

**AGREEMENT FOR
SOLID WASTE, RECYCLING, HOUSEHOLD HAZARDOUS WASTE, BULK AND
YARD WASTE COLLECTION SERVICES**

THIS IS AN AGREEMENT, dated the _____ day of _____, 2021, by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of 601 City center Way, Pembroke Pines, Florida 33025 hereinafter referred to as "CITY",

and

_____, a company authorized to do business in the State of Florida, with a business address of _____, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1
PREAMBLE**

1.1 In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.2 On _____, the CITY advertised its Request for Proposals #AD-21-01 of the CITY's desire to hire a firm to provide Solid Waste, Recycling, HHW, Bulk & Yard Waste Collection Services as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said bid entitled:

**RFP# AD-21-01
SOLID WASTE, RECYCLING, HHW, BULK & YARD WASTE COLLECTION
SERVICES**

1.3 On _____, the bids were opened at the offices of the City Clerk.

1.4 On _____, the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to render the services more particularly described herein below.

1.5 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

1.6 The Agreement consists of this Agreement, RFP# AD-21-01, "Solid Waste, Recycling, HHW, Bulk & Yard Waste Collection Services" (the "RFP"), attached hereto as **Exhibit "A,"** including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda; the Contractor's bid/proposal, dated _____, attached hereto as **Composite Exhibit "B";** and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between the RFP, this Agreement and the Contractor's Proposal, the RFP as issued by the City shall take precedence over this Agreement and the Contractor's Proposal. Furthermore, in the event of a conflict between this Agreement and the Contractor's Proposal, this Agreement shall prevail.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONTRACTOR hereby agrees to perform the Solid Waste, Recycling, HHW, Bulk & Yard Waste Collection Services, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, in accordance with the Scope of Work outlined in the RFP attached hereto and made a part hereof as **Exhibit "A"** and CONTRACTOR's response thereto, attached hereto and made a part hereof as **Composite Exhibit "B."** CONTRACTOR agrees to do everything required by this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form.

2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the CONTRACTOR'S expense.

2.4 CONTRACTOR shall schedule regular meetings with the CITY representatives at least once a month to discuss issues related to the services provided pursuant to this Agreement, as more specifically described in **Exhibit "A."**

2.5 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.6 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

2.7 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

ARTICLE 3 **FRANCHISE**

3.1 **FRANCHISE** - For a period of approximately seven (7) years, and any renewal terms, the CITY hereby grants CONTRACTOR the exclusive franchise and the sole obligation to operate and maintain a comprehensive garbage, trash and other refuse collection including roll-off and removal system and service as well as recycling collection systems for residential and commercial customers in and for CITY of Pembroke Pines as specified in the RFP, which is attached hereto as **Exhibit "A"**, and incorporated herein by reference. CONTRACTOR is authorized by CITY to enter in and upon private property, in, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the City of Pembroke Pines for the purposes of collecting the garbage, trash, recyclables, and other refuse of the residents, inhabitants, businesses and other entities existing within the municipal corporate limits of the City of Pembroke Pines, Broward County, Florida, or as directed in conformance with the Charter and Ordinances of the City of Pembroke Pines and other applicable law.

3.2 **TERM OF FRANCHISE** - The term of this Contract/Franchise for Solid Waste, Recycling, HHW, Bulk & Yard Waste Collection Services (the "Term") shall be for approximately seven (7) consecutive years, commencing on _____ at 12:00 AM through September 30, _____ at 11:59 PM. The Term may be extended for one (1) additional seven (7) year term, subject to the execution of a written amendment to this Agreement signed by both parties.

ARTICLE 4 **COMPLIANCE WITH LAWS**

4.1 Contractor shall comply with all applicable County, State and Federal laws relating to wages, hours and all other applicable laws relating to the employment or protection of employees, now or thereafter in effect. Contractor hereby agrees to abide by and comply with all applicable Federal, State and County laws, Ordinances and regulations. Contractor and its cash/surety shall indemnify, defend and save harmless City, its City Commissioners, all its officers, representatives, agents and employees against any claim or liability arising from or based on the violation of any such laws, regulations, ordinances, orders or decrees, whether by itself or its employees.

4.2 Contractor is required and hereby agrees by execution of this contract to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended and changed from time to time.

ARTICLE 5 **INSURANCE**

5.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners, principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

5.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

5.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

5.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

5.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this

Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

5.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

5.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

5.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

5.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

5.6.4 Umbrella/Excess Liability Insurance in the amount of **\$5,000,000.00** as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

5.6.5 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

5.7 REQUIRED ENDORSEMENTS

- 5.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 5.7.2 Waiver of all Rights of Subrogation against the CITY.
- 5.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 5.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 5.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

5.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

5.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

5.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

5.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

ARTICLE 6

INDEMNIFICATION

CONTRACTOR shall indemnify, save harmless and undertake the defense of CITY, its City Commissioners, agents, servants and employees from and against any and all claims, suits, actions, damages, or causes of action arising during the term of this Contract/Franchise, for any personal or bodily injury, loss of life, or damage to property arising directly or indirectly from CONTRACTOR's operation pursuant to this Contract/Franchise and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders or judgments which may be entered therein. CITY shall notify CONTRACTOR within ten (10) days of receipt by CITY of any claim, suit or action against CITY arising directly or indirectly from the operations of CONTRACTOR hereunder, for which CITY may be entitled to a claim or indemnity against CONTRACTOR, under the provisions of this Contract. CONTRACTOR shall have the right to control the defense of any such claim, suit or actions. CONTRACTOR shall also be liable to CITY for all costs, expenses, attorneys' fees and damages which may be incurred or sustained by CITY by reason of CONTRACTOR'S breach of any of the provisions of the contract. CONTRACTOR shall not be responsible for negligent acts of CITY or its employees.

ARTICLE 7

RECORDKEEPING, REPORTING, AUDIT AND INSPECTION RIGHTS

7.1 Access and Audits: The Contractor shall maintain, within Broward County, adequate records of the solid waste collection and/or Recovered Materials services during the fiscal year and for three years following the end of each fiscal year of the Contract. The City shall have the right to review all records, including recording and recordkeeping requirements, maintained by the Contractor during normal business hours upon twenty-four (24) hours' notice.

7.2 The Contractor shall provide the City with a review of the Revenue and Expense Financial Statement representing the financial results of operations. The review must be performed in accordance with Statements on Standards for Attestation Engagements and Related Interpretations promulgated by the American Institute of Certified Public Accountants. The annual review shall be delivered to the City within one hundred and twenty (120) days of the twelve (12) month period ending the Contractor's fiscal year. The audit can be limited to the entity actually providing services. In addition, a certified annual financial statement ("Annual Report") of Contractor, shall be furnished to City within six (6) months of the close of Contractor's fiscal year, and its parent company, if applicable, for each fiscal year, on an annual basis throughout the term of this contract or any extension thereof.

7.3 As required herein, the Contractor shall create, maintain, and make available records as defined in, and required by, all applicable local, state, and federal laws, rules and regulations, and any reports as are reasonably necessary to:

(i) Document collection of materials, source of materials, time delivered to Designated Facility, and other information as requested by the Contract Administrator. For Residential Service Units the report shall indicate monthly residential material collected in tons by material type (e.g., Solid Waste, Recyclable Materials, Hazardous Household Waste, Bulk Waste, Bulk Yard Waste, etc.). For Commercial Service Units the report shall include cubic yards of material collected and tons of material disposed. For City facilities, the report shall include cubic yards of material collected and tonnage of material disposed by material type (e.g. Solid Waste, Recyclable Materials, etc.).

(ii) Document missed collections, late set-outs and improper set-outs on a daily basis including the address, time and date for each and the reason and notice for the improper set-outs.

(iii) For Commercial Service Units document customer accounts including the name of business, contact name and phone number, address, type of Collection Services, frequency for each Collection Service, and number and size of Bins, Carts, Dumpsters, Compactors, and Roll-offs for each customer.

(iv) Document overflowing Containers, special pickup requests, and other additional services provided.

(v) Document customer contact or complaints.

(vi) Such other documents and reports as the Contract Administrator may reasonably require to verify compliance with this Agreement or to meet the City's reporting requirements with the State of Florida.

(vii) Contractor agrees to maintain separate records in a form sufficient to identify gross receipts from the City of Pembroke Pines from gross receipts for other municipalities and/or other operations.

viii) A summary table of delivery ticket information from each facility must be attached to the monthly reports.

7.5 Reporting Requirements

(i) The Contractor shall submit monthly reports by the 10th of the following month in an electronic format approved by the Contract Administrator summarizing the records the Contractor is required to create, maintain, and make available to the City pursuant to this Agreement.

(ii) The Contractor shall submit annual reports in an electronic format approved by the Contract Administrator within thirty (30) calendar days following the end of the contract year summarizing the records the Contractor is required to create, maintain, and make available to the City pursuant to this Agreement.

7.6 Inspection Rights - The Contractor shall consent to inspection of loads by the City.

7.7 Interpretation of Performance and Administrative Charges. The City's Contract Administrator shall make the interpretation or decision regarding any and all questions which may arise concerning the quality and acceptability of the work and services provided by the Contractor, the interpretation of the provisions of the Agreement, and the acceptable fulfillment of Contractor's duties under the Agreement. The Contractor shall have the right to appeal any decisions or findings of the Contract Administrator to the City Commission, whose findings and conclusions shall be final and binding.

ARTICLE 8 **ASSIGNMENT OF CONTRACT**

This Contract/Franchise or any portion thereof, shall not, under any circumstances, be sublet or assigned without the prior written approval of the City. Contractor shall not sell or otherwise dispose of any assets during the term of this Contract/Franchise which sale or disposition will in any way affect the ability of Contractor to perform its obligations under this Contract/Franchise, without the express consent of City Commission by action taken in a formal meeting of said body. For the purposes of this Contract/Franchise, a stock sale of Contractor's stock in excess of fifty-one (51%) shall constitute a non-permitted assignment and subject Contractor to the default provisions of this Contract.

ARTICLE 9 **NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of the Agreement, neither CONTRACTOR nor its subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual

orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 10

INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, or United States policies, rules or regulations relating to the use of CONTRACTOR's Funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 11

UNCONTROLLABLE FORCES

11.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

11.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable

dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 12

WITHHOLDING OF PAYMENTS

12.1 The City may withhold part or all of any payment otherwise due the Contractor from the City if the Contract Administrator concludes that the Contractor's actions or inactions have resulted in the following:

- (i) Unsatisfactory work not caused by conditions beyond the Contractor's control;
- (ii) Defective work that has not been corrected;
- (iii) The Contractor's failure to carry out instructions or orders of the City;
- (iv) Failure of the Contractor to make payments to any subcontractor for materials or labor, which results in a claim against the City;
- (v) Unsafe working conditions allowed to persist by the Contractor;
- (vi) Failure of the Contractor to provide routes, schedules, data, or reports requested by the City.

If the foregoing problems are corrected, payment shall be made to the Contractor for the amounts withheld, but the City shall not be liable to the Contractor for interest on any delayed payment. The Contract Administrator shall not exercise the City's right to withhold payments under this section unless the Contract Administrator concludes that such action is reasonable and necessary in light of the Contractor's problems or failure of performance.

ARTICLE 13

TERMINATION

13.1 Default by Contractor. In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure. The City shall be the sole judge of nonperformance.

13.2 City Termination

(i) In the event there should occur any Material Breach or Material Default in the performance of any covenant or obligation of Contractor which has not been remedied within thirty

(30) days after receipt of written notice from City specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within thirty (30) days, provided that Contractor has undertaken the cure within such thirty (30) days and proceeds diligently thereafter to cure in an expeditious manner), City, may if such breach or default is continuing, terminate this Agreement upon written notice to Contractor.

(ii) If Contractor shall fail to cure its breach or default as specified in this Section, City may terminate this Agreement upon ten (10) days written notice. In such case, Contractor shall not be entitled to receive further payment for services rendered from the Effective Date of the Notice of Termination.

(iii) In addition, City may invoke performance and payment bonds and may enter into a separate contract for the completion of the Agreement, according to its terms and provisions, or use such other methods as in City's sole opinion shall be required for the completion of the Agreement.

(iv) All damages, costs and charges incurred by City, together with the cost of completing the terms and provisions of the Agreement, shall be deducted from any monies due or which may become due to Contractor. In case the damages, and expenses so incurred by City shall exceed the unpaid balance, then Contractor shall be liable and shall pay to City the amount of such excess.

(v) If after Notice of Termination it is determined for any reason that Contractor was not in breach or default, then the rights and obligations of City and Contractor shall be the same as if the Notice of Termination had not been issued pursuant to the termination for cause clause as set forth in this Section.

(vi) Upon receipt of Notice of Termination, Contractor shall promptly discontinue all affected work unless the Notice of Termination directs otherwise, deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries, such other information as may have been required under the terms of Agreement whether completed or in process.

(vii) The following events shall, without limitation, constitute a Material Breach or a Material Default by Contractor for purposes of this Section:

1. Contractor shall abandon as hereinafter defined, the performance of Collection Services for a period of five (5) consecutive calendar days unless caused by event of Uncontrollable Force. As used herein, the term "abandon" shall refer to voluntary cessation of performance of Collection Service.
2. The failure of Contractor to pay amounts owed to City under the terms of this Agreement within fourteen (14) calendar days after such amounts become finally due and payable.

3. In the event that the Contractor becomes financially distressed as evidenced by one or more of the following:

- i. Contractor fails to pay its debts when they become due;
- ii. Contractor has filed for relief or reorganization and bankruptcy or insolvency;
- iii. Contractor makes an assignment for benefit of its creditors in lieu of taking advantage of any available bankruptcy or insolvency law;

Contractor shall consent to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; or if Contractor is adjudicated insolvent or shall take corporate action for the purpose of any of the foregoing.

4. The default by Contractor with respect to any obligation to any third party pertaining to Contractor or to Collection Services, which may permit any third party, either immediately or following notice and/or the passage of time to accelerate the maturity of any obligation of Contractor, to assume control of Contractor or take possession of or to transfer or caused to be transferred to any third party any portion of the assets of Contractor, but only if such default materially interferes with or prevents Contractor's performance under the terms of this Agreement.

5. If Contractor shall fail to submit a Performance Bond or a renewal or substitute Performance Bond as required pursuant to this Agreement.

6. If Contractor shall fail to diligently perform its work in accordance with the requirements of this Agreement.

13.3 Post Contractual Obligations. In the event of a termination, for any reason, or the expiration of the Renewal Term or any subsequent term, the Contractor shall continue to coordinate and work with the City during any transition to a subsequent vendor and ensure that there is no interruption in the services provided by the Original Agreement and any subsequent amendments, at the current rates, on a month to month basis until the City establishes a new contract for services.

ARTICLE 14

CLAIMS/DISPUTE RESOLUTION/OPERATIONS DURING DISPUTE/ COST SAVINGS

14.1 Definition of Claim - As used herein "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of the Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause. A claim by Contractor shall be made in writing and submitted to Contract Administrator.

14.2 When a controversy cannot be resolved by mutual Agreement, Contractor shall submit a written request for final decision to Contract Administrator. The written request shall set forth all the facts surrounding the controversy.

14.3 Process for Dispute Resolution

i. In connection with any claim under this clause, Contractor, at the discretion of Contract Administrator, may be afforded an opportunity to be heard and to offer evidence in support of their claim. Contract Administrator shall render a written decision on all claims within thirty (30) Business Days of receipt of Contractor's written claim, unless Contract Administrator determines that a longer period is necessary to resolve the claim. The decision shall be furnished to Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within thirty (30) calendar days, Contract Administrator shall notify Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

ii. Except as provided otherwise in this Agreement and to the extent permitted by law, the Contract Administrator shall be responsible for interpreting this Agreement to resolve disputes that may arise hereunder. Nothing contained herein shall limit any party's right to pursue any rights or remedies available at law.

14.4 Operations During Dispute

i. In the event that any dispute arises between City and Contractor relating to this Agreement performance or compensation hereunder, Contractor shall continue to render service and receive compensation in full compliance with all terms and conditions of this Agreement as interpreted, in good faith, by City, regardless of such dispute.

ii. Contractor expressly recognizes the paramount right and duty of City to provide adequate services to its residents, businesses and commercial establishments, and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with City in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute shall present the matter to mediation in the courts of Florida. If mediation fails, Contractor shall present the matter to a court in Florida.

iii. Notwithstanding the other provisions in this Section, City reserves the right to terminate this Agreement at any time whenever the service provided by Contractor fails to meet reasonable standards of the trade, after City provides written notice to Contractor pursuant to the terms of this Agreement. Upon termination, City may call the performance bond and apply the cash and surety bond for the cost of service in excess of that charged to City by the firm engaged for the balance of the Agreement period.

14.5 In the event that Contractor and/or City identify method(s) in which a cost savings to the City is available, Contractor and City may agree to modify this Agreement to provide for such,

provided that any such changes do not create an undue hardship on Contractor and are mutually agreed upon by City and Contractor.

ARTICLE 15
PERFORMANCE & PAYMENT BONDS

The performance bond shall be conditioned that the Contractor performs the contract in the time and manner prescribed in the contract.

The payment bond shall be conditioned that the Contractor promptly make payments to all persons who supply the Contractor with labor, materials and supplies used directly or indirectly by the Contractor in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the City to the extent of any and all payments in connection with the carrying out of said Contract which the City may be required to make under the law.

Contractor shall furnish at its own cost, to City, an irrevocable Performance Bond and an irrevocable Payment Bond, in form and content approved by the City Attorney, for the faithful performance of this contract and all of its obligations arising hereunder in the amount of **Five Hundred Thousand and 00/100 Dollars (\$500,000.00) dollars, each**. Two (2) separate bonds are required and both must be approved by the City.

The Contractor will be held responsible for renewal of the bond for each successive year of the Agreement, including renewal terms.

Bonds shall be written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31DFR, Section 223.10, Section 223.11). Further, the surety company shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+

Contractor shall furnish to City proof of such bond within fifteen (15) days after the execution of this Contract, and in any event prior to commencing work, such proof shall include a statement that the policy or bond may not be canceled or altered without at least thirty (30) days prior notice to City.

Maintenance of said bond and the performance by Contractor of all of the obligations under this paragraph shall not relieve Contractor of liability under the default provisions set forth in this Contract or from any other liability as a result of any breach hereunder. The performance Bond may be "called" in the event of any default hereunder by Contractor. The calling of the Bond shall in no manner restrict or preclude any additional or further remedies available to City against Contractor for breach, default or damages hereunder.

ARTICLE 16
PUBLIC RECORDS

16 The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. Contractor shall comply with Florida's Public Records Law. Specifically, Contractor shall:

16.1.1 Keep and maintain public records required by the City to perform the service;

16.1.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

16.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, Contractor shall destroy all copies of such confidential and exempt records remaining in its possession after Contractor transfers the records in its possession to the City; and

16.1.4 Upon completion of the Agreement, Contractor shall transfer to the City, at no cost to the City, all public records in Contractor's possession. All records stored electronically by Contractor must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

16.2 The failure of Contractor to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement, for which, the City may terminate the Agreement in accordance with the terms herein.

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

CITY CLERK
601 City Center Way
Pembroke Pines, FL 33025
(954) 450-1050

mgraham@appines.com

ARTICLE 17
SCRUTINIZED COMPANIES

Contractor, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

17.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

17.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

17.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

17.2.2 Is engaged in business operations in Syria.

ARTICLE 18
E-VERIFY

Contractor certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

18.1 Definitions for this Section:

18.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. “Contractor” includes, but is not limited to, a vendor or consultant.

18.1.2 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

18.1.3 “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

18.2 Registration Requirement; Termination:

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

18.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract;

18.2.2 All persons (including subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

18.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 19 **MISCELLANEOUS**

19.1 Succession of Agreement. This Agreement and the rights and obligation contained herein shall inure to the benefit of and be Binding upon the parties hereto and their respective successors and assigns.

19.2 Survival. Any rights either party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.

19.3 No Penalties. No provision of this Agreement is to be interpreted as a penalty upon any party to this Agreement. The parties hereby agree that the rights of City in the event Contractor takes or fails to take certain actions pursuant to this Agreement, are reasonable, and that the parties desire such certainty with regard to such matters.

19.4 Further Assurance. Contractor and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform

such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

19.5 Time of the Essence. For purposes herein, the parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.

19.6 Captions and Section Headings. Captions and Sections headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

19.7 No Waiver. No waiver by City of any term, covenant or condition herein contained shall be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The rights and remedies created by this Contract/Franchise are cumulative, and are not intended to be exclusive. The use of one remedy under this Contract/Franchise shall not be taken to exclude or waive the right or use of another Contract/Franchise, and each party shall be entitled to pursue all remedies generally available under the laws of the State of Florida.

19.8 Exhibits. All Appendices attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by reference. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

19.9 Authorization. Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the Person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

19.10 Taxes. Contractor shall pay all applicable sales, consumer use and other similar taxes required by law. The City of Pembroke Pines is exempt from all Federal, State, and Local taxes. An exemption certificate will be provided where applicable upon request.

19.11 Permits Fees and Notices. Contractor shall secure and pay for all permits and fees, licenses and charges necessary for the proper execution and completion of the work, if applicable. The costs of all permits, fees, licenses and charges shall be included in the Price Proposal except where expressly noted in the specifications.

19.12 Budget Constraints. In the event the City is required to reduce contract costs due to budgetary constraints, all services specified in this document may be subject to a permanent or temporary reduction in budget. In such an event, the total cost for the affected service shall be reduced as required. The Contractor shall also be provided with a minimum 30-day notice prior to any such reduction in budget. In the event of a budget reduction, the Contractor and City will enter into good faith negotiations to reduce the level of service provided commensurately. If the parties

fail to reach agreement on a reduction in service level this contract may be terminated in accordance with the City's contract termination requirements contained in Section 13 herein.

19.13 Unauthorized Aliens. The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-contractors used by the Contractor as well.

19.14 City's Ordinances. Nothing contained in any City ordinance hereafter adopted, pertaining to the collection of garbage or trash, shall in anyway be construed to affect, change, modify or otherwise alter the duties, responsibilities, and operations of Contractor in the performance of the terms of this Contract/Franchise, unless it is agreed to in writing by both Contractor and City and this Contract/Franchise is amended accordingly.

19.15 No Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee, subcontractor, lobbyist, or consultant working solely for Contractor to solicit or secure this agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee, subcontractor, lobbyist, or consultant working solely for Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract/Franchise. For the breach or violation of this provision, City shall have the right to terminate the Contract/Franchise without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

19.16. Attorney's Fees. In the event that either party shall have to enforce the provisions of this Contract/Franchise the prevailing party shall be entitled to recover all of its attorneys' fees, and costs, including paralegal expenses, at both the trial and appellate levels, and further including any post-judgment proceedings.

19.17. Legal Representation. It is acknowledged that each party to this Contract/Franchise had the opportunity to be represented by legal counsel in the preparation of this Contract/Franchise and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

19.18. Records. Contractor shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to services provided and fees charged pursuant to this contract/franchise. Upon providing reasonable notice, such books and records will be available at all reasonable times for examination and audit by City and its representatives, and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records may be grounds for disallowance by City of any fees or expenses based upon such entries.

19.19. Proprietary Information. The documents, records, routing, charges, and pricing of Contractor are proprietary information and records of Contractor, and are exempt from disclosure pursuant to Section 815.045, Florida Statutes, as may be amended from time to time, unless in the sole opinion and judgment of either the City Manager or the City Attorney, such documents and records are not within said statutory exemption.

19.20. Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by facsimile transmission with certification of transmission to the receiving party, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the City designate the following as the respective places for giving of notice:

As to **CITY**: Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way
Pembroke Pines, Florida 33025
Telephone: (954) 450-1040

Copy to: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone: (954) 771-4500
Facsimile: 9954) 771-4923

As to **CONTRACTOR**: _____

Telephone: _____
Facsimile: _____

16.21. Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

16.22 Entire Agreement and Conflicts: This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the RFP and the CONTRACTOR’s bid proposal, this Agreement shall govern, then the RFP, and then the bid proposal.

IN WITNESS WHEREOF, the parties have caused these presents to be executed and attested to by their duly authorized officers or representatives and their official seals to be affixed hereon, the day and year first above written.

ATTEST: CITY

MARLENE GRAHAM,
CITY CLERK

BY: CHARLES F. DODGE
CITY MANAGER

APPROVED AS TO FORM.

OFFICE OF THE CITY ATTORNEY

CONTRACTOR

Witnesses:

[NAME OF CONTRACTOR]

Print Name

BY:
Print Name:
Title:

Print Name

STATE OF _____)
) ss:
COUNTY OF _____)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____ of [NAME OF CONTRACTOR], a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of [NAME OF CONTRACTOR] for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 20__.

NOTARY PUBLIC

(Name of Notary Typed, Printed or Stamped)