifically provided, the measure of damages to be paid by the Contractor to the City due to any failure by the Contractor to meet any of its obligations under this Agreement shall be the actual damages incurred by the City. Such damages shall include, but shall not be limited to, the following:

- a) If the City terminates this Agreement because of an event of default by the Contractor, the Contractor shall be liable to the City for all actual damages incurred by the City as a result of the Contractor's default. In no event shall the City recover more than its actual damages.
- b) If, after notice to the Contractor and failure to cure pursuant to Article 6 of this Agreement, the City shall have the right to take such actions as were required to be taken by the Contractor (including but not limited to contracting with third parties) and the Contractor shall pay the City all costs and expenses reasonably incurred by the City. The foregoing shall apply regardless of whether the City terminates this Agreement and shall be in addition to any other damages for which the Contractor may be liable pursuant to other sections of this Agreement.
- c) If the Contractor fails to comply with any Applicable Laws, the Contractor shall pay to the City the following: (i) all lawful fines, penalties and forfeitures charged to the City by any judicial orders or by any governmental agency responsible for the enforcement of Applicable Laws; and (ii) the actual costs incurred by the City as a result of the failure to comply with Applicable Law, including any costs incurred in investigating and remedying the conditions that led to the failure to comply with the Applicable Law.

7.4 Liquidated Damages

If the Contractor fails to open and operate the Facility as required by this Agreement, with exception for reason of a Force Majeure Event, or disposes of any Single Stream Recyclables that were segregated for recovery, the City Administrator shall give notice of the failure to the Contractor. If the Contractor fails to remedy the failure within one (1) Operating Day of notice from the City Administrator, deductions in the amount of one-thousand dollars (\$1,000) per incident shall be assessed against the Contractor until such time as the City Administrator determines that the Contractor has remedied the failure.

ARTICLE 8 GENERAL CONDITIONS

8.1 Insurance Coverages Required of the Contractor

Certificates of all insurance required from the Contractor shall be filed, with the City as the certificate holder, before services under this Agreement commence. The insurance indicated on the certificate shall be subject to the City's approval for adequacy and protection. The certificate will state the types of coverage provided, limits of liability, and expiration dates. The City shall be identified as an additional named insured for each type of coverage required, with a hold harmless agreement in favor of the City, where applicable.

The certificate should also indicate if coverage is provided under a "claims made" or "per occurrence" form. If any coverage is provided under a claims made form, the certificate will show a retroactive date, which should be the same date of the Agreement (original if Agreement is renewed) or prior. If the initial insurance expires prior to the completion of the work, renewal certificates and/or required copies of policies shall be furnished thirty (30) days prior to the date of their expiration.

In the event any insurance is cancelled for any reason the Contractor shall provide notice to the City immediately.

The Contractor and its Subcontractors shall maintain insurance of types for not less than the limits specified below, or greater if required by law. It shall be the responsibility of the Contractor to ensure that all of its Subcontractors meet these requirements.

TYPE OF INSURANCE COVERAGE	LIMIT REQUIREMENTS
Workers Compensation and Employer's Liability	Statutory
Comprehensive General Liability, Bodily Injury and Property Damage	\$1,000,000 single limit, per occurrence/ \$2,000,000 general aggregate
Automobile Liability	\$1,000,000 single limit, per occurrence
Comprehensive Umbrella	\$5,000,000 per occurrence
Pollution Liability/Environmental Impairment During the Course of Processing or Transportation	\$10,000,000 per occurrence

8.2 Assignment

No individual or firm shall assign, in whole or in part, any interest in this Agreement, and shall not transfer any interest in the same without prior written consent of the City. Such approval shall not be unreasonably withheld by the City.

The City and the Contractor shall bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement. Any assignment or transfer by the Contractor of its interest in this Agreement without the written consent of the City shall be null and void. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or the Contractor, nor shall it be construed as giving any right or benefit hereunder to anyone other than the City or the Contractor.

8.3 Governing Law

This Agreement will be governed, interpreted, and construed in accordance with the laws of the State of Florida. The venue for any and all legal proceeding regarding this Agreement shall be in Broward County, Florida. Jury trial is waived.

8.4 Non-waiver

The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or noncompliance.

8.5 Severability

If any term, condition, covenant or obligation of this Agreement is declared illegal, void or unenforceable, the remaining terms will not be affected but will remain in full force and effect, and this Agreement shall be construed as if such illegal, void or unenforceable provision had never been contained therein.

8.6 Independent Contractor

In the performance of the services required in this Agreement, the Contractor will be acting in the capacity of an independent Contractor and not as an agent, employee, partner, joint venturer, or associate of the City. The Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the Contractor in the full performance of the Agreement. Neither the Contractor nor any of its employees, officers, agents or any other individual directed to act on behalf of the Contractor for any act related to the Agreement shall represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of the City and the Contractor shall have no authority to bind the City to any agreement or contract.

8.7 Dispute Resolution

In the event of a dispute arising from this Agreement, the City and the Contractor shall continue performance of their respective obligations and attempt to informally resolve such dispute in a cooperative manner. If the dispute cannot be resolved directly by the parties, prior to filing any action at law or equity, the parties shall submit any dispute to non-binding mediation.

8.8 Sovereign Immunity

Nothing in this Agreement shall be interpreted or construed to mean that the City waives its sovereign immunity granted under Section 768.28, Florida Statutes.

8.9 Amendments

Except as otherwise specifically provided herein, this Agreement may be amended only by mutual written agreement of the parties and may be changed only by such written amendment.

City of Hallandale Beach, Florida
Agreement for Transport and Disposal of Solid Waste and Processing of Single Stream Recyclables

EXHIBIT 1

PRICE PER TON SERVICE FEES

Material	Price Per Ton Service Fees
City's Acceptable Waste	\$62.50
Licensed Hauler's Acceptable Waste	\$72.00
Administrative Fee Paid to City by Contractor	\$7.00
City's Single Stream Recyclables	\$0.00
City's Single Stream Recyclables Rebate	\$0.00

EXHIBIT 2

**CALCULATION OF CPI AND FUEL INDEX ADJUSTMENTS
TO THE PER TON SERVICE FEES**

On January 1, 2012 and January 1 of each subsequent Contract Year of this Agreement, the Contractor's Per Ton Service Fees may be adjusted according to the following methodology: ninety-five percent (95%) of the rates shall be adjusted based on seventy-five percent (75%) of the percentage change in the CPI for the twelve (12) months ending on the preceding September 30th and five percent (5%) of the rates shall be adjusted based on the percent change in the U.S. DOE Fuel Index for the previous twelve (12) months ending on the preceding September 30th. The total rate adjustment each year may not exceed three percent (3%) of the previous year's rate.

New Contractor's Rate = $[95\% \times T\&D \times (1 + (75\% \times ((CPI2-CPI1)/CPI1)))] + [5\% \times T\&D \times (F12/F11)]$

Where

"T&D" = Contractor's current Per Ton Service Fees

"CPI" = Consumer Price Index for the South Urban Region, All Items - All Urban Consumers, published by the United States Department of Labor, Department of Labor Statistics

http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0300SA0.CUUS0300SA0

"CPI1" = average CPI for the 12 month period ending September 30 of the previous year

"CPI2" = average CPI for the 12 month period ending September 30 of the current year

"FI" = Fuel Index is the Lower Atlantic (PADD 1C) No. 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Sales by All Sellers (Cents per Gallon), U.S. Department of Energy, Energy Information Administration

http://www.eia.gov/dnav/pet/pet_pri_gnd_a_EPD2DXL0_pte_dpgal_w.htm

"F11" = average Fuel Index for the 12 month period ending September 30 of the previous year

"F12" = average Fuel Index for the 12 month period ending September 30 of the current year

SAMPLE CALCULATION

Assumptions: T&D = \$62.50
CPI1 = 207.845
CPI2 = 208.261
F11 = 266.1
F12 = 277.2

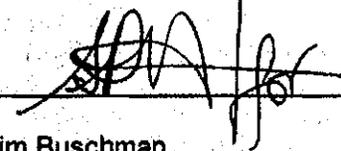
New Per Ton Service Fee Calculation = $[95\% \times \$62.50 \times (1 + (75\% \times ((208.261 - 207.845)/207.845)))] + [5\% \times \$62.50 \times (277.2/266.1)]$
New Per Ton Service Fee = $[\$59.49326] + [\$3.490229] = \$62.98$

City of Hallandale Beach, Florida

Agreement for Transport and Disposal of Solid Waste and Processing of Single Stream Recyclables

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, and such of them as are corporations have caused those present to be signed by their duly authorized officers intending to be legally bound, the parties have caused their authorized representatives to execute this Amendment as of the date first above written,

ATTESTED:



Jim Buschman

City Clerk

BOARD OF CITY COMMISSIONERS
CITY OF HALLANDALE BEACH, FLORIDA

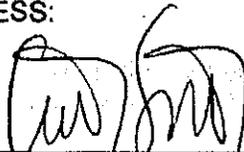
By: 

Mark Antonio

Title: CITY MANAGER

Date: 12-6-10

WITNESS:



Mateo Lopez



President/Owner

By: Glen Miller

Title: CEO

Date: 12-6-10