

Meeting Date: 8/10/2010



Agenda Item # 5-A

CITY COUNCIL AGENDA ITEM

Contact Name: Christine Davis Department Director: *Christine Davis*
Department/Contact # 775-5432 City Manager: *[Signature]*

- Type of Item:
- | | | | |
|-------------------------------------|--------------------------|--------------------------|---------------------|
| <input type="checkbox"/> | Public Hearing | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | Ordinance First Reading | <input type="checkbox"/> | Discussion & Action |
| <input type="checkbox"/> | Ordinance Second Reading | <input type="checkbox"/> | Council Approval |

Subject: Amending the Residential Franchise Contract with EWS LLC

BACKGROUND:

EWS agreed to lower the monthly fee from \$21.58 per month to \$15.85 per month, for an annual saving to city residents of \$68.80 or 36.2%. Additionally, EWS requested the contract be extended three years (opposed to a five-year extension that the contract allows) to include January 1, 2012 through December 31, 2014. During this time EWS agrees to fix the annual rate at \$15.85 per month or \$190.20 annually.

On July 27, 2010, Council by motion approved the amendment of the residential franchise contract with EWS, which will reduce the fee and extend the contract.

RECOMMENDATIONS: Staff recommends Council approve Ordinance 427 at the first reading, thereby amending the EWS contract, which: 1) sets the monthly rate at \$15.85 for January 1, 2011 through December 31, 2014, and 2) extends the term to include January 1, 2012 through December 31, 2014.

ATTACHMENTS: Ordinance No. 427 and Exhibit "A" (the amended contract).

FINANCIAL IMPACT: The annual Solid Waste special assessment will be reduced by \$117,309 for FY 10/11 and \$156,382 for FY 11/12.

Reviewed by City Attorney _____
Reviewed by Finance Dept. _____
Reviewed by: _____

1st Discussion Date: 7/27/2010	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
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ORDINANCE NO. 427

AN ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, AMENDING THE EXCLUSIVE FRANCHISE CONTRACT WITH EMERALD WASTE SERVICES LLC OF FLORIDA, A PRIVATE CORPORATION (EWS LLC), FOR THE COLLECTION AND DISPOSAL OF RESIDENTIAL SOLID WASTE, YARD WASTE AND CURBSIDE RECYCLABLE MATERIALS WITHIN THE CITY LIMITS; PROVIDING FOR EXTENSION OF TERM, AND AMENDING RATE; CONTAINING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as the City of Orange City entered into an exclusive franchise agreement with Waste Management by adoption of Ordinance 286; and,

WHEREAS, the City of Orange City authorized the assignment of the exclusive residential franchise to EWS LLC for the collection and disposal of residential solid waste, yard waste and curbside recyclable materials within the City Limits by Resolution No. 496-08; and,

WHEREAS, both the City of Orange City and EWS LLC. agree to amend the existing contract, as adopted by Ordinance 299, and accept the amended agreement attached hereto as attachment "A"; and,

WHEREAS, the City of Orange City finds it in the public interest to amend the existing contract with EWS LLC for residential solid waste, yard waste and curbside recyclable materials collection and disposal to the extent allowed by law because of the overriding public health, safety and welfare considerations associated with the provision of this service; and,

WHEREAS, the City of Orange City finds amending the exclusive residential franchise contract as the best means of assuring that the above-described interests of the City of Orange City are promoted.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:

SECTION 1. That both the City of Orange City and EWS LLC agree to amend the existing contract, as adopted by Ordinance 299, and accept the amended agreement attached hereto as attachment "A".

SECTION 2. That all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this ordinance shall not be affected.

SECTION 4. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

First Reading, this _____ day of _____, 2010.

Gary A. Blair	_____	Jeff H. Allebach	_____
O. William Crippen	_____	Tom Abraham	_____
Anthony Pupello	_____	Tom Laputka, Vice Mayor	_____
Harley Strickland, Mayor	_____		

Second Reading, this _____ day of _____, 2010.

Gary A. Blair	_____	Jeff H. Allebach	_____
O. William Crippen	_____	Tom Abraham	_____
Anthony Pupello	_____	Tom Laputka, Vice Mayor	_____
Harley Strickland, Mayor	_____		

PASSED and ADOPTED this _____ day of _____, 2010.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

William E. Reischmann, Jr., City Attorney

Exhibit "A"

As Amended August 2010

Exclusive Franchise for the Collection and Disposal of
Residential Solid Waste, Yard Waste and Curbside Recyclable Materials

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SECTION 1. Definitions.

- A. "City" shall mean the City of Orange City, Florida.
- B. "City Manager" shall mean the City Manager of the City of Orange City or his designee.
- C. "Curb Service" shall mean a single collection point within five (5') feet of the edge of a road.
- D. "Construction Debris" shall mean waste building materials resulting from construction, remodeling, repair or demolition operations in the service area.
- E. "Contractor" shall mean the bidder granted this exclusive franchise and hereby undertakes to perform each and every obligation assigned herein and hereby agreed to.
- F. "Duplex Residence" shall mean and include an attached two family structure designed or intended for occupancy by two (2) families.
- G. "Garbage Can" shall mean and include any light gauged steeled, plastic or galvanized receptacles closed at one end and opened at the other, furnished with a tight fitting top or lid and appropriate lifting handles and not more than thirty-five (35) gallon capacity and not weighing more than fifty (50) pounds when it is full.
- H. "Handicapped Service (Back door service)" shall be household solid waste service and recycling service at rear or side residence for handicapped persons with physician verification for special service on file with the Grantor.
- I. "Hazardous Materials" shall mean waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agent or appropriate State agency by or pursuant to Federal or State law, or waste, in any amount which is regulated under Federal or State law. For purposes of this Contract, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans, and any items containing chlorofluorocarbons or freon.
- J. "Multifamily Residences" shall mean multiple dwelling units of four (4) units or more and shall mean and include a detached three family structure designed or intended for occupancy by three (3) families.
- K. "Person" includes individuals, children, Thins, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
- L. "Plastic Bag" shall mean a plastic bag no larger than a thirty-five (35) gallon garbage can and of sufficient strength to hold contents securely tied at top and not to exceed fifty (50) pounds when full.
- M. "Recyclable Materials" shall mean newspaper, glass containers, plastics, tin cans, aluminum cans, and such other materials as determined by the City during the term of this Agreement

- N. "Recycling Bin" shall mean a receptacle designed for the purpose of curbside collection of Recyclable Materials. The receptacle shall be one made of plastic that has been accepted by other cities with experience in curbside recycling.
- O. "Recycling Container" shall mean the receptacles intended for use as a receptacle of Recyclable Materials.
- P. "Recycling Service Area" refers to the corporate limits of the City of Orange City and as hereafter amended through annexation.
- Q. "Roll-Off Container" shall mean any container (open top or enclosed for compacting) used for the collection and storage of construction, demolition debris, solid waste and rubbish that can be picked up and transported on a specially equipped truck to the disposal site.
- R. "Rubbish" shall mean non-recyclable solid wastes (excluding solid waste and bulky items consisting of both combustible and noncombustible trash) such as paper, cardboard, tin cans, plastics, yard clippings, wood, glass and similar materials.
- S. "Single Family Residence" shall mean and include a detached single family structure designed for occupancy by one person or by one family. Each townhouse shall be deemed a "residence" and each townhouse unit shall be deemed a single family structure. This definition does not extend to nor entitle the grantee to any solid waste, yard waste, or recyclables generated by manufactured homes, mobile homes, and trailers on land zoned for designated residential uses; specifically, Country Village Community, Sunburst RV Park, Orange Tree Village, Pine Forest, Sunset Hills, Oak Hill, and Orange City Mobile Home Park.
- T. "Solid Waste" shall mean every accumulation of waste (animal, vegetable and/or other matter) that results - from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fow4 birds, fruits, rains or other animal or vegetable matter (including, but not by way of limitation, used recyclables or other food containers; and all putrescible or easily decomposable animal or vegetable waste matter which is likely to attract flies or rodents); excluding special material.
- U. "Special Material" shall mean bulky items and materials or other special wastes that are not stored in standard storage containers and cannot be picked up by normally used collection vehicles. Wastes such as major appliances, furniture, building materials, tree limbs, non-containerized trash piles and any unusually large amount of refuse not suitable for containerized. There shall be no additional charge for collection of such items generated in the normal course of use at residences served. Upon notification of the customer, collection shall be scheduled within 48 hours or two business days (Monday through Friday).
- Collection of unusually large volumes of special materials may be billed separately to the customer on the basis of labor, truck cost and disposal charges.
- V. "Yard Waste, Vegetative" shall mean shrubbery cuttings or clippings, palm fronds, small tree branches (not to exceed four (4') feet in length and four (4") inches in diameter), bushes or shrubs, or other organic mater generated as refuse in the care of lawns, gardens, hedges, bushes and trees. Tree trimmings and palm fronds shall be tied in bundles not exceeding four

(4') feet in length, not weighing over fifty (50) pounds, and placed at the curb for pick up. Large branches, trees or bulky or non-combustible materials not susceptible to manual loading and collection in "back packer" type sanitation equipment used for regular collections from domestic households are not included in this definition.

SECTION 2. Grant of Franchise.

Contractor is hereby granted an exclusive mandatory residential franchise, including every right and privilege appertaining thereto, to operate and maintain a residential recycling, trash, solid waste and refuse collection and removal service in, upon, over and across the present and future streets, alleys, bridges, easements and other public places within the limits of this franchise for the purpose of collecting and disposing of all residential recyclables, residential trash, solid waste and other refuse generated by the citizens, residents, and inhabitants, and is hereby granted title to all of such residential recyclables, trash, solid waste and refuse generated within said boundaries, insofar as the City can establish its legal right to make such grant of title.

This franchise does not extend to manufactured homes, mobile homes, and trailers within established parks that are zoned for such residential uses; specifically, Country Village Community, Sunburst RV Park, Orange Tree Village, Pine Forest, Sunset Hills, Oak Hill, Orange City Mobile Home Park and Land O' Lakes. No person shall collect or convey over any of the streets or alleys of the City, or dispose of any residential recyclables, residential refuse or solid waste accumulated in the City, except as expressly provided herein.

SECTION 3. Limits of the Franchise.

The franchise covers the corporate limits of the City of Orange City except as provided for in Section 2. Contractor agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that contractor has no vested right in a specific area.

SECTION 4. Term. (Amended 8/2010 by Ordinance 427)

The Franchise ~~initial term has been~~ shall be granted for a period of five (5) years, beginning January 1, 2007, and ending December 31, 2011, unless sooner terminated by reason of a breach of the terms hereof by the Contractor, which result in the failure of the contractor to provide effective and efficient service. The Franchise shall be extended for three (3) years, beginning January 1, 2012, and ending December 31, 2014. In the event of a dispute between the parties as to a breach of the terms hereof; the questions in issue will be submitted to arbitration as provided in Section 17 hereof.

~~This franchise may be extended, under the same terms and conditions then existing, for an additional five (5) year term, unless Contractor or the City shall give notice to the other of an intent to cancel or renegotiate, which notice shall be in writing, and delivered by United States Mail, return receipt requested and posted no sooner than twelve (12) months, and no later than nine (9) months before the termination date of this franchise. Said notice may also be delivered by hand within the above time frame, and if so delivered, a receipt thereof signed by an authorized agent of the City or of the Contractor as applicable, shall be evidence of delivery.~~

SECTION 5. Franchise Consideration. (Deleted 2/2007 by Ordinance 299)

~~Contractor shall pay to the City a sum equal to ten (10%) percent of the gross quarterly dollar customer billings. Payment to the City shall be made four (4) times per year, in March, June, September and December, within ten (10) days of the close of each quarter and without demand by the City.~~

~~It is further understood and agreed that the consideration paid pursuant to this Ordinance shall not be added on as a separate item on the patron's and/or residents solid waste collection bills, but rather shall be considered as an operational expense.~~

SECTION 6. Assignment

The franchise rights herein granted to the Contractor shall not be assigned by Contractor except with the express approval of the City, which approval may not be unreasonably withheld, but which shall be reflected by a resolution of City. -

In the event of such assignment, Contractor shall cause its assigns to execute an Agreement of Acceptance, subject to the approval of the City, evidencing that such assignee accepts the assignment subject to any and all of the terms, conditions and limitations imposed hereby and which acceptance shall include an affirmative statement evidencing such Contractor's intent to fulfill the obligations imposed by Contractor in contemplation hereof. Notwithstanding the City's approval of such an assignment and assignees' acceptance, Contractor shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Contractor. -

A transfer of more than five (5%) percent of the issued outstanding stock of Contractor shall constitute an assignment for the purpose of this Section. Likewise, any transfer of the voting rights attendant to five (5%) percent or more of the issued or outstanding stock of Contractor shall constitute an assignment for the purposes hereof.

SECTION 7. Bankruptcy or Insolvency.

If the Contractor becomes insolvent and if the Contractor files a petition of voluntary or involuntary bankruptcy, this franchise shall terminate no later than the date of filing of the bankruptcy petition.

SECTION 8. Default

- A. The failure on the part of Contractor to comply in any substantial respect with any of the provisions of this franchise shall be grounds for a forfeiture, but no such forfeiture shall take effect until City has served upon the Contractor written notice of default which notice shall set forth the nature and extent thereof. Contractor shall have thirty (30) days following the notice of default to correct the same. If Contractor protests the reasonableness or propriety of City's declaration, said protest shall be served upon the City in writing within ten (10) days following receipt by the Contractor of the City's notice.
- B. If the City and the Contractor cannot agree as to the reasonableness or propriety of the City's declaration of default, then the issue shall be submitted to arbitration as providing in Section 17 of this Ordinance.

SECTION 9. Rate Adjustments. (Amended 2/2007 by Ordinance 299, Deleted 8/2010 by Ordinance 427)

The rates quoted herein shall remain in effect for a minimum of two (2) years, until January 1, 2009.

The Contractor shall provide the City with a credit equal to the full amount of any waiver or reduction in landfill tipping fees granted by any refuse disposal site receiving refuse collected under the terms and conditions of this Agreement.

The Contractor shall be eligible for rate increases after January 1, 2009 and throughout the remaining term and extension thereof for the following reasons:

A. Tipping fees increase. Upon notice of an increase in the disposal charges at the landfill, the Contractor shall notify the City of such increase, provide the City the unit rate increase necessary to cover the tipping fee increase, and submit documentation to the City detailing the monthly amounts of refuse being transported to the landfill, and shall calculate the rate increase in the following manner:

Rate Increase = $\frac{(LV \times NTF) - (LV \times OTF)}{NC}$, with LV being the volume of waste disposal at the Volusia County landfill, OTF being the original tipping fee, NTF being the new tipping fee, and NC being the number of customers.

B. Cost of living increases. On June 1, 2008, and each June 1 thereafter, the Contractor may petition the City Council for a cost of living rate adjustment to reflect seventy-five (75%) one-hundred (100%) percent of the percentage increase, if any, in the Consumer Price Index (CPI), for all urban consumers, South, Nonmetropolitan, less than 50,000 population, (1982-84=100), published by the US Department of Labor, Bureau of Labor Statistics, Southeastern Regional Office, determined by comparing the CPI for March of the year of the adjustment to the CPI for March of the prior year. The maximum increase for any annual period shall be four (4%) percent. If, in its discretion, the City Council approves any such petition, its action shall be documented by Resolution. Any rate adjustment so approved will take effect on January 1 of the year following the year in which it was approved. At such time as the Contractor receives a rate increase pursuant to this Paragraph, the City franchise fee shall be automatically adjusted by an equivalent percentage.

C. Cost of doing business increases. The Contractor may petition the City Council for a rate increase for alleged substantial and unusual increases in the cost of doing business resulting from new or revised laws, ordinances or regulations. Any such petition shall be accompanied by an analysis, prepared by a certified public accountant (or other financial advisor acceptable to the City) and certified as to accuracy and compliance with GAAP, of the pre-tax, cash-on-cash impact to the alleged substantial and unusual increase in the cost of doing business, and its proportional impact on the Contractor's cost of doing business in the City. The analysis should be accompanied by not less than six (6) months' actual financial data of the Contractor.

The CPI and Cost of doing business increases will only be applied to the cost of collection and will not be applied to the disposal costs. If a rate adjustment is not requested by June 1st the rate adjustment for that particular twelve (12) month period shall be deemed waived and shall not be taken into consideration in future rate adjustments.

SECTION 10. Right to Purchase.

In further consideration of the grant of right, permission, authority and consent contained in this franchise, Contractor hereby agrees the City shall have the right and option to purchase the disposal service (for purpose of this franchise defined as the aggregate of all disposal service components owned or controlled by Contractor then existing as an integrated solid waste disposal service within the area of the franchise); said option to be exercisable after the termination by any means of this franchise and upon written notice to Contractor accompanied by certified copy of the resolution or ordinance indicating City's intent to purchase.

The price and consideration for the purpose by the City and sale by the Contractor shall be determined as follows:

In the event the City and the Contractor do not agree to the price, three disinterested persons shall be chose as arbitrators to determine the value thereof The City shall appoint one of these arbitrators, the Contractor another, and the two thus chose shall select a third. The said City and the said Contractor shall make their respective appointments of arbitrators within thirty (30) days after the date of the service of said notice on the Contractor and the two arbitrators thus appointed- shall choose a third arbitrator within thirty (30) days after their appointment In case the two arbitrators cannot agree upon a third arbitrator within such time, either the City or the Contractor may apply to the senior judge of the Circuit Court of Volusia County, Florida, to have such arbitrator appointed by such judge.

In case either party shall neglect for a space of thirty (30) days after service of the aforesaid certified copy of the resolution or ordinance of the City as above provided to select an arbitrator and notify in writing the other party of such selection, the party having selected an arbitrator may apply to the said senior judge of the Circuit Court of Volusia County, Florida, for the appointment of an arbitrator to represent such party; thereupon the said judge may appoint such arbitrator who shall have the same powers to perform the duties of an arbitrator as though selected by the party for whom he was to be appointed. Either party shall have the right to produce witnesses and submit evidence as to value before said arbitrators.

The arbitrators shall fix the fair cash market value of the disposal service which the City desires to purchase (taking into consideration original costs, going value, reproduction costs, and other usual elements of value, tangible or intangible, of public utility property) within four (4) months from the date of the notice to Contractor and the City shall have the option of refusing to purchase or purchasing at the price fixed by the award of such arbitrators; provided, if the City elects to purchase, it shall complete the purchase within six (6) months from the date of the award by paying in cash (or in such other medium other than cash as is acceptable to Contractor) to Contractor the purchase price fixed in said award. In the event said arbitrator cannot agree as to price to be paid by -City, the City shall file the appropriate condemnation proceedings within six (6) months after the date of filing the original petition.

The cost and expenses of said arbitration shall be borne equally by the parties unless after the fixing of the award, the City neglects or refuses to exercise its option to purchase, in which event the City shall pay the whole cost of such arbitration proceedings. This section is subject to the conditions and rights set out in Section II hereinafter set out.

SECTION 11. Rights of First Refusal.

In the event Contractor shall at any time during the term of this franchise desire to sell the disposal service then existing and shall have received a bona fide offer from any other person, firm, corporation or from any other municipal corporation or county, authority or political subdivision of the State of Florida satisfactory to Contractor to purchase the same, the Contractor shall within ten (10) days after receipt of such bona fide offer advise the City in writing of the purchase price and other terms and conditions of such offer, and the City for a term of thirty (30) days after the receiving such notice has the option to purchase the disposal service from Contractor upon the same terms and conditions as are set forth in said offer. In the event the City shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, and Contractor shall have the right to sell the disposal service to the prospective purchaser thereof, subject to the terms in Section 6 of this Ordinance, and the right and option given to the City to purchase the property under the terms and provisions of Section 10 shall continue in full force and effect as to such purchaser, its successors or assigns.

SECTION 12. Restoration.

The Contractor agrees to repair all property, public or private, altered or damaged by its negligence, its agents or employees in the performance of its duties, as deemed by the City, herein in as good or better condition as it was before being damaged or altered. The City and Contractor shall meet at least quarterly to review damage to public streets and rights-of-way to assess costs and scheduling of repairs.

SECTION 13. Compliance with Laws.

Contractor shall conduct operations under this agreement in compliance with all applicable laws. Contractor specifically agrees to be solely responsible for the enforcement, administration and compliance with all applicable provisions of Part IV of Chapter 403, Florida Statutes and future amendments thereto. Furthermore, Contractor shall be responsible for the necessary promotion and educational activities required to familiarize the general public with the recycling mandates.

SECTION 14. Liability Insurance; Hold Harmless; Workers Compensation.

Contractor shall carry public liability insurance to the extent of Five Million (\$5,000,000.00) Dollars for the death of or injury to more than one person or property damage insurance to the extent of Five Hundred Thousand (\$500,000.00) dollars, upon each of the trucks or other vehicles used in carrying out the work called for in this franchise, such insurance expressly to cover both the City and the Contractor.- A certificate showing that the Contractor has in force and effect the aforesaid insurance shall be filed with the City within ten (10) days from the execution of this franchise, and yearly thereafter at least thirty (30) days prior to the date of the expiration of said policies or insurance for each year of said franchise, The aforesaid insurance shall be of such form and written by such companies as are approved by the City and also shall contain an enforcement obligating the insurance company to furnish the City thirty (30) days notice in advance of the cancellation of the insurance, Said policies of insurance shall name City as additional insured.

Contractor shall defend, indemnify and hold harmless the City for any and all claims for damages of whatsoever kind or nature arising from or in any manner connected with any activities performed by the Contractor under this franchise.

Contractor shall carry Workers Compensation insurance on all its employees and show proof of insurance and payment of premiums thereon to the -City, as requested. All such Workers Compensation policies shall provide for notice by the insurer to the City at least sixty (60) days prior to any termination, revocation or modification thereof

SECTION 15. Performance Bond.

Contractor shall furnish to the City a performance bond, in form approved by City, for the faithful performance of this agreement and all its obligations arising hereunder in the amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars. Said bond shall be executed by a surety company approved by City and licensed to do business in Florida.

SECTION 16. Right to Require Performance.

The failure of the City at any time to require performance by the Contractor of any provision hereof shall not affect the right of the City thereafter to enforce same; nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. The City shall have the right to terminate this franchise agreement if Contractor fails to correct violations of this agreement after a period of thirty (30) days upon being notified by the City of such alleged violations. Notice of all alleged violations shall be delivered by certified mail, return receipt requested, to the office of the Contractor.

SECTION 17. Arbitration.

If any arbitratable controversy shall arise between the parties, it shall be arbitrated in the following manner:

After the dispute has arisen, either party shall serve written demand for arbitration upon the other party. Within ten (10) days after the service of such notice, each party shall select one arbitrator. Within five (5) days thereafter, the two arbitrators shall select a third arbitrator and within ten (10) days thereafter the three arbitrators will hear the dispute and render a decision unless a majority of the arbitrators agree that additional time is needed. The decision of the arbitrators shall be binding on the parties. Each party will pay the fees and expenses of its arbitrator; and the two arbitrators selected by the parties will agree on the fees and expenses of the third arbitrator together with the agreed upon cost of the arbitration, all of which shall be paid one-half by each party. The decision of the arbitrators will be binding on the parties and may be enforced as provided for by the Florida law.

SECTION 18. Operations During Dispute.

In the event that a dispute arises between the City and the Contractor, or any other interested party in any way relating to this contract, performance or compensation hereunder, the Contractor shall continue to render service in full compliance with all terms and conditions of this contract regardless of the nature of the dispute.

Contractor expressly recognizes the paramount right and duty of City to provide adequate waste collection and disposal service as necessary governmental functions, and further agrees, in consideration for the execution of this franchise, that in the event of a dispute, said Contractor will neither stop service nor seek injunctive relief in any court, but will either negotiate for an adjustment on the matter in dispute, or arbitrate arbitrable disputes, or present the matter to a court of competent jurisdiction in an appropriate suit instituted by Contractor.

SECTION 19. Standard of Performance.

- A. If the Contractor fails to collect materials herein specified for a period in excess of five (5) consecutive scheduled working days or fails to operate the system in a satisfactory manner, for a similar period, the City may proceed as follows (provided such failure is not due to war, insurrection, riot, act of God, or other cause beyond the Contractor's control):
1. At its option, after written notice to the Contractor as provided hereinafter, take over and operate any or all of the Contractor's equipment used in the performance of this franchise.
 2. Use and operate same itself until such matter is resolved and the Contractor is again able to carry out its operation under this franchise. Any and all operating expenses incurred by the City in so doing may be charged to the Contractor.

During such period, the liability of the City to the Contractor for loss or damage to such equipment so used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability. The liability of the Contractor to third parties shall continue and all claims or demands arising out of the operation of the collection service shall be directed solely to the Contractor and City shall be treated as an agent of Contractor for purposes of determining liability. -

The provisions of Section 17 shall be invoked by the City immediately upon its assuming control of the system under this Section.

SECTION 20. Curbside Recyclable Materials Collection and Disposal.

- A. Contractor shall collect all residential recyclable materials in the corporate limits of the City, transport, and provide for recovery of said residential recyclable materials at a designated recovery facility approved by the City, or, if no market is available, to the nearest County landfill. The Contractor shall perform such services as are required to provide a complete residential recyclable materials program.
- B. Point of Pickup of Recyclable Materials. Collection of recyclable materials shall be at curbside or other such locations as will provide ready accessibility to the Contractor's collection crew and vehicle. In the event an appropriate location cannot be agreed upon, the City shall designate the location. Handicapped residents will be accommodated at no additional fee.
- C. Receptacles. The Contractor shall pick up all recyclable materials which have been properly prepared for collection and placed in recycling containers or paper or bags and set at curbside.

The Contractor shall supply and distribute to each residence within the service area as required at least one (1) container, or multiple containers as mutually agreed between the City and Contractor, to hold recyclable materials to be collected.

The Contractor shall supply and distribute recycling containers to new residents and replace lost or damaged containers, The Contractor will deliver lost or damaged replacements and the City will determine if a charge shall be assessed to the resident. Any changes in container specifications, including color and markings thereon must be approved by the City. -

- D. Description of the Work. The Contractor shall collect all recyclable material set out for the purpose of recycling from all single family homes and duplex residences. The collection of recyclables shall be conducted using the single container; or multiple containers furnished by the Contractor, for a co-mingled system. As it becomes appropriate or beneficial, other items may be added to the list at the direction of the City.
- E. Hauling. All Refuse and Recyclable Materials hauled by the Contractor shall be so contained, tied or enclosed that leaking, spilling or blowing are prevented.
- F. Method of Collection of Recyclable Materials. Unless otherwise agreed in writing, the Contractor shall separate at the point of pick up, at least the newspaper, plastics, tin cans, aluminum cans, and glass (green, amber and clear) into different sections of the collection vehicle, The Contractor shall make collections with a minimum of noise and disturbance to the residents and in conformance with the City's Noise Ordinance. Contractor shall handle Recycling Containers with reasonable care and return them to the approximate curbside location from which they were collected. Any recyclable materials spilled by the Contractor shall be picked up immediately. Recycling Containers shall be thoroughly emptied and left inverted at the point of collection. Contractor and City shall mutually develop a procedure for handling placement of incorrect material in recycling bins by residents, preferably via a notice reminding the resident of acceptable materials.
- G. Frequency of Collection. The Contractor shall collect recyclable materials within the service area one (1) time per week. The day of collection shall be on the same day as the regular collection day for solid waste.

SECTION 21. Recycling Program.

- A. Monitoring Records. The Contractor shall be responsible for maintaining information and records adequate to determine participation rates and weekly setout rates by percent for each material, volume of solid waste diverted from landfill by percent, weight by material of items recycled, neighborhoods above or below average participation and other information required by the County or the State of Florida necessary to meet the requirements of the Solid Waste Management Act or to obtain grant funds from the Solid Waste Management Trust fund. The Contractor shall furnish monthly reports to the City containing the required information. Reports shall be on forms and in a format approved by the City.
- B. Marketing and Recyclable Materials. The Contractor and the- City shall cooperate to develop markets for recyclable materials. To the extent possible, based on availability, capacity and market prices, the Contractor may market the recyclable materials through local businesses, approved by the City. At a minimum, the Contractor will provide for taking, marketing or storing of recyclables at the nearest County landfill.

- C. Revenues Generated From Recycling. The Contractor shall account for all revenues generated through recycling and report all such revenues to the City on a monthly basis and pay those revenues, except as noted below, to the City. The revenue amounts are to be verified by the accompanying receipts from the purchaser of the recyclable materials; and, the Contractor shall remit monthly, to the City, fifty (50%) percent of all applicable proceeds received from the sale of recyclable materials.

SECTION 22. Collection Services and Operations. (Amended 2/2007 by Ordinance 299)

- A. Frequency of Waste Collection. Contractor shall pick up from the curbside adjacent to each residence on a regularly scheduled day all solid waste, rubbish, and residential wastes at least once a week. Pickups shall not be reduced by holidays, but pickups normally scheduled to be made on a holiday may be rescheduled upon approved by the City after at least ten (10) working days prior notification to the affected residence by publication or other means approved by City. Said publication shall be at the expense of the Contractor.

- (1) Holidays: The following holidays may be observed by Contractor for purposes of this Agreement:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Routes and Schedules: Residential collection shall be ~~two (2)~~ one (1) time per week effective April 1, 2007. Said day shall be mutually agreed to by the contractor and the City ~~Monday and Friday or Monday and Thursday or Tuesday and Friday, with Monday or Tuesday designated as the day for yard waste/vegetative trash collection~~, but may be rescheduled ~~to as may be necessary~~ to another day mutually agreeable to the City and Contractor. The City Manager or his/her designee is authorized to modify, extend or suspend schedules in the event of a natural disaster, health hazard or any other state of emergency requiring such action.

- B. Quantity. Contractor shall be required to pick up all solid waste and rubbish generated by a residential premise, provided same is placed in a waste receptacle. Contractor shall also be required to pick up all rubbish from the curbside of a residential unit.
- C. Waste Collection. Contractor shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Waste receptacles shall be handled carefully by the Contractor and shall be thoroughly emptied and left where they were found standing upright inverted and with covers placed adjacent to the waste receptacle at the curbside. To preserve the integrity of the city streets, the City encourages waste be transferred from the householders' containers into tubs, cans, hampers, or other containers used by the Contractor in carrying waste to collection trucks. All work shall be done in a safe and sanitary manner. All waste spilled by the Contractor shall be picked up and removed by Contractor.

- D. Special Services. Services such as backdoor collection, below ground collection, removal of any refuse other than residential waste as defined herein or additional pickups shall be provided for a separate fee upon terms agreed to by Contractor and the customer. Requests for pickups of special materials as defined herein shall be considered as requests for special pickup services, except as provided for in Section 31 E. Charges for special services shall not be unreasonable or excessive, except household solid waste services shall be provided at the rear or side residence for handicapped persons approved by the City at no extra charge.
- E. Waste Receptacles.
1. Solid Waste. Solid waste shall be placed for collection separately from rubbish and shall be placed in waste receptacles weighing not more than fifty (50) pounds, when filled, and meeting the following additional standards:
 - a. A container of not more than thirty-five (35) gallons, nor less than ten (10) gallons which is:
 - (i) free from jagged and sharp edges;
 - (ii) free from inside structures, such as inside bands or reinforcing angles, which would prevent free discharge of the contents;
 - (iii) watertight and made of impervious materials to protect the contents from flies, insects, rats and other animals;
 - (iv) provided with a tight fitting cover; and
 - (v) equipped with a cover handle and side handles; or
 - b. Wet strength paper bags of not more than four (4) cubic feet capacity having such characteristics, markings and method of securing as prescribed by regulation of the City.
 - c. A plastic bag having of at least thirteen (13) gallons and not more than thirty-five (35) gallons and having such characteristics, markings and method of securing as are prescribed by regulation of the City.
 2. Rubbish. Rubbish conducive to containerization shall be placed for collection in either a waste receptacle meeting the standard for solid waste and rubbish collection or in a bundle. Other tree limbs or trimmings to be collected by the Contractor shall not exceed four (4) feet in length. Each receptacle, bundle or other item shall weight not more than fifty (50) pounds. Rubbish shall be placed for collection separately from solid waste. Contractor shall not be required to collect any rubbish which does not comply with the requirements in this subsection. Leaves, straw, grass and similar materials must be placed in an approved container.
 3. Hazardous Materials. Contractor shall not be responsible for the collection of hazardous materials.

4. Location of Residential Waste for Collection. All persons receiving residential service pursuant to this contract shall place waste receptacles, disposal containers and other items at the curbside not more than twenty-four (24) hours before collection, secured from disturbance by animals, unless Contractor has agreed to provide a special service collection at another location.
- F. Customer Restrictions.
1. Contractor shall not be required to collect residential waste receptacles containing solid waste or refuse not generated in the residence served.
 2. Contractor shall have the right to terminate service to any customer violating any provision of this section only after prior notification and approval by City.
- G. Removal of Improper Receptacles. Any container used for the collection or storage of residential waste which fails to meet the standards prescribed by ordinance of the City shall be clearly marked by the Contractor, specifying the manner in which the container fails to meet these requirements. Any container which fails to meet these requirements and is so marked shall be removed from service by the person furnishing it. Upon failure of the person furnishing the container to remove it from service after written notice by the Contractor, the Contractor shall remove the container from service and destroy it.

SECTION 23. Office and Collection Hours.

- A. The Contractor shall maintain a conveniently located local office which shall remain open at least between the hours of 9:00 a.m. and 12:00 Noon, Monday through Saturday. Contractor's representative(s) shall be available by telephone Monday through Friday from 7:00 a.m. to 5:00 p.m. and Saturday from 9:00 a.m. to 12:00 Noon for the purpose of handling complaints; and for that purpose, there shall be maintained an adequate number of telephones and a responsible person in charge during the hours specified above. These requirements do not apply on legal holidays set forth in Section 22 A (1).
- B. Collections shall normally be made in residential areas no earlier than 7:00 a.m. and no later than 7:00 p.m. with no service on Sunday, except in time of emergency or to maintain schedules due to holidays. If the Contractor has an equipment breakdown, it shall be relieved from completing collection at 7:00 p.m., but not later than 10:00 p.m. (for the route being served by such equipment experiencing operating difficulties), provided that such route shall be fully collected that day by the Contractor with substitute equipment, and the completion time remains the same.

SECTION 24. Collection Equipment.

The Contractor shall have on hand at all times sufficient equipment in good working order and of the minimum weight necessary to permit Contractor to perform its duties hereunder fully, adequately, and efficiently. Equipment shall be purchased from nationally known and recognized manufacturers of solid waste collection and disposal equipment. Solid waste collection equipment shall be kept clean, sanitary, neat in appearance and in good repair at all times and shall be equipped with back-up warning lights and alarm.

The Contractor shall at all times have available to it, reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall substantially correspond in size and capability to the equipment normally used by the Contractor to perform its duties hereunder.

Equipment is to be painted uniformly with the name of the Contractor, business telephone number and the number of the vehicle in letters not less than three (3") inches high on each side of the collection vehicle. The Contractor may also place its corporate logo on the vehicle; however, no other form of advertising shall be permitted on vehicles.

SECTION 25. Disposal.

All garbage and solid waste shall be hauled to sites or facilities legally empowered to accept it for treatment or disposal. The City reserves the right to approve or disapprove sites, taking into account all governmental regulations, routes within the franchise area, and the rules and regulations of the governmental body having jurisdiction over said sites or facilities.

SECTION 26. Routes and Schedules.

The Contractor shall bi-annually provide the City with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, Contractor shall notify each customer affected by either direct mail or door hangers approved by the City. Contractor shall also notify customers by placing an advertisement prominently displayed in a local newspaper on at least two (2) occasions, the latter being at least two (2) weeks prior to the change. All such changes in routes or schedules will also be immediately communicated to the City when determined by the Contractor.

SECTION 27. Contractor Personnel.

- A. Contractor shall assign a qualified person to be in charge of operations under this franchise and shall give the name and qualifications of said person to the City.
- B. City requires that Contractor's collection employees wear clean uniforms bearing Contractor's company name.
- C. Each person employed to operate a vehicle, at all times, shall carry a valid Florida driving license for the type of vehicle being driven.
- D. City may request the dismissal of any employee of Contractor who violates any provisions hereof or who is found to have been wanton, negligent, or discourteous in the performance of duties.
- E. The Contractor shall provide operating and safety training for all personnel.
- F. Wages of all employees of Contractor shall equal or exceed the minimum hourly wages established by local, state or federal law. Contractor shall supply a schedule of all employee wage scales to City.

SECTION 28. Spillage and Litter.

The Contractor shall not litter premises in the process of making collections, but shall not be required to collect any waste material that has not been placed in approved containers or in a manner herein provided. During hauling, all solid waste or liquids shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the Contractor, the Contractor shall promptly clean up the litter.

SECTION 29. Storms and Other Emergencies.

In case of an unusually severe storm or disruption caused by other severe emergencies not caused by Contractor, City may grant Contractor reasonable variance from regular schedules. As soon as practicable after such storm or other emergency, Contractor shall inform the City of the estimated time required before regular schedules and routes can be resumed and, upon request of City, Contractor shall provide notice to residential premises in the service area. In the event of a storm or emergency requiring mass cleanup operations, Contractor shall, upon direction of City, participate in said cleanup to the extent directed by the City. Contractor shall be compensated by the City in the amount of actual documented costs, and shall be excused from conducting regular services if approved by City. (Any expenses incurred or revenue received under this provision shall not be included in rate base calculations.)

SECTION 30. Nondiscrimination Provision.

The Contractor agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Contractor and the provision of services. The Contractor agrees that on written request it will permit reasonable access to its records of employment, employment advertisements, application forms, and other pertinent data and records by City for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this franchise, provided, however, that Contractor shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the date of this franchise.

SECTION 31. Rates and Charges. (Changes to Section 31, B1, B2 & D were Amended 2/2007 by Ordinance 299, and changes to Section 31 A are being Amended 8/2010 by Ordinance 427)

- A. Rates to be charged by Contractor for service to be performed hereunder per residence per month per unit for solid waste, rubbish and yard waste and recycling pick-up ~~are set at \$30.55 per month beginning January 1, 2007, subject to annual review will be set as follows: January 1, 2007 – March 31, 2007 \$30.55; April 1, 2007 – September 30, 2007 \$23.19; and October 1, 2007 \$21.64; this monthly fee of \$21.64 shall remain in effect for the remainder of the term of this contract, subject to the provision provided for in Section 9 (Rate Adjustments).~~ - December 31, 2010 \$21.64; and January 1, 2012 – December 31, 2014 the rate shall be fixed at \$15.85 per month.

B1. From January 1, 2007 through September 30, 2007, Contractor shall be solely responsible for the billing and collection of receivables from residential customers.

A. Billing and Collection. Contractor shall be responsible for all billing and collection services described and allowed in this franchise. Customers shall be billed in advance at the beginning of each calendar quarter. Should Contractor choose to bill monthly, billing shall be in advance at the beginning of each month.

The occupant of each residential property served shall be responsible for the payment of service fees, unless owner(s) of such residence requests responsibility for payment. However, delinquent service billings shall ultimately be the responsibility of the property owner(s) as described in this subsection.

B. Suspension of Service. Service can only be suspended if City water utility service is suspended upon request of the property owner or utility account holder. In such instances, City will notify Contractor to discontinue service and service fees shall not be billed until the City notifies Contractor that City water utility service has been reinstated. Discontinuation of Contractor services shall be made in whole calendar months only, i.e. no partial month fee shall be administered.

B2. Effective October 1, 2007 the City shall utilize the uniformed method for levy, collection and enforcement of non ad valorem assessments for solid waste collection and disposal services. Accordingly, the City shall be responsible for the billing and collection of payments for all residential collection services and payments shall be made to the Contractor based on a quarterly billing remitted to the City.

C. The Contractor shall keep records of the volume of solid waste collected and charges therefore, and the City shall have the right to review those records which in any way pertain to the payments.

~~D. City specifically reserves the right to unilaterally in conjunction with the County's Tax Collector take over all the bills and collections of residential receivables. In that event, Contractor agrees to review the rates with City and negotiate a reduction in its monthly charges listed in "A" above or subsequent monthly charges. In case a mutually agreed upon charge can not be reached, Section 17 of this Agreement shall apply.~~

E. The Contractor is to provide necessary service to all of City's facilities at no charged to the City. Contractor shall be required one time per year to pick up all special material/bulk items as defined in Section 1. as a special City-wide "clean up" effort. The scheduling of said "clean up" effort shall be mutually acceptable to City and Contractor. Up to six (6) times per year, Contractor agrees to provide, at no cost to the City, dumpsters or other containers to provide refuse service to City sponsored events. The following facilities are to be provided four cubic yard dumpsters: City Hall, Police Dept., Fire Dept., Utilities, Public Works, and Valentine Park and other City facilities as may be mutually agreeable to the City and Contractor.

F. For items requiring roll-off service or any other special handling not otherwise delineated in this franchise, the charges are to be negotiated between the Contractor and the customer. If agreement cannot be reached, the matter shall be submitted to the City for final determination.

SECTION 32. Delinquent Accounts. (Amended 2/2007 by Ordinance 299)

- A. From January 1, 2007 through September 30, 2007 the following procedures shall apply to any delinquent accounts. In the event any account is not fully paid within thirty (30) days from the billing date, the account shall be deemed delinquent. The owner of the account shall be sent a notice prior to termination because of non-payment. If not paid within ten (10) days from termination notice, collection service may be ceased by Contractor, only after prior notification and approval by City.
- B. Any delinquent account may be reinstated upon payment of the past due balance, any interest due thereon and the necessary deposit/advance payment. Service shall resume upon the next scheduled pick-up after notice has been given to the Contractor.
- C. To the full extent permitted by law, Contractor is hereby authorized to impose a lien against property to which service fees are delinquent, plus interest to the date of payment. Provided however, Contractor agrees to use its best efforts to collect delinquent fees by means other than the imposition of liens. Contractor agrees to save harmless and assume the defense of and indemnify the City and its officers, employees, contractors and consultants against and from any and all claims, costs, charges and expenses (including without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed against the City and their officers, employees, contractors and consultants by reason of any lien imposed by Contractor. In case any claim shall be made or action brought against any person in or entity respect of which indemnity may be sought against Contractor, such indemnified person or entity shall promptly notify Contractor in writing setting forth the particulars of such claim or action. The indemnified person or entity shall be entitled to select and retain counsel of his or her choice and Contractor shall be responsible for the payment or immediate reimbursement for all reasonable fees and expenses incurred in the defense of such claim or action.
- D. If the City finds it necessary for the protection of the health and welfare of the citizenry to make payments on a delinquent account in order to insure collection, the City may cause to be brought the necessary legal proceedings to enforce payment thereof with all accrued interest and penalties, together with all legal costs, including a reasonable attorneys' fee. A certified copy of a judicial order issued pursuant to this section may be recorded in the public records and shall constitute a lien against the property on which the violation exists.

SECTION 33. Customer List/Accounting; Audit. (Amended 2/2007 by Ordinance 299)

- ~~A. On or before July 2002 and at the City's request thereafter (which shall not exceed two times per year), Contractor shall provide to the City a copy of the Customer List. The Customer List shall designate the dwelling units receiving service as handicapped customers. If requested by the City Manager, Contractor shall provide the Customer List on electronic media in a format compatible with the City's data processing system.~~
- ~~B. Contractor shall keep an accurate set of books and records reflecting the gross revenues derived under and pursuant to franchise rights herein granted. Said books and records shall reflect, in addition to information normally reflected pursuant to standard accounting procedures and the requirements of Chapter 403, Part IV of Florida Statutes, the name and service address of each~~

~~residential customer, dates of commencement and termination of service, the service charge and any changes thereto, the billings and billing dates and the receipt of revenues. For the purpose hereof, "gross revenue" shall mean and include any and all fees, without reduction, received by Contractor under and pursuant to the franchise rights herein granted. The above books and record shall be furnished to the City upon request. City may cause a semi annual audit to be made of the books and records of Contractor in order to determine whether the franchise fees paid pursuant to Section 5 are the same as those required thereby. The omission of the City to exercise its right to a semi annual audit at any time shall not constitute a waiver of such right, and notwithstanding such omission, the City shall have such continuing right, provided that except in the event of fraud, deceit or such other extraordinary occurrence, each audit shall be made at intervals no less than six (6) months. In the event City elects to exercise its right of audit, City shall provide to Contractor written notice of such election at least forth eight (48) hours in advance of the time of such audit. City shall have the right to elect the auditors to make the audit and the audit shall be made at Contractor's expense. Contractor shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit; and shall make no charge to the City therefore.~~

SECTION 34. Complaints.

All complaints shall be resolved by Contractor within twenty-four (24) hours. Contractor shall within seventy-two (72) hours, supply City with copies of all complaints on a form approved by it and indicate the disposition of each. Such record shall be available for inspection by City at all times during business hours specified herein. The form shall indicate the day and hour on which the complaint was received and the day and hour on which it was resolved. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be serviced on the next working day. The Contractor shall establish procedures acceptable to City to insure that all customers are notified as to the complaint procedure.

SECTION 35. Monitoring Performance and Compliance.

In order to fully implement the provisions of this franchise, a panel for the review of the quality of services provided for in this contract shall be created to consist of three (3) members; one (1) member representing the City, one (1) member representing the Contractor, and one (1) member an independent member chosen by the previously named two members. It shall be the function of this committee to review, report and make recommendations to the City regarding the quality of services provided for herein. For the purpose of this function, "service" shall be defined as the performance of the duties, tasks and obligations of the Contractor enumerated herein and the performance of such other duties, tasks and obligations as are generally reasonably regarded as incident to the safe and satisfactory discharge or responsibilities in the sanitation industry.

SECTION 36. Charges for Failure of Performance.

A. Administrative charges shall be assessed in accordance with the following schedule:

SCHEDULE OF ADMINISTRATIVE CHARGES

(1)	Failure to clean up spilled refuse	\$100 per incident per location
(2)	Failure or neglect to collect solid waste or Special Collection Solid Waste	\$100 per incident per location
(3)	Failure or neglect to complete each route on the regular collection day.	\$500 for each route per day not completed
(4)	Failure to have vehicle operator properly licensed.	\$250 per day per incident
(5)	Failure to replace or repair any container damage caused by the Contractor or his personnel.	\$25.00 per incident per location
(6)	Collection of Residential Solid Waste and/or recyclables before 7:00 A.M. or after 7:00 P.M. without City approval	\$100 per incident
(7)	Co-mingling solid waste with vegetative waste, recyclable materials, C & D materials or other waste material.	\$200 per incident
(8)	Failure to return containers or garbage receptacles to original location.	\$25 per incident
(9)	Failure to repair damage to public or private customers property within seven (7) days.	\$200 per incident
(10)	Failure to provide clean, safe and sanitary equipment at beginning of work schedule.	\$200 per day

(11)	Failure to maintain office hours as required with authorized, trained personnel.	\$200 per day
(12)	Failure to cover materials, if appropriate, on collection vehicles.	\$100 per incident
(13)	Name and phone number not displayed on equipment.	\$100 per incident
(14)	Failure to comply with employee roster and proper uniforms.	\$100 per incident
(15)	Using improper equipment.	\$100 per incident
(16)	Failure to respond to complaints and customer calls in a timely and appropriate manner.	\$100 per incident
(17)	Failure to provide proper notification prior to Residential route changes.	\$250 per incident

B. Administrative charges shall be assessed on a monthly basis and Contractor will be notified at the end of each month in writing of any administrative charges assessed and the basis for each assessment. The Contractor may contest such assessments in writing to the panel provided for in Section 35. The panel decision shall be binding and not subject to the provisions of Section 17.

AMENDED FRANCHISE ACCEPTANCE AGREEMENT

WHEREAS, the City of Orange City, a municipal corporation of the State of Florida (“City”), awarded an exclusive franchise to Waste Management Inc. of Florida (“prior Contractor”) by Ordinance No. 286 and subsequently approved an assignment of the franchise to EWS LLS (“current Contractor”) by Resolution No. 496-08, for the collection and disposal of residential solid waste, yard waste and curbside recyclable materials within the City limits of the City of Orange City, Florida, for a period of five (5) years, beginning January 1, 2007 and ending December31, 2011, and extended for three (3) years, beginning January 1, 2011 and ending December 31, 2014, as subsequently amended February 2007 by Ordinance No. 299, and as subsequently amended August 2010 by Ordinance No. 427.

NOW THEREFORE, in consideration of City’s approval of said franchise, Contractor agrees as follows:

1. EWS LLC accepts the franchise, as amended, subject to all of the terms, conditions, and limitations imposed in the franchise document.
2. EWS LLC agrees to fulfill all the obligations contained in the franchise document, as amended.
3. It is further agreed and understood that EWS LLC guarantees the performance of its duties pursuant to the franchise document, as amended.

DATED this _____ day of _____, 2010

CITY OF ORANGE CITY

EWS LLC

By: _____
Jamie Croteau

By: _____

Title: City Manager

Title:

ATTEST:

Deborah J. Renner, CMC City Clerk