



Islamorada, Village of Islands

SPECIAL CALL VILLAGE COUNCIL MEETING

July 17, 2023 - 5:30 PM
Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036

The Village Council has resumed the in-person regular meeting format. Virtual participation is still available to the public. Please see the last page of the agenda for participation details

AGENDA

- I. **CALL TO ORDER / ROLL CALL**
- II. **PLEDGE OF ALLEGIANCE**
- III. **AGENDA: Requests for Deletion / Emergency Additions**
- IV. **PUBLIC COMMENT**
(This is general public comment. It provides an opportunity for the public to speak about matters not scheduled elsewhere on the agenda. The mayor opens public comment on agenda items throughout the meeting.)
- V. **MAYOR / COUNCIL COMMUNICATIONS**
- VI. **VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS**
- VII. **RESOLUTIONS**
 - A. Resolution Approving Non-Renewal of Village Manager Contract
- **TAB 7 from July 6, 2023 Council Meeting** (John Quick, Interim Village Attorney)
 - B. Resolution Approving Award of Contractual Services Agreement for Residential and Commercial Solid Waste, Yard Waste and Recycling Collection and Disposal Services Effective January 1, 2024 - **TAB 15 from July 6, 2023 Council Meeting** (Ted Yates, Village Manager)
A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A CONTRACTUAL SERVICES AGREEMENT FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE, YARD WASTE AND RECYCLING COLLECTION AND DISPOSAL SERVICES; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE CONTRACTUAL SERVICES AGREEMENT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACTUAL SERVICES AGREEMENT;

**AUTHORIZING THE VILLAGE MANAGER TO EXPEND
BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE**

VIII. ADJOURNMENT

Options for Viewing the Village Council Meeting:

The public is encouraged to watch the meeting on Monroe County's MCTV Comcast Channel 77. Alternatively, the public may view the meeting streamed live on the Village website from their personal computer, tablet or phone via the following link:

https://www.islamorada.fl.us/departments/communications/live_village_broadcast_meeting.php

Option 1: Email your comments.

1. Public comment should be submitted via email to: public.comment@islamorada.fl.us
2. The email should contain "Public Comment" in the subject line.
3. The name and address of the submitter shall be included in the email.
4. Public comment should be submitted by 9 a.m. the day before the meeting. Public comment will be sent to the Village Councilmembers for consideration prior to the meeting. Public comments will not be read during the meeting.

Option 2: Call in During the Meeting.

1. If phoning in, dial 305-224-1968 and enter the webinar ID: **911 0656 4166** followed by #. When the Mayor opens public comment pertaining to the agenda item you are interested in dial *9 to be recognized by the Zoom meeting monitor. The Monitor will call you by the last four digits of your phone number. **Please be sure to unmute your phone when you are called upon.**
2. If watching online via Zoom: Open the Zoom webinar link <https://zoom.us/j/91106564166> and follow the prompts to join the webinar. When the Mayor opens public comment use the "raise your hand" feature to be recognized by the meeting monitor. Public comments will be heard in the order in which they are received.

ADA Assistance:

These meetings are open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the ADA Coordinator at (305) 664-6448 or by email at ADA@islamorada.fl.us at least 48 hours before the scheduled meeting



Council Communication

To: Mayor and Village Council
From: John Quick, Interim Village Attorney
Date: July 17, 2023
SUBJECT: **Resolution Approving Non-Renewal of Village Manager Contract - TAB 7 from July 6, 2023 Council Meeting**

Background:

Analysis:

Budget Impact:

Staff Impact:

Recommendation:

Attachments:

1. Reso_Yates Non-Renewal
2. Att 1 to Reso_Yates Contract Nonrenewal_070623 RVCM
3. Att 2 to Reso_Yates Contract Nonrenewal_070623 RVCM
4. VM Yates Public Comment

RESOLUTION NO.

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, DECLINING TO RENEW THE
EMPLOYMENT AGREEMENT WITH THOMAS T. YATES AS
VILLAGE MANAGER; AND PROVIDING FOR AN EFFECTIVE
DATE**

WHEREAS, Islamorada, Village of Islands (the "Village"), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, Section 7(3) of the Village Charter requires that there shall be a Village Manager, who shall be the Chief Administrative Officer of the Village; and

WHEREAS, on May 6, 2022, at a special meeting, the Village Council selected Mr. Thomas T. Yates to serve as Village Manager; and

WHEREAS, Mr. Yates executed an Employment Agreement with the Village on June 9, 2022, which is attached hereto as Attachment "1", and commenced employment as the Village Manager on August 1, 2022; and

WHEREAS, pursuant to Section 17.1 of the Employment Agreement, the term of the Agreement is from August 1, 2022 through August 1, 2023 "unless terminated by either the Village Council or Village Manager, as provided for in Sections 18-21 of [the] Agreement;" and

WHEREAS, the Employment Agreement does not prevent, limit or otherwise interfere with the right of the Village Council to terminate the Village Manager's employment at any time; and

WHEREAS, as noted in the legal opinion attached hereto as Attachment "2," a majority vote of the Village Council is needed to terminate the Village Manager at a properly posted and duly authorized public meeting; and

WHEREAS, the Village Council finds that it is in the best interests of the Village not to

renew the employment contract with Mr. Yates as Village Manager.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Non-Renewal Of Employment Agreement. The Village Council hereby approves the non-renewal of the employment agreement with Mr. Thomas T. Yates as Village Manager.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.
Motion to adopt by _____, second by _____.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA:

Mayor Joseph B. Pinder III	_____
Vice Mayor Sharon Mahoney	_____
Councilman Mark Gregg	_____
Councilwoman Elizabeth Jolin	_____
Councilman Henry Rosenthal	_____

PASSED AND ADOPTED this 6th day of July, 2023.

JOSEPH B. PINDER III, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

JOHN J. QUICK, VILLAGE ATTORNEY

RESOLUTION NO. 22-06-43

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, APPROVING THE
APPOINTMENT OF THOMAS T. YATES AS VILLAGE
MANAGER; APPROVING AND AUTHORIZING EXECUTION OF
AN EMPLOYMENT AGREEMENT WITH MR. YATES FOR
SERVICE AS THE VILLAGE MANAGER; AND PROVIDING FOR
AN EFFECTIVE DATE**

WHEREAS, Islamorada, Village of Islands (the "Village"), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, Section 7(3) of the Village Charter requires that there shall be a Village Manager, who shall be the Chief Administrative Officer of the Village; and

WHEREAS, on May 6, 2022, at a special meeting, the Village Council selected Mr. Thomas T. Yates to serve as Village Manager; and

WHEREAS, the Village Council finds that the Employment Agreement with Mr. Yates as Village Manager, attached as Exhibit "A" (the "Agreement"), is fair and provides reasonable compensation for Mr. Yates to serve as Village Manager; and

WHEREAS, the Village Council finds that it is in the best interests of the Village to approve the appointment of Mr. Yates as Village Manager, and approve and authorize execution of the Agreement with Mr. Yates to serve as Village Manager.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

Section 1. **Recitals.** The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Appointment. The Village Council hereby approves the appointment of Mr. Thomas T. Yates as Village Manager. Mr. Yates appointment shall be effective as of August 1, 2022.

Section 3. Approval of Agreement. The Village Council finds that the Agreement with Mr. Thomas T. Yates, attached as Exhibit "A," is reasonable and appropriate and is hereby approved. The Mayor is hereby authorized to execute the Agreement.

Section 4. Effective Date. This Resolution shall take effect immediately upon adoption. Motion to adopt by Councilman Mark Gregg, second by Mayor Pete Bacheler.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA:

Mayor Pete Bacheler	YES
Vice Mayor Henry Rosenthal	YES
Councilman Mark Gregg	YES
Councilman Joseph B. Pinder III	YES
Councilman David Webb	YES

PASSED AND ADOPTED THIS 2nd DAY of JUNE, 2022.



PETE BACHELER, MAYOR

ATTEST:



MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY



JOHN J. QUICK, INTERIM VILLAGE ATTORNEY

EMPLOYMENT AGREEMENT
VILLAGE MANAGER

This Employment Agreement (the "Agreement") is made and entered into this 9 day of June, 2022, between Islamorada, Village of Islands, Florida, a Florida municipal corporation, (the "Village") and Thomas T. Yates ("Yates" or "Village Manager").

RECITALS:

WHEREAS, Section 7(3) of the Village Charter (the "Charter") requires that there shall be a Village Manager, who shall be the Chief Administrative Officer of the Village; and

WHEREAS, the Village desires to employ the services of Yates as Village Manager and Yates wishes to accept this employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties.

1.1 The Village agrees to employ Yates as Village Manager to perform the functions and duties specified in the Village's Charter and applicable sections of the Village Code and to perform other legally permissible and proper duties and functions without interference.

1.2 The Village Manager is the Chief Administrative Officer of the Village and shall faithfully perform the duties as prescribed in the Village's Charter and applicable sections of the Village Code and shall comply with all lawful governing body directives, state and federal law, Village policies, rules and ordinances as they exist or may hereafter be amended.

1.3 The Village Manager shall carry out the policy directives of the Village Council and shall perform such other legally permissible, ethical, and proper duties as may be assigned by the Village Council from time to time. All duties assigned to the Village Manager by the Village Council shall be appropriate to and consistent with the professional role and responsibility of the Village Manager.

1.4 With regard to other employees of the Village, it shall be the duty of the Village Manager to:

(i) Employ on behalf of the Village all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the Village.

(ii) Direct, assign, reassign and evaluate all of the employees of the Village consistent with policies, ordinances, Charter, state and federal law.

(iii) Organize, reorganize and arrange the staff of the Village and to develop and establish internal regulations, rules and procedures which the Village Manager deems necessary for the efficient and effective operation of the Village consistent with the lawful directives, policies, ordinances, state and federal law.

(iv) Accept all resignations of employees of the Village consistent with the policies, ordinances, state and federal law, except the Village Manager's resignation which must be accepted by the Village Council.

1.5 The Village Manager cannot be reassigned from the position of Village Manager to another position without his express written consent. In the event the Village Council determines that the Village Manager should be reassigned to another position, the Village Council will provide the Village Manager with at least thirty (30) days' notice of such reassignment.

1.6 The Village Council, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Village Manager for study and/or appropriate action.

Section 2. Salary.

2.1 The Village Manager shall receive an initial annual salary in the amount of \$200,000.00 payable in equal installments in accordance with the Village's existing pay periods.

2.2 The Village Manager agrees and understands that he will not receive any increase in salary for a period of eighteen (18) months subsequent to his employment with the Village. Subsequent thereto, his salary shall be adjusted from time to time by cost-of-living adjustments consistent with any across-the-board adjustments provided to other Village employees.

2.3 The Village Manager agrees and understands that he will not receive any increase in salary for a period of eighteen (18) months subsequent to his employment with the Village. Subsequent thereto, this agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Village's compensation policies to include all salary adjustments on the same basis as applied to other employees of the Village.

2.4 At any time during the term of the Agreement, the Village may, in its discretion, review and adjust the salary of the Village Manager, but in no event shall the Village Manager be paid less than the salary set forth in Section 2.1 of the Agreement except by mutual written agreement between the Village Manager and the Village. Such adjustments, if any, shall be made pursuant to a lawful Village Council action. In such event, the Village Manager and the Village agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

Section 3. Relocation Expenses.

3.1 Village Manager shall be entitled to a lump sum relocation allowance of Fifteen Thousand Dollars (\$15,000.00) in recognition of the Village Manager's need to relocate to the area. The Village Manager will provide the Village with receipts related to his relocation for the purposes of reimbursement. Said sum shall be payable to the Village Manager upon full execution of this Agreement.

Section 4. Housing.

4.1 Village Manager shall be entitled to a housing allowance of Four Thousand Dollars (\$4,000.00) per month as part of the overall compensation as the Village Manager. The housing allowance shall commence and be payable to the Village Manager within the first pay period of August 2022.

Section 5. Performance Evaluations.

5.1 The Village Council shall evaluate the Village Manager every six (6) months for the first eighteen (18) months of his employment, if this Agreement is still in effect and has not been terminated as provided for herein. Thereafter, if the Agreement has not been terminated, the Village shall annually evaluate the performance of the Village Manager within 30 days of the Anniversary Date (i.e., August 1).

5.2 The evaluation specified in Section 5.1 shall be based upon (i) the Village Manager's performance of the duties specified in Section 1 and the Village Manager's achievements of the Village Council's policy directives.

Section 6. Insurance/Retirement Benefits/Life Insurance.

6.1 Village Manager shall receive the benefits currently provided to Village employees for health insurance to include vision, life insurance, dental insurance, and retirement benefits as outlined in the Village's Employee's Policies and Procedures Manual dated October 1, 2018 (the "Manual").

6.2 Village Manager shall pay the sum of One Hundred and Twenty-Five Dollars (\$125.00) bi-weekly towards a "Family" plan of the group benefits identified in Section 6.1 above.

6.3 Except as otherwise provided in this Agreement, the Village Manager shall be entitled to the level of benefits enjoyed by and/or available to other employees of the Village as provided by the Village's policies, Charter, ordinances, or personnel rules and regulations or other practices.

6.4 Should the Manual be amended by action of the Village Council, the Village Manager's benefits listed in Section 6.1 shall be changed to match those benefits provided in the amended Manual,

Section 7. Professional Dues and Expenses.

7.1 The Village agrees to budget and pay for professional dues and subscriptions of the Village Manager necessary for continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for the Village Manager's continued government management and government finance professional participation, growth and advancement and for the good of the Village.

7.2 The Village acknowledges the value of having the Village Manager participate and be directly involved in local civic clubs or organizations. Accordingly, the Village shall pay for the reasonable membership fees and/or dues to enable the Village Manager to become an active member in local civic clubs or organizations.

7.3 The Village recognizes that certain expenses of a non-personal but job-related nature are incurred by the Village Manager and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Village business is being discussed or conducted and participation in social events of various organizations when representing the Village. Such expenditures are subject to annual budget constraints as well as state and Village ethics and purchasing policies. The Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

Section 8. Automobile.

8.1 The Village shall reimburse the Village Manager at the IRS standard mileage rate for any business use of his personal vehicle.

Section 9. Annual Leave, Sick Leave and Holidays.

9.1 The Village Manager shall continue to receive the benefits currently provided to Village employees for annual leave, sick leave and holidays as outlined in the Manual.

9.2 The Village Manager's accrual of the benefits specified in Subsection 9.1 shall be based upon the Village Manager's initial employment date with the Village of August 1, 2022.

9.3 The Village Manager shall accrue sick leave and vacation leave at the rate provided or available to any other employees of the Village and under the same rules and provisions applicable to other employees.

Section 10. Travel.

10.1 The Village agrees to budget and pay for travel and associated expenses of the Village Manager for professional and official travel, meetings and occasions to adequately continue the professional development of the Village Manager and to pursue necessary official functions for the Village, including but not limited to national, regional, state and local governmental associations, groups and committees in which the Village Manager serves as a member.

10.2 The Village also agrees to budget and pay for travel and associated expenses of the Village Manager for short courses, institutes and seminars that are necessary for the Village Manager's professional development and for the good of the Village.

Section 11. Equipment.

11.1 Recognizing the importance of constant communication and maximum productivity, the Village shall provide the Village Manager, for business and personal use, a laptop computer, software, mobile phone/personal digital assistant and/or tablet computer for business and personal use required for the Village Manager to perform his duties and to maintain communication with Village staff and officials as well as other individuals who are doing business with the Village. Upon termination of the Village Manager's employment, the equipment described herein shall be returned to the Village.

Section 12. Days.

12.1 Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 13. Indemnification.

13.1 To the extent permitted by law, the Village shall defend, save harmless, and indemnify the Village Manager against any action, claim, demand or other legal action, whether groundless or otherwise arising directly or indirectly out of the Manager's duties or position with the Village.

13.2 The aforesaid indemnification only applies to the extent that the costs, expenses or damages exceed monies covered by insurance including attorneys' fees.

13.3 Notwithstanding the provision of Section 13.1, the Village shall not be obligated to indemnify or save harmless the Village Manager from claims of any nature arising out of the malfeasance of the Village Manager, or from injury or property damage caused by the intentional misconduct of the Village Manager.

13.4 This indemnification provision shall survive the termination of this Agreement.

Section 14. Bonds.

14.1 The Village shall pay for the cost of any fidelity or other bonds for the Village Manager required by any law, ordinance or the Village Charter.

Section 15. Reduction of Compensation.

15.1 The Village Council shall not at any time during the term of this Agreement reduce the salary provided to the Village Manager below any percentage equally applied to all employees during the annual budget process.

15.2 The Village Council shall not at any time during the term of this Agreement reduce the benefits provided to the Village Manager below those that are equally applied to all employees during the annual budget process.

Section 16. Employment Exclusive.

16.1 The Village Manager shall be considered a full-time employee of the Village and shall remain in the exclusive employ of the Village and shall not accept any other employment during the Term of this Agreement without the prior approval of the Village Council.

Section 17. Term.

17.1 The term of this Agreement shall be for an initial period of one (1) year from August 1, 2022 to August 1, 2023, unless terminated by either the Village Council or Village Manager, as provided for in Sections 18-21 of this Agreement.

17.2 Prior to separating from the Village, the Village Manager agrees to participate in an exit interview in order to provide feedback concerning his experience working at the Village, his reasons for leaving and ideas for improvement.

17.3 For purposes of this Agreement, the Village Manager's Anniversary Date shall be August 1.

17.4 If this Agreement is not terminated prior to the Anniversary Date, then it shall automatically be renewed on its Anniversary Date for one (1) year terms unless terminated in accordance with the provisions of Sections 18-21 of this Agreement.

Section 18. Termination.

18.1 In accordance with the Charter, the Village Manager shall serve at the pleasure of the Village Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate this Agreement at any time.

18.2 For the purposes of this Agreement, termination shall occur when the majority of the Village Council votes to terminate the Village Manager in accordance with the provisions of Section 7(2) of the Charter at a properly posted and duly authorized public meeting.

Section 19. Termination Without Cause.

19.1 If the Village, citizens or legislature acts to amend any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Village Manager's position that substantially changes the form of government, the Village Manager shall have the right to declare that such amendments constitute termination.

19.2 If the Village reduces the base salary, compensation or any other financial benefit of the Village Manager, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

19.3 If the Village Manager resigns following an offer to accept resignation, whether formal or informal, by the Village as representative of the majority of the governing body that the Village Manager resign, then the Village Manager may declare a termination as of the date of the suggestion.

19.4 If the Village Manager is unable for a consecutive period of 60 days to perform his duties as specified in Section 1 of this Agreement due to disability, sickness, accident, or injury, as certified by a physician, the Village Council may elect to terminate this Agreement. In the event of the Village Manager's death, this Agreement shall be deemed terminated.

Section 20. Termination For Cause.

20.1 If the Village Manager is terminated for cause, the Village shall have no obligation to pay severance under this section.

20.2 For the purposes of this Section "for cause" shall be defined as: (i) breach by the Village Manager of any material term or condition of this Agreement, (ii) violation of any applicable laws or codes, (iii) misconduct, (iv) gross insubordination or (v) willful neglect of the duties specified in this Agreement; or conviction of a felony or plea of no contest to a felony.

Section 21. Resignation.

21.1 In the event that the Village Manager voluntarily resigns his position with the Village, the Village Manager shall provide a minimum of thirty (30) days' written notice unless the Village and Village Manager agree otherwise in writing.

21.2 If the Village Manager resigns, then the Village is not obligated to pay severance under Section 22; however, the Village Manager shall be compensated for all sick leave, vacation leave and all paid holidays at the Village Manager's rate of pay in effect at the time of separation, in accordance with policies and procedures established for all employees of the Village.

Section 22. Severance.

22.1 Severance shall be paid to the Village Manager when employment is terminated as defined in Section 19 (Termination without Cause).

22.2 If the Village Manager is terminated as defined in Section 19, the Village shall provide a minimum severance payment equal to twenty (20) weeks' salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Village Manager's option.

22.3 The Village Manager shall also be compensated for all sick leave, vacation leave, and all paid holidays at the Village Manager's current rate of pay, in accordance with policies and procedures established for all employees of the Village.

22.4 The Village Manager shall provide the Village direction as to payment by lump sum or installment payments within 30 days of termination or resignation.

Section 23. Conflict of Interest Prohibition.

23.1 Village Manager shall not without the express prior approval of the Village Council, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the Village, except for stock ownership in any company whose capital stock is publicly held and regularly traded.

23.2 The Village Manager shall abide by the provisions of Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.

23.3 The Village Manager shall timely file statutory disclosures of financial interests as required by Chapter 112, Florida Statutes.

Section 24. Confidentiality

24.1 The Village Manager shall not disclose to any person, party or entity any confidential, proprietary, time-sensitive, or non-public information relating to the Village or its operations unless required by law to do so.

Section 25. Miscellaneous Provisions.

25.1 **Complete Agreement.** It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

25.2 **Amendment.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

25.3 **Severability.** If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

25.4 **No Waiver.** The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

25.5 **Non-Assignment.** The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Village Manager.

25.6 **Governing Law.** Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Monroe County, Florida, Upper Keys Division or, if in Federal Court, in the Southern District of Florida.

25.7 **Waiver of Jury Trial.** Both the Village and the Village Manager knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

25.8 **Notice.** Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery or delivered at a Village Council meeting. Notice shall be sent as follows:

For the Village: Mayor
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036
Telephone: (305) 664-6400
Facsimile: (305) 664-6464

With a copy to: Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036
Telephone: (305) 664-6400
Facsimile: (305) 664-6464

For the Village Manager: Village Manager
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036
Telephone: (305) 664-6410
Facsimile: (305) 664-6464

IN WITNESS WHEREOF, the Village, by signature of the Mayor as authorized by Council Resolution No. 22-06-43 on 6/2/2022, and Village Manager have signed and executed this Agreement the day and year first above written.

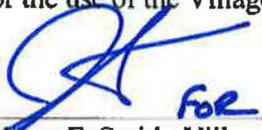
ISLAMORADA, VILLAGE OF ISLANDS

By: 
Pete Bacheler, Mayor

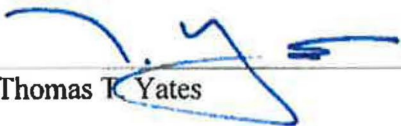
ATTEST:


Marne McGrath, Village Clerk

Approved as to form and legal sufficiency
For the use of the Village Council only:


Alison F. Smith, Village Counsel

VILLAGE MANAGER


Thomas T. Yates



Alison F. Smith
asmith@wsh-law.com

MEMORANDUM

TO: Councilmember Elizabeth Jolin
FROM: Alison F. Smith, Esq.
DATE: June 14, 2023
RE: Implications of Involuntary Separation of Village Manager

ISSUES

Councilmember Elizabeth Jolin and Councilmember Henry Rosenthal of Islamorada, Village of Islands (the “Village”), have posited questions concerning the Village Manager’s existing contract of employment (the “Employment Agreement”), as follows:¹

- 1) May the Council renew the Employment Agreement by taking no action?
- 2) May the Council, by majority vote, opt not to renew the Employment Agreement?
- 3) If there is a vote of nonrenewal prior to the expiration date of the Employment Agreement, will the Village avoid having to pay severance to the Village Manager?
- 4) May the Council terminate (as opposed to renew/nonrenew) the Village Manager’s employment at any time?

¹ To the extent any queries were similar in nature or overlapped, they were combined to avoid duplication.

- 5) What are the financial implications if the Council terminates the Village Manager with and/or without cause?
- 6) What is the process that the Village Council must follow in order to separate the Village Manager from the Village, regardless of the manner in which the separation is couched (i.e., nonrenewal, termination with cause or termination without cause)?
- 7) Is there a notice requirement for a termination of the Village Manager's Employment Agreement?

BACKGROUND INFORMATION

By way of background, Village Manager Ted Yates entered into the Employment Agreement with the Village on June 2, 2022. The Employment Agreement contains the following pertinent terms:

- "[T]he Village Manager shall serve at the pleasure of the Village Council. Nothing in [the] Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate this Agreement at any time." (Employment Agreement, Section 18.1).
- The term of the Agreement is from August 1, 2022 through August 1, 2023 "unless terminated by either the Village Council or Village Manager, as provided for in Sections 18-21 of [the] Agreement;"² (Employment Agreement, Section 17.1).
- "...[T]ermination shall occur when the majority of the Village Council votes to terminate the Village Manager in accordance with the provisions of Section 7(2) of the Charter at a properly posted and duly authorized public meeting." (Employment Agreement, Section 18.2).
- "If [the] Agreement is not terminated prior to the Anniversary Date, then it shall automatically be renewed on its Anniversary Date for one (1) year terms unless terminated in accordance with the provisions of Section 18-21 of this Agreement." (Employment Agreement, Section 17.4).

² Sections 18-21 are respectively titled "Termination," "Termination Without Cause," "Termination For Cause" and "Resignation."

The inquiries made by Councilpersons Jolin and Rosenthal are outlined below, with the pertinent analysis immediately following each inquiry.

ANALYSIS

Issue #1:

May the Council renew the Employment Agreement by taking no action?

Yes. The Employment Agreement contains what is colloquially known as an “evergreen” clause or an automatic renewal clause (Employment Agreement 17.4), requiring that the Village express a desire to end the Employment Agreement before its expiration date of August 1st failing which, the contract will automatically renew. In particular, the Employment Agreement provides as follows: “If this Agreement is not terminated prior to the Anniversary Date, then it shall automatically be renewed on its Anniversary Date for one (1) year terms unless terminated in accordance with the provisions of Section 18-21 of this Agreement.” (Employment Agreement, Section 17.4).

Issue #2

May the Council, by majority vote, opt not to renew the Employment Agreement?

Yes. If the Council desires **not** to have the Village Manager continue within the employ of the Village, it is imperative to affirmatively act to cause his employment to be separated. Pursuant to the Village Charter (Section 7(2)(a)), and the Employment Agreement (Section 18.1), the Village Manager serves at the pleasure of the Village Council. This implies that the Village Manager will serve until some affirmative action is taken by the Village Council to cause the Village Manager’s services to be discontinued. In fact, in Section 7(2)(b) of the Village Charter, the Village Manager can only be “...**removed** from office...by a majority vote

of the full council” (emphasis supplied). In other words, an affirmative vote by three (3) Councilmembers is required. The Charter further provides that, “[u]pon demand by a charter officer, a public hearing shall be held prior to such removal.”

Issue #3:

If there is a vote of nonrenewal prior to the expiration date of the Employment Agreement, will the Village avoid having to pay severance to the Village Manager?

There is a viable argument that no severance is owed to the Village Manager if the Employment Agreement is nonrenewed. The analysis for this conclusion follows.

In responding to the inquiry concerning any requirement to pay severance to the Village Manager, the first issue to assess is whether a nonrenewal constitutes a termination without cause.

The issue of whether a nonrenewal is synonymous with a termination without cause is a nuanced one. A review of Florida case law indicates that this analysis is very fact specific and turns on the specific provisions in the employment contract at issue. Two cases (one public sector and one private sector), are instructive here, as they involve employment contracts that contain language similar to the language used in the instant Employment Agreement.

In the first case, which involves the public sector (i.e., *White v. Fort Myers Beach Fire Control District*, 302 So. 3d 1064 (Fla. 2d DCA 2020), a former fire chief brought an action for breach of contract arguing that he was terminated rather than nonrenewed. There were two key provisions to the Court’s analysis: Section 2 and Section 3 of the employment agreement. Section 2 noted that the fire chief’s employment existed from 10/1/12 through 09/30/15.

Section 3 provided how the agreement could be terminated prior to expiration. On 09/30/15, the agreement was considered automatically renewed for a period of 2 years as long as neither party submitted a written notice of termination to the other party. In February 2015, the fire chief received a nonrenewal letter. The letter specifically said it was not a termination as covered by section 3 of the agreement. The court noted that “if the parties intended section 3’s termination procedures to apply to the nonrenewal option, they could have said so in section 2.” *Id.* at 1071. Accordingly, the court held there was no breach of the employment agreement (i.e., it was simply not renewed and not terminated).

In the second case, a private sector case (i.e., *Paladyne Corp. v. Weindruch*, 867 So. 2d 630 (Fla. 5th DCA 2004)), a former president of the corporation entered into an employment agreement that included a “term” provision. Pursuant to that provision, the agreement began on a specific date and ended on a specific date. The Agreement was subject to automatic renewal for successive one-year terms unless either party notified the other 30 days prior to the expiration of the then current term. A separate provision titled “termination” set out a number of ways the company could effectuate termination. Specifically, there were three ways: without cause, with cause, and termination by employee. The company elected to send the former president a notice of its intent to not renew the Agreement and declined to pay him any severance pay. The former president sued arguing he was effectively terminated and entitled to severance pay for one year. At trial, the trial judge found that the nonrenewal was equivalent to a termination. However, the Fifth District Court of Appeal did NOT agree. Instead, it held that “a facial reading of the two provisions leads us to the conclusion that the word nonrenewal was not meant to be synonymous with termination.” *Id.* at 633. Put

simply, “there would be no point in having a nonrenewal provision if the effect of not renewing the contract is identical to the effect of termination the contract under paragraph 10(i).” *Id.*

Notwithstanding the foregoing, it should be noted that there *are* other cases in which courts in Florida have held that non-renewal of an employment contract is akin to a termination without cause. *See e.g., Medcomp, Inc. v. Alternative Physicians Solutions, LLC*, 2019 WL 11504458 *1, at *6 (M.D. Fla. July 19, 2019) (holding the non-renewal of the employment agreement in that case constituted a termination).

In this case however, whether a nonrenewal of the Employment Agreement is viewed the same as or different from a termination without cause, an argument could be made that the result should be the same as it relates to the payment of severance (i.e., that no severance is owed). This is because, under the Employment Agreement, it appears that only four instances are contemplated under which there is an obligation for severance to be paid if the Village Manager’s termination is without cause, and none of these four instances include a nonrenewal of the contract.

In particular, pursuant to the Employment Agreement, if the Village Manager’s contract is terminated without cause, the Village is responsible for providing the Village Manager with severance equal to twenty (20) weeks’ salary, as well as all sick leave, vacation leave, and paid holidays, *if any of the following four (4) circumstances occur*:

1. If the Charter is amended such that the Village Manager’s role, powers, duties, authority or responsibilities are substantially affected, in which case he/she can declare it a termination of the Employment Agreement.
2. If the Village reduces the Village Manager’s base salary, compensation or any other financial benefit, unless it is applied in no greater percentage than

the average reduction of all department heads, in which case it would be deemed to be a termination.

3. If the Village Manager resigns following an offer to accept resignation.

4. If the Village Manager is unable for a consecutive period of 60 days to perform his duties due to disability, sickness, accident, or injury, as certified by a physician, the Village Council may elect to terminate this Agreement. The Employment Agreement is also deemed terminated in the event of the Village Manager's death.

(Employment Agreement, Sections 19 & 22).

Issue #4:

May the Council terminate (as opposed to renew/nonrenew) the Village Manager's employment at any time?

Yes. Pursuant to the Employment Agreement, as well as the Charter, as aforementioned, the Village Manager serves at the pleasure of the Village Council. (Employment Agreement, Section 18.1, Village Charter Section 7(2)(a)). The Village Manager may be terminated with or without cause. (Employment Agreement, Sections 19 & 20). Cause is defined pursuant to the Employment Agreement as: (i) breach by the Village Manager of any material term or condition of [the] Agreement; (ii) violation of any applicable laws or codes; (iii) misconduct; (iv) gross insubordination; (v) willful neglect of the duties specified in [the] Agreement; or (vi) conviction of a felony or plea of no contest to a felony. (Employment Agreement, Section 20.2).

Issue #5:

What are the financial implications if the Council terminates with and/or without cause?

If the Village Manager's contract is terminated **with cause** (as defined immediately above in response to issue #4), the Village is under no obligation to provide the Village Manager with severance. (Employment Agreement, Section 20.1).

If the Village Manager's contract is terminated **without cause**, the Village is responsible for providing the Village Manager with severance equal to twenty (20) weeks' salary as well as all sick leave, vacation leave, and paid holidays in the event one of the four circumstances enumerated above in response to issue #2 occurs. (Employment Agreement, Section 19).

Issue #6:

What is the process that the Village Council must follow in order to separate the Village Manager from the Village, regardless of how the separation is couched (i.e., nonrenewal, termination with cause or termination without cause)?

If there is any intent to involuntarily separate the Village Manager from the Village, as discussed above in response to issue #2, affirmative action must be taken by the Council to do so. Indeed, there does not appear to be any genuine dispute that any nonrenewal or termination (for whatever reason), of the Village Manager's Employment Agreement would need to be added to a Council agenda and voted on by the Council at a public meeting, and that a majority vote of the full Council would be needed to discontinue the Village Manager's services, regardless of what that cessation of services is deemed to represent (i.e., a nonrenewal or termination of the Employment Agreement).³

³ The Employment Agreement contains a clause indicating that the Village Manager must be terminated in accordance with the provisions of Section 7(2) of the Charter at a properly posted and duly authorized public meeting. While the Employment Agreement uses the term "terminated" and "termination," the Charter uses broader language (i.e., removal). (Employment Agreement, Section 18.2).

Issue #7

Is there a notice requirement for a termination of the Village Manager's Employment Agreement?

The Employment Agreement does not provide a certain number of days prior to its expiration by which the Village must announce its intent not to renew or terminate the Village Manager's contract.⁴ However, as mentioned above, since the last Village Council meeting before August 1st is on July 27th, it would be prudent to vote on the potential nonrenewal of the Village Manager's contract by this meeting.⁵

Sincerely,



Alison F. Smith, Esq.

⁴ Pursuant to the Employment Agreement however, the Village Manager must provide thirty (30) days' notice of his intent to resign. (Employment Agreement, Section 21.1).

⁵ There are currently two regular Village Council meetings scheduled for July – July 6 and 27, 2023. Accordingly, should the Council wish to have such a discussion, it could occur at either of those meetings.

Marne McGrath

From: Barn <barnabyrich@gmail.com>
Sent: Friday, June 30, 2023 2:55 PM
To: Marne McGrath
Subject: Ted Yates

To whom it may concern,

I wanted to reach out and express my appreciation and gratitude for everything Ted Yates brings to the table for the village of Islamorada. Ted and his team have provided real stability and accountability to Village Management and it's that sort of trusted consistency that will help us prosper and grow in healthy, organic directions. Since day one, he's been transparent with us all and understands that leadership isn't about making popularity contest decisions but making difficult decisions for the good of our town.

I'm aware his contract renewal is coming up and I feel like this is a no-brainer, but I've also been surprised by departures of good people recently and wanted to share. With another 5 years in his role as village manager, you'll be assuring calm and constancy in a formerly volatile and incongruent space. He has our trust, he should have the job.

Marne McGrath

From: Andy Newman <andy@newmanpr.com>
Sent: Friday, June 30, 2023 3:38 PM
To: Buddy Pinder; Elizabeth Jolin; Henry Rosenthal; Mark Gregg; Sharon Mahoney
Subject: Village Manager Contract

June 30, 2023

Council Members:

I understand, through the "Coconut Telegraph," that some council members are dissatisfied with our current village manager.

The same reports indicate that there may be a discussion and resolution regarding severing his current contract and initiate a search for a new village manager.

While I am not in a position to grade every category of his job performance, I believe he is doing well, especially considering that he is in his first year. My understanding is that he has developed a solid relationship with staff and that morale is higher than it has been in years.

He also seems well respected among county leaders, which is important in a linear community that requires effective partnerships.

But my biggest reason you need to consider maintaining his contract are the optics that a dismissal might send to the community.

Seriously? Four village managers since 2020?

That simply doesn't make sense, and some people may very well wonder why an effort shouldn't be staged to dissolve village government and return the region's administration to Monroe County.

In Ted Yates' case, surely he deserves more time before a radical decision is made.

Please give the above deep thought before you make a decision.

Thanks very much.

Most sincerely,
Andrew A. Newman
193 El Capitan Drive
Islamorada, FL. 33036

Marne McGrath

From: Susan Latham <susanbelllatham@gmail.com>
Sent: Sunday, July 2, 2023 8:11 AM
To: Marne McGrath
Subject: Support of Ted Yates

I am in support of Ted Yates as Village Manager. He is an honest man who wants to do his best for our community. He has a love for his new home and I support his contract being extended.

Thank you

Susan Latham
112 Stromboli Drive
Islamorada

Sent from my iPad please pardon any typos

Marne McGrath

From: Brenda Mace <bistro78704@yahoo.com>
Sent: Sunday, July 2, 2023 3:33 PM
To: Marne McGrath
Subject: Ted Yates

Ted and Sharon are our neighbors and I can vouch for his integrity and honesty. Not sure if it matters, as I am not in islamorada but certainly believe he is the right person for that job.

Sent from Yahoo Mail for iPad

Marne McGrath

From: Scott Kay <scott@tlcastles.com>
Sent: Sunday, July 2, 2023 10:23 PM
To: Marne McGrath
Subject: In support of Ted Yates

To whom it may concern,

It has recently come to my attention that a member of the Islamorada Village Council, this week, will be moving to terminate the contract of Village Manager, Ted Yates.

This letter is to express my support for Mr. Yates, and also my opinion that any discussion to terminate his contract would be against the best interest of the community. It is clear that one of the challenges that this community, and specifically the Village Manager role, has faced has been a lack of continuity and direction in leadership. It is my strong belief, and the belief of many others that I have discussed this issue with, that Mr. Yates brings exactly the type of experience, leadership, transparency and ability to communicate and connect with people of various backgrounds and ideas that this community needs.

In less than one year, Mr. Yates can already speak to a significant list of initiatives that have been positives for the community, and holds a vision for many more. It is my sincere hope that the rest of the Village Council is also able to recognize these accomplishments, and the leadership that Ted Yates brings to his position, and enable it to continue for many years in the future.

Sincerely,

Scott Kay
138 San Marco Drive
Islamorada, FL 33036

607-760-7560

Marne McGrath

From: Joel Bishop <jbish1984@yahoo.com>
Sent: Sunday, July 2, 2023 11:55 PM
To: Marne McGrath
Subject: Ted Yates

Dear Islamorada Council Members,

I would like to voice my support for the City Manager, Ted Yates. He was hired to do the job and needs to be given the time and assets required to accomplish the job he was hired to do. He is a man of good character and imminently qualified.

Respectfully,

Joel Bishop

Marne McGrath

From: Jack & Jamie Niedbalski <niedkeys@bellsouth.net>
Sent: Monday, July 3, 2023 1:48 PM
To: Marne McGrath
Subject: Village Manager

Just heard that our current Village manager might be on the chopping block. For what? Not knowing any of the facts about why this might be, my first thought is unless he has done something unethical or outside of his role as VM, I think the Village Council needs to hold on to Ted. He seems to be doing a good job--he engages the public in a positive way--and seems to be a good fit in our community and his role as Village Manager. From a stability perspective, the Council needs to stick with a person who embraces our unique island lifestyle and has the best interest of the people he/she serves. If Ted likes is here and is willing to put in all the hours to make the Village a better place to live-work-play, then we need to keep him here and keep him happy. We need focus on retaining & not replace another Village Manager.

Regards.
Jack Niedbalski
Plantation Key homeowner

Marne McGrath

From: Lindsay Fast <lindsay@habitatupperkeys.org>
Sent: Tuesday, July 4, 2023 6:13 PM
To: Marne McGrath
Cc: Ted Yates
Subject: Ted Yates Support

Hello,

I wanted to express my support of Ted Yates' continued employment at the Village of Islamorada.

I appreciate his reasonable, collaborative and community minded approach to his position and with additional time I believe he can bring the community together with a more efficient, comprehensive approach to our local government.

Thank you!

--
Lindsay Fast

Habitat for Humanity of the Upper Keys

Executive Director

mobile: 305-433-1022



Marne McGrath

From: Dave Helwig <Dave@helwigcs.com>
Sent: Wednesday, July 5, 2023 7:44 AM
To: Marne McGrath
Subject: Village Manager Tenure

I have learned that renewal of the Village Manager contract for Ted Yates is up for consideration and would like to express my support and appreciation.

Ted has proven to be a tremendous asset to our community and its governance. He has proven to be a much needed reasoned and stabilizing influence. He has quickly grasped the challenges facing our unique community and been proactive in pursuit of practical solutions.

It is important to the entire community that Ted's contract be extended and his contributions praised.

David Helwig
156 Bougainvillea Street

Sent via the Samsung Galaxy S21 FE 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

Marne McGrath

From: Frank Derfler <fderfler@gmail.com>
Sent: Wednesday, July 5, 2023 11:44 AM
To: Marne McGrath
Subject: "Tab 7" of Thursday's Council Agenda

I note that the contract for Ted Yates is under review. As a full time Village resident for 25 years and based on first-hand experience, I give my full support to continuing Ted as Village Manger.

In dealing with Ted at informal meetings like Islamorada Chamber events or in formal business like road repairs, I find Ted is smart, informed, creative, and that he has high integrity.

I see no reason to terminate his contract and feel that action would be detrimental to the Village for reasons ranging from Village image to effective governance. Ted has the full support of myself and my neighbors at mm 89.

-- Frank J. Derfler

Islamorada

Frank Derfler

Marne McGrath

From: Pat Key <nautibell@aol.com>
Sent: Wednesday, July 5, 2023 1:28 PM
To: Buddy Pinder; Sharon Mahoney; Mark Gregg; Elizabeth Jolin; Henry Rosenthal
Subject: Support for renewing Ted Yates contract as Village Manager

Dear Village Council Members,

I am writing to wholeheartedly support the renewal of Ted Yate's contract as the Village Manager. Having been a resident of the Keys since 1983, I have witnessed both significant changes to Founders park and a lack of consistency in previous Village Managers. However, Ted Yates has not only become an integral part of our community but has also invested in it by purchasing a home in the Keys.

Under Ted's leadership, his unwavering dedication, strategic vision, and effective communication skills have brought about remarkable improvements during his tenure. His responsiveness to residents' needs and commitment to addressing them have earned him the respect and admiration of many. Renewing Ted Yates' contract would provide the stability and continuity that the Village needs.

Please consider the overwhelmingly positive impact Ted has had on the community and seriously evaluate the value he brings as the Village Manager. His experience, understanding of the Villages' unique needs, and ability to foster collaboration make him an invaluable asset. I am confident that his continued leadership will lead to even greater achievements in the future.

Thank you for your time and consideration.

Regards,
Pat Key

Marne McGrath

From: Tony Hammon <thammon@islandcommunitychurch.org>
Sent: Wednesday, July 5, 2023 3:08 PM
To: Marne McGrath
Subject: Ted Yates support

Dear Council Members:

I wish to express my strongest support for Mr. Ted Yates and to recommend his continued employment. He has proven to be an excellent member of the Islamorada community and it would be to our detriment to not continue with his contract.

Sincerely,
Tony Hammon

Marne McGrath

From: Derek Rodberg <5rodbergs@gmail.com>
Sent: Wednesday, July 5, 2023 5:11 PM
To: Marne McGrath
Subject: Ted Yates/ Rodberg

I would like to voice my tremendous support for our current Village Manager, Ted Yates. We moved to the Keys in 1970, and growing up here was an absolute privilege. I cherished it so much that I left my job on Wall Street, to raise my own three children on our amazing islands. I never really get involved in Village politics but I feel that this current situation is critical to the betterment of our hometown ! I would like to share one quick story from my experience with Ted Yates. I was at the Homestead airshow and struck up a conversation with several of the Thunderbirds. What an amazing group of America's finest young women and men. I said to them in passing, "Hey if you ever want to come down to Islamorada give me a call." Well at 9am the next morning I got a call from the USAF Thunderbird team asking if the invitation was still open.

They arrived at 3pm on that Sunday afternoon and Ted was there to help me show all 14 of them around Islamorada. We wanted to show our appreciation for all that they do for America. We took them out in the boats, had a dinner for them and finished back at my house for sunset.. Two of them said that they had the best day of their lives and that nobody would go out of their way to entertain them like we did. Ted is an amazing ambassador for our Village and goes above and beyond ! He loves our community and strives every day to make it the absolute best town in America. We need to show support and consistency with regards to our Village Manager position. Ted has tremendous support from the majority of our residents, so please lets make the right choice for Islamorada !

Best, Derek Rodberg

Marne McGrath

From: nthemx <nthemx@aol.com>
Sent: Wednesday, July 5, 2023 5:11 PM
To: Marne McGrath
Subject: Ted Yates

Hello,
I've known Ted Yates since he took the Village MGR position.
And i know him to be the type of person that really puts a lot of thought into what he is currently working on.
I feel he has the best interests of our community in mind.
It seems like this is a tough position with all the turnover....
I'm hoping that we continue to allow Ted to hold this position and work through any of these tough situations.

Thank you,
Russell Hubartt

nthemx@aol.com

Marne McGrath

From: CARLA BAHN <clbahn@aol.com>
Sent: Wednesday, July 5, 2023 9:20 PM
To: CARLA BAHN
Subject: Review of Ted Yates

Dear Islamorada Council,

I know you are all busy, so I will be brief. **Keep Ted!** He is well respected in the community and is doing a great job. Many other Managers would probably have quit after the insults that were slung at him during the last council meeting when he was questioned about HIS decision to terminate Dan Gulizio. Although his character was called into question, he exhibited the integrity we expect from our Village Manager. I recommend we renew his Contract for another year.

Although I am not able to physically attend the 7/6/2023 meeting, I will be watching remotely. Should the Council make the (bad) decision to not renew Ted's Contract, the Citizens of Islamorada should be provided with very specific information as to the Goals and Objective given to Ted, that he failed to meet.

Respectfully,
Carla L. Bahn
Plantation Key

Marne McGrath

From: Ty Harris <tyharrispa@gmail.com>
Sent: Thursday, July 6, 2023 10:25 AM
To: Marne McGrath; jquick@wsh-law.com; Ted Yates
Subject: Resolution Approving Non-Renewal of Village Manager Contract - Tab 7

Marne, will you please include this email as part of the public comments on the afore-reference item.

Village Council, in reviewing tonight's agenda, it is with great concern for our Village that I read Tab 7. I am not privy to your individual reasons for wanting to discuss Mr. Yates contract; however, I am disappointed that Village politics appears to be the main driver on this agenda item. In my dealings with Mr. Yates, I have found him to be professional and a manager who follows through on his promises. As you know, the position of Village Manager is a difficult one. The average tenure of a city or county manager is typically five years, we can't even get to one year! For the Village to function and serve our community it must have strong leadership at both the Village Council and at senior management level. One of the reasons for this instability is the constant 24-month election cycle. Most projects in the Village are multi-year and the direction and priorities of Council can change with each election. This is extremely difficult on staff and our community. To begin to address this situation STABILITY within the ranks of Village staff is critical. That starts with a manager that has the trust and support of the employees. Mr. Yates has accomplished this in less than a year after the tumultuous tenure of Mr. Orvec. As a property owner and former Village employee, I ask that you support the manager so we can get on with the business of the Village and continue to make this community one of the premier places to live-work-and play in Florida.

Kind regards,

Ty Harris

Marne McGrath

From: Brett Ekblom <brett@nativeconstruction.com>
Sent: Thursday, July 6, 2023 12:13 PM
To: Marne McGrath; Buddy Pinder; Henry Rosenthal; Sharon Mahoney; Mark Gregg
Cc: Jacquelyn Ekblom; David epstein
Subject: Ted Yates , subject agenda

Council,

I heard Ted's contract is being voted on Thursday. (Today). I'd like to share my support. I have a bunch of permits and communication with the city's departments all the time . Whenever I need help , Ted is there with a fair resolution and follows through. I'm happy with his position. Please keep him. Does the village really need to be in the market for a replacement?

Thank you
Brett

Marne McGrath

From: Chris Trentine <chris@cbtconstruct.com>
Sent: Thursday, July 6, 2023 2:07 PM
To: Marne McGrath
Cc: Marne McGrath; Buddy Pinder; Henry Rosenthal; Sharon Mahoney; Mark Gregg
Subject: Re: Ted Yates

Good Afternoon Council,

Village Manager Ted Yates is an asset to our community. He is one of the only managers to buy a house and plant his feet here to stay in years. Please consider what he has done for this community in the short time and that he should continue to represent our community as our manager.

Thanks!

Chris

Chris Trentine
CBT Construction and Development Inc.
305 852 3002
Fax: 305 852 3062
Chris@cbtconstruct.com
www.cbtconstruct.com
CGC 1513423

Marne McGrath

From: Mark Gregg <mgregg9787@aol.com>
Sent: Thursday, July 6, 2023 6:49 AM
To: Marne McGrath
Subject: Fw: Village Manager

Hello Marne, If appropriate, please forward the attached letter to the other council members and Ted.
Thank you, Mark

----- Forwarded Message -----

From: Joseph Roth <jroth@reganroth.com>
To: Mark Gregg <mgregg9787@aol.com>
Sent: Wednesday, July 5, 2023 at 03:44:39 PM EDT
Subject: Village Manager

Hi Mark,

Hope you are doing well and surviving the heat that summer has brought. Getting out of town end of month for a Bahamas boat trip and looking forward to it. Really want to bag a ridiculously large hogfish if possible this year, we will see.

I wanted to take a moment to let you know that I was made aware of the contract renewal with Ted Yates, Village Manager.

Seems to me the following:

There may be some animosity with the decision on Dan. Having dealt with Dan, I would say that the decision to remove him was probably best for the Village. My impression was that Dan had no desire to exercise any implied authority that he had in his capacity. This lead to a backup of progress. I understand that the codes need to be updated but putting decisions on hold (with pressure and/or allegiance to certain Political Action Groups) to rewrite our codes is not the answer. I don't believe the planning and building department would have ever moved forward under his "leadership".

I am assuming based on my knowledge of doing the same for my business, that the cost to bring Ted here was more than 30% of his compensation package. Unless he has made some egregious error in judgement professionally or with regards to human resources, I don't think 12 months is enough time to evaluate his performance thoroughly. Clearly, there should be a review, discussion on where/how to improve, and monitoring for results. I don't feel that 12 months is enough time to become integrated into the community as a whole. I am sure the first few months he was here were probably filled with becoming familiar with staff, peers, vendors, and the workings of our unique Village.

I encourage you to think of the cost to replace him versus the cost to give proper direction to succeed. I also encourage and would support you taking a stand against any retaliatory agendas that others may have. As a Council, a Board, or any other similar body, the responsibility is to set the goals, make available the assets to meet those goals, and

communicate with your CEO, Manager, or Director whatever their title may be. That manager should have autonomy to hire and fire as they see fit based on their game plan to meet the goals set forth by Council. We (I am speaking from experience on a number of BOD's) don't get down into the detail and the politics of hiring and firing the manager's staff.

I am not sure who does and who does not support Ted other than the hearsay around town and well I have personally dealt with Ted and feel our communications and dealings were positive this is as much about the position (Manager) and how you and your peers on the Council deal with your one employee along with the costs associated with replacing him or her. Please feel free to share my remarks.

Sincerely,

Joe

Joseph H Roth III

Regan ROTH Insurance Agency

90144 Overseas Highway

Tavernier, FL 33070

(305) 852-3234 ext 1005 Office

(305) 393-2660 Cell

Marne McGrath

From: Deborah Esslinger <islanderdeb@hotmail.com>
Sent: Thursday, July 6, 2023 11:07 AM
To: Marne McGrath
Cc: Stephanie Conde; Maria Bassett; Ted Yates
Subject: Public Comment-Surveys and Manager Contract

Hi Marne,

Please forward to all council members...

Where is the resident survey on whether or not the the Village Manager contract should be renewed? Or several of the other important items that warrant as much public comment as you can get?

Push those resident surveys. It's only fair that all residents should have the opportunity to have a say and that's they way to accomplish it. Those of us who are unable to attend or zoom due to having a life could very well benefit from them. Most people have enough time in their busy lives to fill out a quick survey vs. waiting hours to speak at one of these meetings.

Ted has been a great manager. I am sure not everyone has agreed with all his decisions, however the man was hired to do a job and he is doing it very well. The best thing about him is that he is not one-sided. He voices his need to hear both sides. Just because he doesn't jive with a certain few puppet masters agendas, he has been a huge asset to finally having a decent manager that my family would like to see stick around. To not renew his contract after the last manager fiasco (Greg) and stressing at the time of selection for Ted that who ever was hired needed to commit whole heartedly because we can't keep a manager around, will make the Village look worse than it already does in that department. We are extremely thankful to our finance director Maria for her dedication to our Village everyday and the several times she was interim manager. Ted seems eager to stay with us and that alone says a lot. I love our little Village and the residents. It doesn't deserve a bad reputation and it needs a manager! I oppose spending more tax dollars on another search and selection of a manager that is in no way warranted. Make the right choice for your residence and not the select few who are out to destroy our peaceful place in paradise.

Deb Esslinger
Life long Islamorada resident

Marne McGrath

From: David Epstein <militaryinstaller@gmail.com>
Sent: Thursday, July 6, 2023 1:50 PM
To: Marne McGrath; Buddy Pinder; Henry Rosenthal; Sharon Mahoney; Mark Gregg; Jacquelyn Ekblom
Subject: Fwd: Islamorada Village Way Forward

Sent from my iPhone

From: "EPSTEIN, DAVID B CIV USAF AFRC 482 MSG/CEX" <david.epstein.2@us.af.mil>
Date: July 6, 2023 at 12:50:01 PM EDT
To: militaryinstaller@gmail.com
Subject: Islamorada Village Way Forward

Village Council,

It has come to my attention, that a renewal of our Village Manager, and leader is still up for debate. While we have many village issues, I know you are working hard on, this would take us 3 steps backwards. What an awesome job he is doing, and will be doing for many years to come.

If you have some compelling reason that you have not made public, then this would be irresponsible of the council on many levels (Fiscally /Managerial/Leadership). Do any of you have some human resources issue that needs to be discussed? The previous administration (council) has done great harm by replacing some managers/leaders, without true causes. Mr Yates is the only person I have seen at county or state meetings, and he is becoming the face in many forums. Having spoken to several previous managers, they have said how awesome he has been, and a true professional representing the village.

Mr Yates leadership, transparency, willingness to make decisions, and leadership with the community has been far and away been nothing short of awesome and inspirational. My real proposal would be to renew his contract, and have him give the village elected officials (elected officials need training too) some tips on how to be leaders in the community. I happen to be with Mayor Cava the other day (Miami Dade County Mayor), and she asked about Islamorada Manager by name Ted, since we met in April all together. Her words, "you have a true professional manager down there, it's great to hear".

To be responsible and continue to build our community, please don't tear it down by making any change at the top. Allow Mr Yates to continue to lead, excel and continue Islamorada's greatest place on earth to call home. Yes I have traveled the Globe in the

Marne McGrath

From: Andreas Hopman <hopman.andre@gmail.com>
Sent: Thursday, July 6, 2023 2:50 PM
To: Marne McGrath
Subject: Village Manager Contract

PLEASE FORWARD TO COUNCIL MEMBERS, sorry I couldn't make it.

Dear Council Members,

My interactions with Ted Yates have been limited to half waves and hello's on the 2nd floor of Village Hall. He probably couldn't pick my face out in a crowd and up until writing this email I did not know his last name. But what I do know, however, is that his staff like him. They enjoy working with him and think he's a great boss. Isn't that what matters here? Please consider the Employees of the Village, when making your vote on their leader and renew his contract!

Andre Hopman
208 Buttonwood Lane
Islamorada, FL 33036

Sent from my iPhone

Marne McGrath

From: ENGEL, RICHARD P. <richard.engel@firsthorizon.com>
Sent: Thursday, July 6, 2023 2:50 PM
To: Marne McGrath
Subject: Ted Yates Village Manager

To Whom it May Concern,

I am writing to the Village Counsel recommending a continuance of Ted Yates Village Managers employment contract. I feel there is no possible way to evaluate anyone's performance as Village Manager in one years' time. I speak from the standing point of experience as a Vice President, Bank Manager, Board Member of Habitat for Humanity of the Upper Keys, Islamorada Chamber Member & Ambassador as well as a Rotarian.

My experience with Ted Yates has only been positive , professionally and personally. I strongly urge you to extend his employment contract at least two more years and let him show you how effective he can be for the Village of Islamorada.

Sincerely,

RICHARD ENGEL

Vice President
Banking Center Manager
NMLS# 1619899
richard.engel@firsthorizon.com
305-664-6275 office | 305-664-4483 Branch
80900 Overseas Highway
Islamorada, FL 33036



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Marne McGrath

From: Claire Johnson <flkeysclaire@gmail.com>
Sent: Thursday, July 6, 2023 3:07 PM
To: Marne McGrath
Subject: Letter to the Council Members for tonights Council Meeting

Good afternoon Marne,

Will you please pass this letter along to all council members?

Dear Council Member,

Thank you for your service and thank you in advance for taking the time to read this letter.

In watching the Council meeting on June 8th, I was in disbelief at the topic regarding a Village Manager's decision about a staff member. In taking on the position as a council member, there are times you should stand above the crowd and do the right thing. This discussion was not the right thing to do. A council member's role is to set policies and not micromanage. For a council member to ask the manager to qualify his decision is unprofessional, inappropriate, and overstepping. The professionalism of how Ted answered should speak volumes.

Our charter states "that certain interference with village employees shall constitute malfeasance in office" There are always 2 sides to every story and we (we meaning the council and the public) are not privy to the true nature of an employee's performance or lack of performance. I am hopeful that the council will look at the entire picture, even including the effects on staff and all potential ripple effects that micromanaging will have.

The Charter is specific with the role of council members. You might not agree with them but they should be respected.

Warmest regards,

Claire Johnson

185 Nautilus Dr. Islamorada

July 6, 2023

Honorable Council Member

The June 8, 2023, council meeting's discussion on the departure of an employee left me speechless. Equally disturbing was public comment. I was shocked that the speakers angrily demanded disclosure of the employee's information. One would expect most people to realize releasing personal information would allow the employee to seek some measure of compensation from the Village. I cannot image how other employees must feel. I was surprised that no one on Council or Staff addressed why private employee information could not be discussed.

I have met both the departed employee and the manager, both of whom are intelligent and capable individuals. I do not know what goes on in the office day to day. Nor should you. My job is to vote and elect council members who will perform their duties as required by their Oath and the Charter/laws/codes of Islamorada. I do not want to know when or why employees leave, nor should I know, The Council should not second guess hiring and firing decisions made by the manager. Please give the manager enough time and space to do his job. I trusted that you hired the best man for the job. I have seen nothing to suggest otherwise. Do not allow public speakers to run the Village of Islamorada. That is your job.

Respectfully,

Barbara Neal
110 Columbus Drive
Islamorada, Florida 33036

Marne McGrath

From: Brick Guy <brickguy@bellsouth.net>
Sent: Thursday, July 6, 2023 3:15 PM
To: Buddy Pinder; Henry Rosenthal; Sharon Mahoney; Mark Gregg; Marne McGrath
Subject: Village Manager

Good Afternoon, I understand that Ted Yates contract is up for discussion at tonight's meeting and it possibly won't be renewed. I can't for the life of me understand why you would get rid of someone who seems to be working extremely well with most of village staff and the community. I have had numerous village staff and even one police officer reach out to me to see if anything can be done to keep Ted, he appears to have a good relationship with about every one . I don't feel firing another Village manager would be beneficial to anyone, especially one who seems to be becoming a valuable part of our community.

Thank you for your consideration.

Roger Young

Islamorada Brick Co

CRC 034492

Phone: 305.395.8282

P.O. Box 104

Islamorada, FL 33036

Marne McGrath

From: Wayne Porter <portertw@gmail.com>
Sent: Thursday, July 6, 2023 3:40 PM
To: Marne McGrath
Subject: To the Council of Islamorada: Please vote yes to keep Ted Yates as Village Manager

7/6/2023

Dear Council Members,

Thank you for your service to our community. We are writing to you to strongly support the extension of the Village Manager, Ted Yates', contract. Having lived in Islamorada for more than 40 years, we believe he is one of the best Village Managers which we have ever had.

We believe Ted Yates is a man of integrity and shows strong leadership for the Village of Islamorada. He has not even completed a year here and has done an amazing job of bringing the community together and leading in a manner that benefits the people of Islamorada.

We want to encourage each of you to please vote for Ted Yates to stay as Village Manager. It is for the best of our community, and we hope you each will do the right thing.

Thank you again for your service and we look forward to seeing your vote for the Village Manager to remain here in Islamorada.

God Bless,

Wayne and Tina Porter



Council Communication

To: Mayor and Village Council
From: Ted Yates, Village Manager
Date: July 17, 2023
SUBJECT: **Resolution Approving Award of Contractual Services Agreement for Residential and Commercial Solid Waste, Yard Waste and Recycling Collection and Disposal Services Effective January 1, 2024 - TAB 15 from July 6, 2023 Council Meeting**

Background:

The Village provides residential and commercial solid waste, yard waste and recycling collection and disposal services ("solid waste services") to all developed properties in the Village, including approximately 4,385 residential customers and 289 commercial customers. Residential customers include single-family homes and all multifamily duplex and triplex buildings that are either two (2) or three (3) residential units. The residential house count is updated annually. Any building with four (4) or more units is considered a commercial customer and is not included in the residential count.

The solid waste services are currently outsourced through a Contractual Services Agreement with independent contractor Waste Management, Inc. (formerly Advanced Disposal, Inc., formerly Veolia ES Solid Waste Southeast, Inc.), awarded by the Village Council pursuant to a previous competitive selection process in 2013. The agreement provides for an initial ten (10) year term with one five (5) year renewal option.

At its meeting on February 9, 2023, The Village Council directed the Village Manager to not exercise the five (5) year renewal option, and to solicit proposals for the Village's solid waste services. The current agreement with Waste Management, Inc. expires on December 31, 2023. Village Manager Ted Yates confirmed at the Council meeting on March 2, 2023, that an RFP was being drafted and that it would be released on March 6, 2023.

The Village issued Request for Proposals ("RFP") 23-05 on March 6, 2023 with an initial submittal deadline of April 11, 2023. RFP 23-05 was issued in accordance with Sec. 2-327(b) and (c)(4) of the Village's Purchasing Guidelines in the Village Code of Ordinances and was published on DemandStar.com and on the Village's website from March 5, 2023 through the submittal deadline. Village staff posted the bid on the Village's Facebook page and sent information via email to its distribution list to make residents and other interested parties aware that the Village had entered into the sealed bid procurement process.

A mandatory pre-proposal meeting was held on March 16, 2023; the meeting was duly noticed and open to the public. Four firms attended the meeting. Only those firms that attended the mandatory pre-proposal meeting were eligible proposers.

By the deadline on May 16, 2023, at 2:00 p.m., the Village received proposals from three of the four eligible proposers, listed below. Waste Connections of Florida, Inc. attended the pre-proposal meeting and submitted a no bid notification via email on the date of the bid submittal deadline. The three firms that submitted proposals are:

Atlantic Residential, LLC, Key Largo, Florida – an Atlantic Trash & Transfer Subsidiary
Island Disposal Company, Tavernier, Florida
Waste Management Inc. of Florida, with a local office in Islamorada, Florida

To evaluate the proposals, the Village Manager assigned himself and two members of the Village staff to serve on the RFP 23-05 Evaluation Committee (the "Committee") and requested the Village Council appoint two or more members. The Village Council expressed approval of the Village Manager's choices and assigned two Village Council Members to serve on the Committee. The seated Committee was comprised of Mayor Buddy Pinder, Councilman Henry Rosenthal, Village Manager Ted Yates, Finance Director Maria Bassett and Public Works Director A.J. Engelmeyer. The Committee evaluated and ranked the proposals at a duly noticed public meeting on June 6, 2023.

It should be noted that Atlantic Residential was disqualified as a proposer on June 7, 2023 due to communication to the Village Council that did not fall within an exception to the Cone of Silence.

Analysis:

At the June 8, 2023 Village Council Meeting, the Village Manager provided a summary of the Committee's discussion and rankings of the proposals and reported that Island Disposal Company was the top-ranked firm. Following the Village Manager's presentation and discussion, the Village Council adopted Resolution No. 23-06-56 approving the Committee's recommendation and directing the Village Manager and Village Attorney to enter into negotiations for the Contractual Services Agreement.

The Contractual Services Agreement provided as Exhibit "A" to the proposed resolution is the Agreement negotiated by the parties. Adoption of the resolution would approve the Contractual Services Agreement with Island Disposal Company for an initial ten (10) year term beginning January 1, 2024 with one (1) five (5) year renewal option.

There were no changes to services or service levels directed by the Village Council during discussions at the Village Council meetings. The proposed Contractual Services Agreement would continue the same level of solid waste services currently provided.

Budget Impact:

The Village has established a Solid Waste Special Revenue Fund to account for the Village's solid waste non-ad valorem revenues and program expenditures. The Village's adopted FY 2022-2023 budget includes \$2,063,500.00 in the Solid Waste Fund for residential solid waste services

expenditures. This amount was calculated based upon 4,385 residential properties to be served at \$452.13 per year (the previous annual rate per unit of \$438.96 increased by CPI of 3% or \$13.17). The total budgeted revenues in FY 2022-2023 are \$2,062,800.00 from the non-ad valorem solid waste assessments and \$1,500.00 from interest revenue. The budgeted excess of revenues over expenditures at September 30, 2023, is \$800.00. The committed fund balance in the Solid Waste Fund estimated pursuant to the September 30, 2022, audit, which is still ongoing, is approximately \$24,000.00.

The FY 2023-2024 budget would need to include costs associated with the continuation of the Village's agreement with Waste Management through December 31, 2023, under the current terms, which include a maximum 3% increase in rates based on CPI. Then rates applicable to the contract expected to be in place for services beginning January 1, 2024, would need to be analyzed during the FY 2023-2024 budget preparation and included in the final budget for adoption by the Village Council.

Staff Impact:

The Village Manager is responsible for administering the contract while the Public Works Director is responsible for daily operations monitoring.

Recommendation:

It is recommended that the Village Council adopt the proposed resolution approving the Contractual Services Agreement for Residential and Commercial Solid Waste, Yard Waste and Recycling Collection and Disposal Services with Island Disposal Company.

Attachments:

1. Resolution_RFQ_23-05-Solid_Waste_Agreement_Award_2023-07-06
2. PROPOSED SOLID WASTE AGREEMENT

RESOLUTION NO. 23-

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A CONTRACTUAL SERVICES AGREEMENT FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE, YARD WASTE AND RECYCLING COLLECTION AND DISPOSAL SERVICES; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE CONTRACTUAL SERVICES AGREEMENT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACTUAL SERVICES AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of Islands, Florida (the "Village") provides residential and commercial solid waste, yard waste and recycling collection and disposal services ("Solid Waste Services") to all developed properties in the Village; and

WHEREAS, the Solid Waste Services are currently outsourced through a Contractual Services Agreement with independent contractor; and

WHEREAS, the initial ten (10) year term of the current Contractual Services Agreement expires on December 31, 2023; and

WHEREAS, the Village Council directed the Village Manager to solicit proposals for the Village's Solid Waste Services for a term to begin on January 1, 2024; and

WHEREAS, the Village issued Request for Proposals ("RFP") 23-05 in accordance with Sec. 2-327(b) and (c)(4) of the Village's Purchasing Guidelines in the Village Code of Ordinances and duly advertised RFP 23-05 for a total of seventy one (71) days from the date of release of the RFP to the final deadline date for submittal of proposals; and

WHEREAS, the Village received proposals from three (3) eligible firms; and

WHEREAS, the Village Manager established an Evaluation Committee (the "Committee") to review and rank eligible proposals and provide the ranking and recommendations to the Village Council; and

WHEREAS, the Committee reviewed the three (3) proposals in a duly noticed public meeting and the Village Manager provided its ranking to the Village Council for consideration at the June 8, 2023 Regular Village Council Meeting; and

WHEREAS, through the adoption of Resolution No. 23-06-56 on June 8, 2023, the Village Council approved the rankings of the Committee and authorized the Village Manager and Village Attorney to negotiate a Contractual Services Agreement for Solid Waste Service with the top-ranked firm, Island Disposal Company; and

WHEREAS, the Village Council finds that approval of the Contractual Services Agreement with Island Disposal Company is in the best interest of the Village and its residents and businesses.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and incorporated into this Resolution by this Reference.

Section 2. **Execution of Agreement.** The Village Manager is authorized to execute the Contractual Services Agreement with Island Disposal Company on behalf of the Village and to execute any required documents to implement the terms and conditions of the Agreement subject to approval as to form and legality by the Village Attorney.

Section 3. **Authorization of Village Officials.** The Village Manager and/or his designees and the Village Attorney are authorized to take all necessary actions to implement the terms and conditions of the Contractual Services Agreement.

Section 4. Authorization of Fund Expenditures. Notwithstanding the limitations

Section 5. Effective Date. This Resolution shall become effective immediately upon its

Motion to adopt by _____, seconded by _____.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Joseph B. Pinder III _____

Vice Mayor Sharon Mahoney _____

Councilman Mark Gregg _____

Councilwoman Elizabeth Jolin _____

Councilman Henry Rosenthal _____

PASSED AND ADOPTED THIS ____ DAY OF _____, 2023.

JOSEPH B. PINDER III, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS:

JOHN J. QUICK, INTERIM VILLAGE ATTORNEY

CONTRACTUAL SERVICES AGREEMENT

FOR

**RESIDENTIAL AND COMMERCIAL SOLID WASTE, YARD WASTE AND RECYCLING
COLLECTION AND DISPOSAL SERVICES**

BETWEEN

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

AND

ISLAND DISPOSAL COMPANY

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CONTRACTUAL SERVICES AGREEMENT

This Contractual Services Agreement for Residential and Commercial Solid Waste, Yard Waste and Recycling Collection and Disposal Services (this “Agreement”) is made and entered into as of this ____ day of July, 2023 by and between Island Disposal Company, a Florida Corporation (“CONTRACTOR”), and Islamorada, Village of Islands, Florida (the “VILLAGE”). The provisions of this Agreement shall be effective on January 1, 2024.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, it is agreed that:

1. Definition of Terms.

For the purpose of this Agreement, the following definitions shall apply. In the event of a discrepancy between a definition in this section and Chapter 403, Florida Statutes, the definition found in Chapter 403, Florida Statutes shall apply.

1.1 CONTRACTOR. Island Disposal Company, a Florida Corporation.

1.2 Biomedical Waste. Shall mean any solid waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste that contains human-disease-causing agents; discarded disposable sharps; human blood and human blood products and body fluids; and other materials that in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility.

1.3 Bulk Trash. Shall mean any non-vegetative large items of various types which cannot be cut for placement as a bundle or in a Garbage Container. Bulk Trash shall not include White Goods, automobiles and automotive components, internal combustion engines or Construction Debris. Carpeting of any diameter should be folded, tied and rolled or bundled and cut in lengths of six (6) feet or less since CONTRACTOR requires a special Collection Vehicle and notification to pick up this Bulk Trash.

1.4 Code. Shall mean the Code of Islamorada, Village of Islands, Florida, as amended from time to time.

1.5 Collection Services. Shall mean collectively, Solid Waste Collection, disposal and Recycling Services as provided for in this Agreement.

1.6 Collection Vehicle. A Boom Truck, Rear, Front or Side Loader/Truck, Roll-Off Truck or other vehicle used by CONTRACTOR to collect or transport or dispose of Solid Waste, Bulk Waste or Recyclable Materials. Individually, each is a Collection Vehicle.

1.7 Commercial Customer. Shall mean an owner or occupant of any public or private place, building and/or enterprise devoted in whole or in part to a business enterprise whether nonprofit or profit-making in nature, including but not limited to, any office buildings, stores, markets, theaters, industrial plants, hospitals or other institutional buildings, but excluding any Residential Customers as defined in this section. For the purpose of this Agreement, "Commercial Customer" shall include an owner or occupant of any residential structures containing four (4) or more dwelling units or any structure with a use that requires an occupational license or certificate of use and occupancy for its continued operation.

1.8 Construction Debris. Shall mean materials from the construction or destruction of a structure as part of a construction or demolition project and which are generally not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, lumber, rocks, soils, stumps and other vegetative matter which normally results from land clearing or land development operations and other materials used for a construction or home improvement project.

1.9 County. Shall mean Monroe County, Florida.

1.10 Day. Shall mean a calendar day.

1.11 Electronic Waste (E-Waste). Shall mean, but not be limited to, discarded computers, office electronic equipment, entertainment device electronics, mobile phones and television sets.

1.12 Franchise Fee. Shall mean the payment by CONTRACTOR to the Village for use of the VILLAGE's public streets, roadways and rights-of-way based upon all gross revenue billed from all sources for all Residential, Commercial, Special Waste and Solid Waste Collection Services provided by CONTRACTOR in the Service Area.

1.13 Garbage. Shall mean any accumulation of animal, fruit, vegetable, or organic matter that attends the preparation, use, cooking and dealing in, or storage of, meats, fish, fowl, fruit or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects.

1.14 Garbage Container. Shall mean a sixty-four (64) gallon or ninety-six (96) gallon wheeled automated pick-up container provided by the CONTRACTOR clearly labeled in large, easily readable signage and colors identifying its purpose for solid waste collection; or, if non-automated, a galvanized metal, durable plastic or other suitable material, as approved by the Village Manager, provided by the CONTRACTOR, of a capacity not to exceed thirty-two (32) gallons with two handles, one on each side, or a bail by which it may be lifted, and shall have a tight fitting solid top.

1.15 Hazardous Waste. Shall mean any materials defined as hazardous waste or hazardous materials under any applicable laws, rules or regulations.

1.16 Holidays. Collectively shall mean the Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day. Individually, each is a Holiday.

1.17 Other Collections. Shall mean collectively Emergency Collections (as defined in Section 6.1.1 hereof), Collection Services on Holidays, and Special Collection Services.

1.18 Pickup Point. Shall mean a location designated by each Residential Customer at curbside or, if no curb, at the swale area, from and to which CONTRACTOR has unobstructed safe access at the time of collection.

1.19 Prohibited Waste. Shall mean any Hazardous Waste, Biomedical Waste, or Special Waste. Nothing herein shall be construed to require CONTRACTOR to pick up Prohibited Waste.

1.20 Recycling Container. Shall mean a sixty-four (64) gallon or ninety-six (96) gallon wheeled automated pick-up container or two (2) rigid containers, for manual collection service, made of plastic or other suitable material, as approved by the Village Manager, of approximately fourteen (14) gallons provided by the CONTRACTOR; all containers will be standard blue colored and clearly labeled in large, easily readable signage identifying its purpose as recycling collection; and including in easily readable text and graphics a list of all approved recyclable materials and those items specifically prohibited from recycling.

1.21 Recyclable Materials. Shall mean those commingled materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste such as:

- (a) paper, newspapers including rotogravure, glossy inserts and colored sections, magazines, catalogs, telephone books and junk mail;
- (b) aluminum, ferrous, bi-metal and steel/tin food and beverage containers (containers should be clean and dry);
- (c) polyethylene terephthalate plastics (PET Number 1) including beverage containers; beer bottles, mouthwash bottles, peanut butter containers, salad dressing and vegetable oil containers; clean and dry with lids removed;
- (d) high density polyethylene plastics (HDPE Number 2) including milk jugs, juice bottles, butter and yogurt tubs, cereal box liners and containers that hold laundry detergents, bleaches, milk, shampoo and motor oil;
- (e) polyvinyl chloride (PVC Number 3) including shower curtains, baby bottle nipples; window cleaner, detergent, shampoo and cooking oil containers;
- (f) low density polyethylene (Number 4) including squeezable bottles, containers for bread, frozen food, dry cleaning, grocery and shopping bags;
- (g) polypropylene containers (Number 5) used in Tupperware type containers, syrup, ketchup, medicine and straws;
- (h) clear, brown and green glass (beverage and food containers only; clean and dry
- (i) corrugated cardboard that has been broken down and placed beside a Recycling Container;
- (j) any other material agreed to by the Village Manager and CONTRACTOR.

Recyclable Materials shall not include Prohibited Waste, aerosol cans, pharmaceutical glass containers, medical waste containers, pesticide containers or containers originally containing Prohibited Waste.

1.22 Recycling Services. Shall mean the weekly collection, separation, or processing and reuse or return to use in the form of raw materials or products of Recyclable Materials from Residential and Commercial Customers, placed at Pickup Points commingled in Recycling Containers.

1.23 Regular Schedule. Shall mean the Initial Schedule (defined below) or any Modified Schedules (defined below).

1.24 Residential Customer. Shall mean the owner or occupant of a structure of no more than three (3) dwelling units designed for permanent residential occupancy including single-family homes, garage apartments, duplexes and triplexes.

1.25 Rubbish. Shall mean all refuse, accumulation of paper, excelsior, rags, wooden or paper boxes and containers, sweep ups and all other accumulations of a nature, other than Garbage and Yard Trash, resulting from the normal activities of a Residential Customer or Commercial Customer.

1.26 Service Area. Shall mean all property located within the VILLAGE's corporate boundaries as defined in the Village Charter.

1.27 Solid Waste. Shall mean and includes Garbage, Rubbish, Yard Trash, Bulk Trash, White Goods, Electronic Waste or other discarded material resulting from daily residential and business activities and excludes Prohibited Waste.

1.28 Solid Waste Collection Services. Shall mean the collection of Solid Waste for each Residential and Commercial Customer and transportation to and disposal in a Solid Waste Disposal Facility.

1.29 Solid Waste Disposal Facility. Shall mean any properly permitted and licensed Solid Waste management facility which is the final resting place for Solid Waste including, but not limited to, landfills, transfer stations and incineration facilities that produce ash from the process of incinerating municipal Solid Waste.

1.30 Special Waste. Shall mean Solid Waste that requires special handling and management, including, but not limited to, asbestos, tires, Used Motor Oil (UMO), lead-acid batteries, and Biomedical Wastes, and shall include items that exceed the size limitation for Yard Trash and Bulk Trash.

1.31 Tipping Fee. Shall mean the fee per ton charged at a Solid Waste Disposal Facility.

1.32 Used Motor Oil (UMO). Shall mean used motor oil that has been refined from crude oil or synthetic oil or any oil that has been used and as a result of such use is contaminated by physical or chemical impurities.

1.33 VILLAGE. Shall mean Islamorada, Village of Islands, Florida.

1.34 Village Government Facilities. Shall mean those facilities listed in Exhibit “D”, currently owned or operated by the VILLAGE, including any additional facilities that are acquired, operated or completed by the VILLAGE.

1.35 Village Manager. Shall mean the Village Manager of Islamorada, Village of Islands, Florida, or a designee appointed by the Village Manager.

1.36 White Goods. Shall include refrigerators, washing machines, dryers, ranges, water heaters, freezers, air conditioning units, and other similar large appliances.

1.37 Yard Trash (Regular). Shall mean vegetative matter resulting from normal yard and landscaping maintenance and shall include materials such as tree and shrub trimmings, grass clippings, palm fronds or small tree branches that shall not exceed four (4) feet in length and four (4) inches in diameter. Yard Trash (Regular) shall include Christmas trees, regardless of size. Yard Trash (Regular) shall be containerized or bundled and tied. No bundle or filled container shall exceed 50 pounds in weight, and no more than six (6) bundles or six (6) 32-gallon containers (furnished by the customer) per residential customer shall be collected at one time. Grass clippings shall be placed in a Garbage Container.

1.38 Yard Trash (Oversize). Shall mean large cuttings of vegetative matter which are part of the normal yard maintenance of a Residential Customer, and which cannot be cut for placement in a container or bundle due to the material exceeding the weight and size restrictions for regular vegetative waste. Yard Trash (Oversize) shall be placed neatly at the Pickup Point and shall be of a type as to be readily handled by the Collection Vehicles of the CONTRACTOR and shall not exceed six (6) feet in length. Yard Trash (Oversize) shall not be commingled with Garbage, Rubbish, or Bulk Trash. Yard Trash (Oversize) does not include any form of matter or debris resulting from commercial tree removal, land clearing, or land development. In the case of a dispute between the CONTRACTOR and a Residential Customer as to what constitutes oversize vegetative waste, the situation shall be reviewed and decided by the Village Manager, whose decision shall be final.

2. Term.

2.1 Term. The initial term of this Agreement shall be for ten (10) years; the “Initial Term” beginning on 1, 2024 and terminating on December 31, 2033.

2.2 Renewal Term. This Agreement may be renewed with the same terms and conditions upon written notice, by the VILLAGE to the CONTRACTOR, for one 5-year term, (an “Additional Term”), which shall be mutually agreed to by both parties no less than 90-days prior to the end of the Initial Term. If such mutual agreement cannot be reached then there shall be no Additional Term.

2.3 Termination for Cause. The VILLAGE may terminate this Agreement for cause as specified in Section 23 of this Agreement, provided the VILLAGE first gives written Notice to the CONTRACTOR of the particular act(s) or event(s) upon which the VILLAGE relies for termination and provides the CONTRACTOR a period of ten (10) days thereafter to cure any such reason for termination stated in the Notice to the satisfaction of the VILLAGE, which satisfaction shall not be unreasonably withheld. If more than ten (10) days are reasonably required to cure such reasons for termination, then in that event, VILLAGE and CONTRACTOR agree to meet and develop and implement a plan, monitored by the VILLAGE to ensure CONTRACTOR’s compliance with any requirements to cure. Should no agreement for cure be reached, the VILLAGE may terminate this Agreement. Should the VILLAGE elect to terminate for cause, the VILLAGE may utilize any of the remedies listed in Section 24 or any other available legal remedies.

2.4 Payment after Termination. If terminated for cause, the CONTRACTOR shall only be paid for those services performed by the CONTRACTOR prior to the date of termination.

2.5 Transition of Services. Upon the expiration or termination of this Agreement, the CONTRACTOR shall provide assistance to the VILLAGE to assure a seamless transition of services. Such assistance shall include timely provision of route information, Residential Customer and Commercial Customer information, and any other information and assistance requested by the Village Manager for a period of thirty (30) days from the date of termination or expiration.

3. Prerequisites to Commencement of Service.

3.1 Pre-Start Route Familiarization. CONTRACTOR shall, at no charge to the VILLAGE, perform a pre-start route familiarization program in conjunction with the VILLAGE to help route drivers become aware of and familiar with the method by which Collection Services are currently being performed and with current Pickup Points.

3.2 Initial Schedule. Prior to the commencement of Collection Services, CONTRACTOR shall provide the Village Manager with a weekly schedule including the days of the week that Recycling Services, Yard Trash collection, and Garbage and Rubbish Collection Services shall be provided to each Residential and Commercial Customer within the frequency required by this Agreement (“Initial Schedule”). The parties recognize that existing residential Collection Services in the VILLAGE are currently subject to an existing collection schedule. In order to provide seamless services to each Residential and Commercial Customer, CONTRACTOR agrees to utilize the existing collection schedule as the Initial Schedule. The Village Manager shall review and approve any Modified Schedule (defined below) prior to implementation.

3.3 Distribution of Garbage Containers and Recycling Containers / Residential. Prior to commencement of Collection Services, CONTRACTOR shall provide each Residential Customer, if collection is automated, with one (1) automated 64-gallon or 96-gallon Garbage Container and one (1) automated 64-gallon or 96-gallon Recycling Container, with the option to add, free of charge, an additional 64-gallon or 96-gallon Recycling Container upon request by the resident or if collection is manual two (2) 32-gallon Garbage Containers and two (2) 14 gallon recycling containers, at no charge to the VILLAGE or Residential Customer. If collection is automated, CONTRACTOR will provide additional 64-gallon or 96-gallon wheeled Garbage Containers to residential customers upon request, at a fee according to Pricing Sheet #1 or Pricing Sheet #4, as applicable, to be borne by the residential customer. During the Term of this Agreement and any renewals, CONTRACTOR shall own the Garbage Containers and Recycling Containers. Upon termination of this Agreement CONTRACTOR may collect the Garbage Containers and Recycling Containers from the Residential Customers. New Residential Customers shall be provided with one (1) automated 64-gallon or 96-gallon Garbage Container and one (1) 64-gallon or 96-gallon automated Recycling Container, or if non-automated two (2) 14-gallon recycling containers and

two (2) – 32 gallon Garbage Containers (collectively, “Approved Containers”) by CONTRACTOR at no charge within seven (7) days of commencement of Collection Services to Residential Customers. CONTRACTOR shall provide additional Garbage Containers as requested by the Residential Customer, at an additional annual fee, according to Exhibit “A”, charged to the Residential Customer annually. CONTRACTOR shall provide Residential Customers with an - additional 64-gallon or 96-gallon Recycling Container, as requested by the Residential Customer, at no additional charge to the VILLAGE or the Residential Customer. CONTRACTOR shall provide Residential Customers with additional non-automated Recycling Containers as requested by the Residential Customer, at no cost to the VILLAGE or the Residential Customer. Color-differentiate Garbage Containers from Recycling Containers which are to be the standard recycling blue color CONTRACTOR shall provide decals or another method of marking each Recycling Container, acceptable to the VILLAGE, with a pictorial or explanatory display identifying what Recyclable Material may be placed in the Recycling Container.

3.4 Distribution of Garbage Containers and Recycling Containers / Commercial.

Commercial Customers shall be provided with a solid waste container, with tight fitting lid, deemed sufficient in size by the CONTRACTOR and up to two (2) Recycling Containers provided by the CONTRACTOR at no charge for delivery within seven (7) days of commencement of Recycling Services to the Commercial Customer. Standard blue colored Recycling Containers for Commercial Customers shall be provided with identification and markings such as a recycle logo, different color container or white lid on dumpster to differentiate the recycling from solid waste dumpsters.

3.5 Approved Containers. All Approved Containers provided by CONTRACTOR for use by Residential Customers shall, while in the possession and control of the Residential Customer, remain the property of CONTRACTOR, and neither the Residential Customer nor the VILLAGE shall have any ownership rights to the Approved Containers. Residential Customers shall use the Approved Containers only for the purpose for which they are intended and shall not make any alterations or improvements thereto.

4. Commencement of Collection Services. Collection Services by CONTRACTOR shall commence on January 1, 2024 (the “Commencement Date”) and shall continue without interruption throughout the Term of this Agreement.

5. Collection Services.

5.1 Collection Service to Residential Customers. CONTRACTOR shall provide Collection Services to all Residential Customers at Pickup Points within the Service Area. All Garbage Containers, Bulk Trash and Recycling Containers to be collected shall be placed within six (6) feet of the curb, paved surface of the roadway, closest accessible right-of-way, or other such location agreed to by CONTRACTOR that provides safe and efficient accessibility to CONTRACTOR's personnel and Collection Vehicles. Enclosures for Garbage Containers shall be within eight (8) feet of the paved surface or right-of-way. Fixed or permanent enclosures shall have a street side opening for the removal of the Garbage Containers. For purposes of this Agreement, roadway or right-of-way means a road owned and maintained by the VILLAGE, the County or the State of Florida, or a road on private property for which an easement has been granted to the public. Where a resident is physically unable to deliver Garbage Container and/or Recycling Container to the Pickup Point as certified by the Village Manager, or the Residential Customer is located in such a manner as to provide non-accessibility to CONTRACTOR's personnel or Collection Vehicles, an alternative location may be arranged between the Residential Customer and CONTRACTOR at no extra cost to the Residential Customer. In the event an appropriate location cannot be agreed upon, the Village Manager shall designate the location of the Pickup Point.

5.1.1 Automated Collection Method. CONTRACTOR shall utilize a fully Automated Collection method for both Solid Waste and Recyclable Materials for Residential Customers. All Garbage, Rubbish and Recyclable Materials shall be placed only in Approved Containers at the Pickup Point by the Residential Customer. On collection day, Residential Customers shall provide unobstructed access to the Approved Containers. CONTRACTOR shall be responsible for, and shall clean up any materials spilled by the CONTRACTOR in the course of collection. The Residential Customer shall be responsible for, and shall clean up any materials spilled which do not result from CONTRACTOR's collection.

5.2 Regular Collections. CONTRACTOR shall collect, transport and dispose of all Solid Waste generated by Residential Customers in the Service Area at such frequencies as described below.

5.2.1 Garbage/Rubbish. CONTRACTOR shall collect Garbage and Rubbish from each Residential Customer at least two (2) times per week, with collections at least three (3) days apart pursuant to the Regular Schedule (each collection day being referred to as “Garbage Collection Day”).

5.2.2 Yard Trash (Regular). CONTRACTOR shall collect Yard Trash (Regular) from each Residential Customer one (1) day per week pursuant to the Regular Schedule (each collection day being referred to as “Yard Trash Collection Day”). Yard Trash (Regular) shall be limited to six (6) containers or bundles per Residential Customer per Yard Trash Collection Day.

5.2.3 Recycling Materials. CONTRACTOR shall provide Recycling Services to each Residential Customer one day per week pursuant to the Regular Schedule (“Recycling Day”). Each Residential Customer's Recycling Day shall be the same as one of the Residential Customer's Garbage Collection Days. Recycled material shall be placed at the Pickup Point, commingled in Recycling Containers as provided by CONTRACTOR.

5.2.4 White Goods and Electronic Waste. CONTRACTOR shall provide collection and disposal service of White Goods and Electronic Waste from each Residential Customer. White Goods and Electronic Waste shall be collected by CONTRACTOR within five (5) working days of receipt of a request from Residential Customer or Commercial Customer. In addition, CONTRACTOR shall provide one (1) pre-scheduled collection and disposal service of White Goods or Electronic Waste per quarter. Collection and disposal of White Goods and Electronic Waste from Commercial Customers are negotiated separately between CONTRACTOR and the Commercial Customer.

5.2.5 Bulk Trash. CONTRACTOR shall provide collection and disposal of Bulk Trash on a call-in basis and shall respond to request for service within five (5) business days.

5.2.6 Services to the Disabled. CONTRACTOR shall provide, at no additional charge, side-door Collection Services to disabled persons upon affidavits presented to the Village Manager by the resident, verified in the same fashion as disabled requirements by the State of Florida, Department of Motor Vehicles, or signed by the resident’s physician.

5.2.7 Yard Trash (Oversize). CONTRACTOR shall have the capability of providing Yard Trash (Oversize) collection to Residential Customers on an on-call basis at the price as set

forth in Exhibit “A”. Special Yard Trash (Oversize) collection shall occur within five (5) working days of request. Yard Trash (Oversize) shall be placed neatly at the Pickup Point and shall be of a type as to be readily handled by the mechanical collection equipment of the CONTRACTOR and shall not exceed six (6) feet in length. Yard Trash (Oversize) shall not be commingled with Garbage, Rubbish, or Bulk Trash. Yard Trash (Oversize) collection and disposal shall not be a service funded by VILLAGE but billed separately to the Residential Customer by the CONTRACTOR.

5.2.8 Chemicals/Paint/Fuels. CONTRACTOR shall provide quarterly Household Hazardous Waste disposal events for Residential Customers at mutually agreed upon central locations, dates and times to collect and dispose of batteries, tires, chemicals, paints and fuels brought in by residents of the VILLAGE. Commercial Customers shall not be afforded this service.

5.2.9 Yard Trash (Regular Extra Containers or Bundles). The CONTRACTOR shall pick up additional containers or bundles of Yard Trash (Regular) in excess of the amount specified in Paragraph 5.2.2, provided each extra container or bundle is marked with a permit or sticker issued by the CONTRACTOR obtained by request of the Residential Customer.

5.2.10 “TAG” Notification. When Garbage and Rubbish, Yard Trash, Bulk Trash, or Recyclable Materials are not properly prepared for collection, the CONTRACTOR shall provide written notification to the customer. The written notification shall be in the form of a “TAG”. The “TAG” shall identify the problem(s) as to why the Garbage and Rubbish, Yard Trash, Bulk Trash or Recyclable Materials were not collected, the dates of the occurrence and indicate the proper disposal method and provide CONTRACTOR contact information. CONTRACTOR shall maintain a copy of such “TAG” notice to be provided to the Village Manager or designee upon request.

5.3 Commercial Solid Waste Collection Services. In the event the Commercial Customer and CONTRACTOR cannot reach an agreement as to the level and type of service to be provided, the Village Manager shall make a decision, binding on both parties, including the location and size of containers and the required number of collections per week. All Garbage, Rubbish, Yard Trash and Bulk Trash of Commercial Customers shall be placed in a container. All containers shall be kept in a safe, accessible location agreed upon between CONTRACTOR and the Commercial Customer. If a location cannot be agreed upon, the Village Manager shall determine the location.

5.3.1 Regular Collection. CONTRACTOR shall collect and dispose of Solid Waste (excluding White Goods) from Commercial Customers in the Service Area at the rates specified in Exhibit “A” of this Agreement. A minimum of one (1) day per week service is required for all Commercial Customers, or such other minimum frequency as provided by law. Such service shall be provided by mechanical container with a lid, provided by CONTRACTOR at rates listed in Exhibit “B”. The size of the container, days of collection and the frequency of collection shall be determined between the customer and CONTRACTOR. However, size and frequency shall be sufficient to provide that no Garbage, Rubbish, Yard Trash or Bulk Trash shall be placed outside or above lid level of the container. Storage capacity shall be suitable for the amount of waste generated by the Commercial Customer. CONTRACTOR shall have exclusive rights to solid waste collections in the VILLAGE.

5.3.2 Recycling. The CONTRACTOR shall provide Recycling Services to each Commercial Customer a minimum of one (1) day per week. The Collection Day shall coincide with the CONTRACTOR’s Collection Day for the Residential Customers in the same geographic area., CONTRACTOR shall not have exclusive rights to recycling collections.

5.3.3 Disputes. In the event the Commercial Customer and CONTRACTOR cannot reach an agreement as to the level and type of service to be provided, the Village Manager shall make a decision, binding on both parties, including the location and size of containers and the required number of collections per week.

5.3.4 Containers/Commercial Solid Waste. All Solid Waste of Commercial Customers shall be placed in an approved container. All containers shall be kept in a safe, accessible location agreed upon between CONTRACTOR and the Commercial Customer. If a location cannot be agreed upon, the Village Manager shall determine location. All containers shall mean any metal or plastic container, with a capacity of one cubic yard up to and including eight cubic yards designed or intended to be mechanically dumped into a picker-loader type truck, including a Compactor. All such containers must be clearly marked in a manner as to prohibit their use for the disposal of Hazardous Waste, , biological, or Bio-Medical Waste or Sludge. Any container damaged by CONTRACTOR shall be repaired or replaced by CONTRACTOR within seven (7) days.

5.3.5 Containers/Recycling. Commercial Customers generating Recyclable Materials shall be offered options of sizes of containers for Commercial Recycling Service at the rates specified in Exhibit “B”. CONTRACTOR shall provide Recycling Containers in standard recycling blue color and Recycling dumpsters shall have a distinguishable white or yellow lid.

5.3.6 Containers/Repair/Replacement. The CONTRACTOR is required to keep Containers emptied by mechanical means, cleaned and suitably painted to present a pleasing appearance. The CONTRACTOR shall submit, annually, a schedule showing the frequency of the cleaning and painting of the Containers. The CONTRACTOR, at the beginning of the tenth (10th) month of the Agreement, begin a program which will provide for each customer to receive a reconditioned or new container during the succeeding twelve (12) month period and each twelve (12) month period thereafter. The CONTRACTOR shall provide each customer who uses a container emptied by mechanical means, a new or renovated container on a regular schedule. The CONTRACTOR shall submit to the VILLAGE for the VILLAGE’s approval a schedule showing how the change-out of the containers is to be accomplished and a schedule showing the frequency of the cleaning, deodorizing and painting of Containers. All Containers shall be maintained in a reasonable, safe working condition and shall be painted a uniform color. The requirement for annual replacement of Containers may be foregone if the CONTRACTOR implements an inspection program after the beginning of the tenth (10th) month of the Agreement. Commercial customers shall file the request for the Container replacement with the CONTRACTOR. Any container damaged by CONTRACTOR shall be repaired or replaced by CONTRACTOR, at the CONTRACTOR’S expense, within seven (7) days at no cost or inconvenience to the customer. In the event the source of damage cannot be agreed upon by the customer and the CONTRACTOR, the VILLAGE shall mediate the dispute.

5.3.7 Commercial Customers/Perishables. Any Commercial Customer that generates waste of a perishable type, including but not limited to, restaurants, bars, fishing tours and bait shops, shall have a minimum of three (3) collections per week, unless otherwise approved in writing by the Village Manager. All perishable waste must be placed in leak-proof plastic bags prior to placement in the container. Commercial Customers with large roll-off self-contained compactors are to be collected a minimum of one (1) day per week. Grouped Residential Dwelling Units treated as Commercial Customers pursuant to Section 5.9 require a minimum collection of two (2) days per

week.

5.4 VILLAGE Collections. Collection Services shall be provided to the Village Government Facilities listed in Exhibit “D” (“Village Government Facilities”) at no charge. This includes accumulated Yard Trash (Regular and Oversize) collected by VILLAGE staff. CONTRACTOR shall provide to the VILLAGE, in addition to the locations listed in Exhibit “D,” at no charge, twenty-four (24) annual collections of Yard Trash (Oversize) within five (5) days of receipt of request by VILLAGE at any location within the Service Area. Any quantity up to a 40-yard roll-off container may constitute a single collection. Such collections may be Yard Trash and/or any other Bulk Trash requested by the VILLAGE.

5.5 Changes to Initial Schedule. The VILLAGE shall be immediately notified in writing of any changes to the Initial Schedule. Any permanent changes to the Initial Schedule ("Modified Schedule") that alter the day of any collection are subject to prior approval by the Village Manager. CONTRACTOR shall notify each affected Residential Customer at least seven (7) days prior to the effective date of any Modified Schedule, in a newspaper of general circulation in the VILLAGE and by direct notification to each customer. The cost of publication shall be borne solely by CONTRACTOR.

5.6 Hours of Collection. Residential Collection Services performed pursuant to this Agreement shall begin no earlier than 7:00 a.m., and shall be completed no later than 7:00 p.m. Monday through Saturday. Commercial Collection Services performed pursuant to this Agreement shall begin no earlier than 6:00 a.m. and shall be completed no later than 7:00 p.m. Monday through Saturday. Collection Services shall not take place on Sunday. In the case of an emergency or breakdown of Collection Vehicles, Collection Services may be permitted on Sundays or during times not permitted by this paragraph, provided CONTRACTOR has received prior verbal approval from the Village Manager, to be later evidenced by a written memorandum from the Village Manager confirming the approval. Exceptions to the hours and days of Collection Services set forth above shall be approved by the Village Manager.

5.7 Protection of Property. CONTRACTOR shall conduct Collection Services in such a manner as to avoid damage to private and public property, including but not limited to containers, racks, fences, trees, shrubs, flowers and other plants, and shall immediately repair or pay for any damage caused by its operations. In the event that repairs are not made or damage paid for within fourteen (14) working days and to the satisfaction of the Village Manager, the Village Manager may make such repairs

or pay for such damage and deduct the cost from amounts due to CONTRACTOR pursuant to this Agreement. CONTRACTOR shall provide Collection Services with a minimum disturbance to Residential Customers and to the neighborhood.

5.8 Spillage. CONTRACTOR shall make every effort to minimize leaks, litter and spillage from Collection Vehicles occurring on public or private property as a result of Collection Services. In the event of any litter, leaks or spillage caused by CONTRACTOR, cleanup shall occur within two (2) hours of notice to CONTRACTOR from the VILLAGE or a Residential or Commercial Customer. In the event that litter, leaks or spillage is not picked up or cleaned up within four hours, the VILLAGE may, in its sole discretion, collect the litter, leaks or spillage and deduct from amounts owed CONTRACTOR the cost for the collection or cleanup.

5.9 Billing Option of Residential Dwelling Units of 3 or Less. Notwithstanding the definitions of Residential or Commercial Customers as provided in Sections 1.23 and 1.7, respectively, any Commercial Customer that consists solely of residential dwelling units of 3 or less may request in writing to CONTRACTOR that each dwelling unit receive Residential Customer Collection Service. CONTRACTOR shall forward this request to the Village Manager, who, in his sole discretion, may authorize the change of billing classification to Residential Customer Collection Services. Any change in classification granted in this subsection shall be effective for billing purposes on the next subsequent October 1, following the request for reclassification.

5.10 Billing Option for Grouped Residential Dwelling Units to be treated as Commercial Customer. In some instances, condominium/homeowners associations (HOAs) meeting the definition of Residential Customer pursuant to Section 1.24 would prefer to be treated as a Commercial Customer under Section 1.7 to minimize or avoid garbage trucks entering the respective neighborhoods to collect Garbage, Rubbish, Recyclable Materials and Yard Trash. In this case, the HOAs may request a commercial account and receive an appropriately sized dumpster with recycling bins and location for disposal of Yard Trash and request to be removed from the non-ad valorem assessment roll. After these HOAs have made contact with Contractor to set up the commercial account and be billed directly by Contractor for services, the HOA shall submit a request in writing to the VILLAGE to be removed from the non-ad valorem tax roll for solid waste assessments for

residential services. Depending on the effective date of the change, the VILLAGE will refund pro-rated solid waste assessment amounts to the individual homeowners comprising the HOA. Should the HOA want to revert back to individualized residential services as a Residential Customer, the request should be submitted to the VILLAGE by August 1 of any year to go into effect October 1. Determination of preference among residential dwelling units comprising the HOAs as to billing option as Residential or Commercial Customer is the responsibility of the units comprising the HOAs. If the HOA chooses to be billed as a Commercial Customer, then once the Contractor is notified by the HOA, the Contractor will begin providing one invoice to the HOA as the bill for the entire community (no individual dwelling unit invoicing is permitted).

6. Other Collections.

6.1 Severe Weather/Emergencies.

6.1.1 Emergency Collections/Charges. In case of severe weather which may create a danger to CONTRACTOR personnel or the public, the Village Manager may grant CONTRACTOR the right to temporarily vary from the Regular Schedule. In the case of severe weather or emergencies where it is necessary for CONTRACTOR to acquire additional Collection Vehicles and to hire extra personnel to clear the VILLAGE of debris resulting from the severe weather ("Emergency Collections"), CONTRACTOR shall be required to cooperate with the VILLAGE on a priority basis in all possible ways for the efficient and rapid clean-up of the VILLAGE. CONTRACTOR shall receive extra compensation above that set forth in this Agreement for Emergency Collections, provided CONTRACTOR has first secured prior written authorization from the Village Manager based on rates jointly agreed to by the Village Manager and CONTRACTOR. The VILLAGE may contract with other firms or units of government to provide the Emergency Collections. As soon as practical, after severe weather or an emergency, CONTRACTOR shall advise the Village Manager and Residential and Commercial Customers of the estimated time required before Regular Schedules can be resumed. CONTRACTOR acknowledges VILLAGE has contracts with other contractors to provide emergency services and accordingly CONTRACTOR has no right or entitlement to provide these services to the VILLAGE; however CONTRACTOR agrees to do so upon request of the VILLAGE and on the foregoing terms.

6.2 Holidays. CONTRACTOR shall be obligated to provide Collection Services on Holidays, excluding Christmas Day, to Commercial Customers. CONTRACTOR shall not be obligated to, but may provide, collection services on Holidays for Residential Customers. Holidays include the Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day and New Year's Day. All portions of the Service Areas not provided service on a Holiday shall be provided service on the next day and all other services during such week may be rescheduled to the next day, if necessary. CONTRACTOR shall be responsible to advertise to the public seven (7) days prior to any regularly scheduled Collection Day changes.

6.3 Special Collections. From time to time the VILLAGE or Residential Customers may have the need for Solid Waste collections, including Garbage and Rubbish, Yard Trash (Regular), White Goods, Special Waste, Yard Trash (Oversize) and Bulk Trash, in addition to the Regular or Modified Schedule ("Special Collections"). CONTRACTOR shall provide Special Collections as requested by the VILLAGE or Residential Customer within five (5) working days from the date of the request at the rates listed in Exhibit "A." Special Collections requested by a Commercial/Residential Customer shall be billed by CONTRACTOR directly to the customer. Prior to making a Special Collection for a Residential Customer, CONTRACTOR shall provide that Residential Customer with a firm written proposal as to the total cost of the Special Collection. No additional costs beyond those listed in the written proposal may be charged by CONTRACTOR. Notwithstanding the provisions of this section, the VILLAGE reserves the right to contract with other entities or directly provide Special Collections.

6.4 Battery Bag Collection. Battery Bags for button cell batteries for residential home use shall be compliant with industry standards and shall be supplied by CONTRACTOR upon request of the Residential Customer.

7. CONTRACTOR Personnel. CONTRACTOR shall provide, at its own expense, all labor and supervision necessary to provide the Collection Services as set forth in this Agreement.

7.1 CONTRACTOR Officer(s). CONTRACTOR shall assign a qualified person or persons to be responsible for the Collection Services under this Agreement. CONTRACTOR shall provide

in writing the names of those persons to the VILLAGE. Information regarding each person's experience and qualifications shall also be furnished.

7.2 Assignment of Personnel. Specific CONTRACTOR personnel shall be assigned to regularly service each Residential Customer. CONTRACTOR shall make every effort to ensure consistency in the personnel servicing each route.

7.3 Conduct of Personnel. CONTRACTOR's personnel shall serve the public in a courteous, helpful and impartial manner. CONTRACTOR's personnel shall use available sidewalks and walkways for pedestrians. Trespassing by personnel shall not be permitted. Personnel shall not cross the property of one Residential Customer in order to service another Residential Customer unless residents or owners of both such properties shall have given permission in writing to the CONTRACTOR.

7.4 Personnel Uniforms. While providing Collection Services, CONTRACTOR's personnel shall wear a clean uniform including a shirt or overalls with the employer identification and the personnel's first name written in letters at least one inch high, uniform in type. CONTRACTOR shall keep a record of personnel names, numbers and route assignments in a manner to allow identification of the personnel at all times. CONTRACTOR shall provide its then current personnel list and route assignments to the VILLAGE upon request of the Village Manager on the Commencement Date and annually thereafter on each anniversary of the Commencement Date and at any time upon written request of Village Manager. Each driver of a Collection Vehicle shall at all times carry a valid Florida Driver's License for the type of vehicle being operated.

7.5 Residents. CONTRACTOR shall, wherever possible, recruit and employ its personnel performing services under this Agreement from among residents of the VILLAGE.

7.6 Equal Opportunity. No person shall be denied employment by CONTRACTOR for reasons of race, sex, national origin, creed, age, or religion.

7.7 Full Time Personnel. All personnel assigned to provide Collection Services in the VILLAGE shall be full-time or regular part-time CONTRACTOR personnel and shall not be subcontractors.

7.8 Dismissal. CONTRACTOR shall, upon receipt of a request from the Village Manager, immediately exclude any personnel of CONTRACTOR who has intentionally violated

any of the terms of this Agreement from providing Collection Services pursuant to this Agreement. Prior to any such exclusion, CONTRACTOR and VILLAGE agree to meet and review the circumstances of any such exclusion in the event the CONTRACTOR disagrees with the VILLAGE's decision to exclude.

8. Collection Vehicles and Equipment.

8.1 Quality and Quantity. CONTRACTOR shall have on hand at all times and in good working order such Collection Vehicles, machinery, tools, accessories and other items necessary to perform Collection Services under this Agreement (collectively "Collection Equipment"). Collection Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection, recycling and disposal equipment. All Collection Equipment shall be kept in good repair, appearance, and in a sanitary and clean condition at all times.

8.2 Collection Vehicles and Equipment – Description and Replacement. All Collection Vehicles and other vehicles used by CONTRACTOR to provide Collection Services ("Other Vehicles") shall be equipped with communication devices (i.e. mobile phones, iPads or other technological devices providing for a means of two way communications). All Collection Vehicles and Other Vehicles are to be painted uniformly with the name of CONTRACTOR, business telephone number and the number of the vehicle in letters not less than five inches high on each side of the vehicle. All Collection Vehicles and Other Vehicles shall be numbered and a record kept by number and utilization. CONTRACTOR shall provide serviceable and adequate equipment at start-up and shall maintain all equipment in accordance with the life expectancy of the equipment. This will include a vehicle for the supervisor overseeing the VILLAGE operations and one (1) "clam" shell truck, operated by the CONTRACTOR, available to the VILLAGE at all times. On the Commencement Date and annually thereafter on each anniversary of the Commencement Date, and at any time upon the written request of the Village Manager, the CONTRACTOR shall provide the Village Manager with a list of current equipment, specifying function, age and anticipated replacement dates. The Village Manager may at any time, upon written notice to the CONTRACTOR and at no additional cost to the VILLAGE, require the repair or replacement of equipment as reasonably necessary for the CONTRACTOR to perform the services and/or for safety concerns.

8.3 Reserve Collection Equipment. The CONTRACTOR shall provide sufficient reserve collection equipment, in proper operating condition to maintain regular schedules and routes of collection.

8.4 Advertising. No advertising shall be permitted on Collection Vehicles.

9. Containers/Residential Collection.

9.1 Generally. Residential Customers shall place Garbage/Rubbish in Approved Containers.

9.2 Handling of Containers. Garbage Containers and Recycling Containers shall be handled carefully by CONTRACTOR, shall not be bent or otherwise abused, and shall be thoroughly emptied and then left bottom up or upright. If an item is found in a Recycling Container that is not Recyclable Material, it shall be left in the Recycling Container with written notification to the effect that the item was not acceptable. Covers on Garbage Containers shall be closed and Garbage Containers returned to the Pickup Point. In the event of damage caused by CONTRACTOR to Garbage Containers or Recycling Containers, other than normal wear and tear, CONTRACTOR shall be responsible for the timely repair or replacement of the Garbage Container or Recycling Container within four (4) days of receiving a complaint from the Residential Customer or the Village Manager.

9.3 Garbage Containers and Recycling Containers. Containers shall be provided to each Residential Customer by the CONTRACTOR pursuant to Section 3.3

10. Disposal of Solid Waste. CONTRACTOR hereby represents and warrants that it shall dispose of the Solid Waste collected pursuant to this Agreement at a county or state-permitted Solid Waste Disposal Facility. CONTRACTOR shall notify the VILLAGE in writing on the Commencement Date and on the anniversary date thereof which Solid Waste Disposal Facility is being used for Solid Waste collected pursuant to this Agreement (“Current Solid Waste Disposal Facility”).

10.1 Disposal of Recycling Materials. CONTRACTOR hereby represents and warrants that it shall dispose of Recycling Materials collected pursuant to this Agreement at a County or State permitted Recovered Materials Processing Facility. CONTRACTOR shall notify the VILLAGE in writing on the Commencement Date and on the anniversary date thereof which Recovered Materials

Processing Facility is being used for Recycling Materials collected pursuant to this Agreement ("Current Recovered Materials Processing Facility").

11. Compensation to CONTRACTOR.

11.1 Monthly Residential Fee. The VILLAGE shall pay CONTRACTOR the sum of \$41.01 per month per Residential Customer (the "Monthly Residential Fee") as full compensation for the performance of regular schedule Residential Collection Services.

11.2 Monthly Commercial Fee. The CONTRACTOR shall charge fees for Commercial Customers at the rates established in Exhibit "B", Commercial Pricing Schedule.

11.3 No Fee for VILLAGE Collections. There shall be no compensation paid by VILLAGE or franchise fee credits to CONTRACTOR for collections at Village Government Facilities for any services.

11.4 Favored Nations Clause. In the event CONTRACTOR negotiates with a neighboring municipality or Monroe County (the "County") a more favorable rate than provided to the VILLAGE for the provisions of the same or substantially the same services provided in this Agreement, upon execution of the Contract with the neighboring municipality or the County, CONTRACTOR shall reduce the rates charged to the VILLAGE to be equal to or lower than the rates charged the neighboring municipality or the County. Neighboring municipality shall mean municipalities within Monroe County.

12. Billing.

12.1 Residential and Commercial Billing. The VILLAGE shall be responsible for billing of all Residential Customer Collection Services. CONTRACTOR shall be responsible for billing of all Commercial Customer Collection Services and Special Waste Collection Services. CONTRACTOR shall provide the VILLAGE with a copy of each Commercial Customer's agreement for services and shall provide a monthly report to include all billing (Solid Waste and Special Waste Collection Services) on a timely basis. CONTRACTOR shall invoice each Commercial Customer on a monthly basis. The invoice shall include a breakdown of all charges per cubic yard as well as all Special Waste Services provided to the Commercial Customer.

12.2 Invoices. CONTRACTOR shall submit an invoice to the VILLAGE by the 10th day of each month for Residential Customer Collection Services rendered during the preceding month.

Each invoice for Residential Customer Collection shall include a deduction for monthly Franchise Fees related to the previous month for Residential Customer Service Collection, calculated as provided in Section 13.2 below. Invoices for Commercial Customers are determined as provided in Section 13.3 below. Payments shall be made to CONTRACTOR (related to Residential Customer Collection Services) by the VILLAGE on or before the 20th day of the following calendar month upon verification of the invoice submitted. The number of Residential Customers served and a copy of the Complaint Register shall be furnished by CONTRACTOR to the VILLAGE along with each invoice.

12.3 Billing Adjustment Procedures. On the first day of each month the number of Residential Customers may be adjusted by the VILLAGE, if necessary, to correspond with Collection Services being provided. This adjustment will result in a variation in fees. The parties agree that there shall be no fluctuation, however, in the quality or quantity of services provided to each Residential Customer, regardless of seasonal population fluctuation. The Village Manager shall notify CONTRACTOR verbally, and shall confirm in writing within 15 days of any Residential Customer to which Collection Services should be terminated and of any Residential Customer to which Collection Services should be commenced. Collection Services shall commence or terminate as appropriate at the next Regular Schedule Collection Day after verbal notification.

12.4 Cost of Living Adjustments. Beginning on October 1, 2024, and annually thereafter on the anniversary thereof, CONTRACTOR's Collection & Hauling fees, whether paid by the VILLAGE or billed directly to the customer, shall be automatically adjusted to reflect the increase or decrease in the cost of doing business, measured by the fluctuation in the Consumer Price Index (CPI) (All Urban Consumers, Miami-Fort Lauderdale, Florida) for all items, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the percentage change in the CPI from the previous June to June of the year in which the adjustment is effected, or the closest annual period, should the statistics for the June to June period cease to be published. Notwithstanding the foregoing, the annual CPI adjustment shall not exceed an increase or decrease of more than five (5) percent.

12.4.1 Cost of Living Adjustments – Disposal. The CONTRACTOR is entitled to the Cost of Living Adjustment for Disposal as provided in Section 12.4 above. However, if the Disposal cost

to the CONTRACTOR is increased or decreased based on the then current price that the Monroe County system charges CONTRACTOR for the respective waste/product type in excess of the increase allowed under Section 12.4 above, the VILLAGE agrees to work with the CONTRACTOR to provide any increase or decrease in the fees paid by customers in the VILLAGE. Should any increase agreed to by the VILLAGE under this Section 12.4.1 be implemented, then any subsequent decrease should be automatically applied.

12.4.2 Cost of Living Adjustments – Fuel Surcharge. Should the cost of diesel fuel increase at a rate in excess of 15% annually, the VILLAGE agrees to work with the CONTRACTOR to alleviate such cost increase with a temporary increase to cover the additional fuel cost. Should the inflated fuel cost decrease then the prior approved increase will automatically decrease accordingly.

13. Franchise.

13.1 Exclusive Rights. To the extent permitted by law, the VILLAGE hereby grants CONTRACTOR the exclusive franchise right and the full obligation during the Term of this Agreement and any Additional Term, for the collection, hauling and disposal of all Residential Customer and Commercial Customer Solid Waste within the Service Area, with the exception of Commercial Customer Recycling Services and roll-on, roll-off service. Pursuant to Florida law, the VILLAGE has the lawful authority to enter into this Agreement. If at any time during the Term of the Agreement, a court or change in law affects the VILLAGE's ability to grant the exclusive franchise rights specified in this Agreement, the VILLAGE shall not be liable to the CONTRACTOR for any losses or damages sustained by the CONTRACTOR by any such change.

13.2 Franchise Fees. As consideration for granting this franchise and for use of the VILLAGE's roads, streets and rights-of-way, CONTRACTOR shall pay the VILLAGE a Franchise Fee as follows: Fifteen percent (15%) of all gross revenues billed (by both CONTRACTOR and the VILLAGE) from all sources of Collection Services, Residential and Commercial, within the Service Area.

13.3 Franchise Payments. CONTRACTOR shall calculate residential Franchise Fees due to the VILLAGE on a monthly basis. Invoices submitted by CONTRACTOR by the 10th day of each month for services rendered and billed in the preceding month shall include a deduction for the corresponding Franchise Fee for the same period. CONTRACTOR shall pay the Commercial Franchise

Fee to the VILLAGE on a quarterly basis on the 20th day of the month immediately following the end of the prior quarter. A clear and concise report summarizing all billing for the corresponding quarter with sufficient documentation to determine the calculation of the Franchise Fee shall be provided by CONTRACTOR with each payment.

14. Ownership of Recyclable Materials. CONTRACTOR shall be the owner of all Recyclable Materials it collects from Residential Customers and may recycle, process, or sell the Recyclable Materials, at its discretion. Neither the VILLAGE nor the Residential Customers shall be entitled to the proceeds of any sale of processed or unprocessed Recyclable Materials.

15. Disposal of Non-Saleable Recyclable Materials. In the event Recyclable Materials are not saleable and must be disposed of at a solid waste disposal facility, the CONTRACTOR shall not charge the VILLAGE for the number of tons of material so disposed.

15.1 Revenue Generated from Recyclable Materials. The CONTRACTOR shall account for all revenues generated through recycling and report all such revenues to the VILLAGE on a monthly basis. The revenue amounts are to be verified by accompanying receipts from the purchaser of the recyclable material and the CONTRACTOR shall retain all revenues generated from the sale of the recyclables.

16. Agreement Performance.

16.1 Unsatisfactory Performance. If at any time during the Term or any Additional Term of this Agreement, CONTRACTOR's performance is considered unsatisfactory to the Village Manager, upon notification of the unsatisfactory performance, CONTRACTOR shall immediately take all steps necessary to satisfactory perform this Agreement, including but not limited to increasing the work force, or increasing or repairing tools and Collection Equipment as needed. The failure of the Village Manager to give such notification shall not be a precondition to the exercise of other rights of the VILLAGE under this Agreement nor relieve CONTRACTOR of its obligation to perform in the manner specified in this Agreement.

16.2 Information. CONTRACTOR shall furnish the Village Manager any information relating to this Agreement deemed necessary by the Village Manager, in the Village Manager's sole

discretion, to ascertain whether or not Collection Services are being performed in accordance with the requirements of this Agreement.

16.3 Inspection. The Village Manager may inspect CONTRACTOR's operations and Collection Equipment upon reasonable notice to CONTRACTOR. CONTRACTOR shall permit the Village Manager to make such inspections at reasonable times and places.

17. Complaints and Complaint Resolution Penalties.

17.1 Customer Service. CONTRACTOR shall have designated customer service representatives available by phone to address any and all resident and/or Village concerns. The customer services shall include a responsible person in charge with the ability to communicate with the public during collection hours. After hours of operation, the CONTRACTOR shall provide a telephone answering service and contact person during non-office hours for the receipt of customer inquiries. The contact person shall have the ability to authorize operations in the case of situations requiring immediate attention. In the event of a dispute between CONTRACTOR and a Customer as to whether an item falls within a particular category of Solid Waste or Prohibited Waste, the situation shall be reviewed and resolved by the Village Manager at his/her sole discretion.

17.2 Complaint Register. CONTRACTOR shall prepare and maintain, in accordance with a format approved by the Village Manager, a written register of all complaints received, indicating the disposition of each complaint ("Complaint Register"). The Complaint Register shall be available for inspection by the Village Manager at all times during which the office is open. The Complaint Register shall indicate at a minimum, the name and address of the complainants, the date and hour on which the complaint was received, the nature of the complaint, and the date and hour on which it was resolved.

17.3 Response to Complaints. Ensure two (2) hour maximum response time for cleanup of spillage by the CONTRACTOR, twenty-four (24) hour response time for missed or delayed collections, and five (5) day response time for special collections of Bulk Trash, oversized Yard Trash, White Goods, Electronic Waste and additional garbage collections. Requested Garbage Containers or Recycling Containers shall be delivered within five (5) working days of receipt of request. When complaint received on a day preceding a holiday or the weekend, the complaint shall be resolved no later than the next working day.

17.4 Reports. The Complaint Register shall be submitted to the Village Manager each month together with the monthly invoice.

17.5 Disputes. Unresolved disputes between CONTRACTOR and Customers shall be referred to the Village Manager whose decision shall be final and binding on the CONTRACTOR.

17.6 Penalties. CONTRACTOR shall be assessed penalties by the Village Manager for failure of performance in accordance with the Penalty Schedule attached as Exhibit "E," which amounts shall be deducted monthly from payments due CONTRACTOR by the VILLAGE.

18. Reports.

18.1 Annual Reports. For purposes of this section, CONTRACTOR agrees to utilize the VILLAGE's fiscal year, October 1 through September 30, as the period for annual reporting and to calculate Franchise Fees. No later than December 1, following each fiscal year, CONTRACTOR shall submit to the VILLAGE a report containing the following information for the previous fiscal year:

18.1.1 Total Solid Waste tonnage collected.

18.1.2 Total Tipping Fees paid to dispose of the Solid Waste.

18.1.3 Gross Billing for all Residential and Commercial Solid Waste collection, including all Special Services, within the Service Area.

18.1.4 Total Recyclable Material collected and recycled at an approved recycling facility.

18.1.5 Proof that all insurance and bonds required by this Agreement are in effect.

18.1.6 Other information and data as requested by the Village Manager, except information which is held by CONTRACTOR as proprietary or confidential.

18.1.7 Complaint Register.

18.1.8 Annual Audit. No annual audit shall be required, provided the CONTRACTOR shall provide compiled financial statements, which may be marked as confidential and be exempt from disclosure to the extent provided by Florida Statutes.

18.1.9 Proof of informational and educational outreach efforts.

18.1.10 List of dates and locations of speaking engagements promoting the VILLAGE's Recycling Services program.

18.2 Monthly Reports. The CONTRACTOR shall provide the following reports on a monthly basis in a form and format approved by the VILLAGE:

18.2.1 The list required by Section 13.3.

18.2.2 A list of addresses that received a “TAG” and other details including attempts to follow up pursuant to Section 5.2.11.

18.2.3 A summary report by ton for all Solid Waste disposed of within the VILLAGE, including copies of disposal tickets.

18.2.4 A Recyclable Materials status report, to include a summary of all tonnages of recyclables collected by category. Report shall list any details of problems in the Recyclable Materials collection operation and measures taken to resolve problems, increase efficiency, and household participation. At a minimum, a breakdown of estimates of the following items shall be included in the reporting: Newspaper, glass, aluminum cans, steel cans, ferrous metals, non-ferrous metals, plastic bottles, other plastics, corrugated paper, office paper, other paper and Yard Trash (Regular and Oversize).

19. Subcontractors. CONTRACTOR shall not employ subcontractors to perform collection, disposal and hauling services pursuant to this Agreement without prior written approval by the VILLAGE.

20. Performance Bond. As additional security for the CONTRACTOR’s obligations under the Agreement, the CONTRACTOR shall obtain and maintain a Performance Bond. The Performance Bond shall be renewed annually and must be in form acceptable to the VILLAGE. The surety company shall be acceptable to the VILLAGE and authorized to do business in the State of Florida.

20.1 Amount of Bond. CONTRACTOR shall, prior to the Commencement Date, furnish to the VILLAGE a Performance Bond in the amount of \$1,000,000 in a form acceptable to the VILLAGE.

20.2 Surety Companies Acceptable to the VILLAGE. The Performance Bond must be executed by a surety company acceptable to the VILLAGE and authorized to do business in the State of Florida. To be acceptable to the VILLAGE as Surety for Performance Bond, a Surety Company shall comply with the following provisions: (1) the surety company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida; (2) the surety company shall have a currently valid Certificate of

Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code; (3) the surety company shall be in full compliance with the provisions of the Florida Insurance Code; (4) the surety company shall have at least twice the minimum surplus and capita required by the Florida Insurance Code at the time the RFP was issued; (5) the surety must have a registered agent in the State of Florida; meet all of the requirements of the laws of Florida and the regulations of the VILLAGE and the VILLAGE's approval; and (6) the surety company shall have a minimum rating of A-/VII as rated by A.M. Best.

The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policy holders, provided any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida Department of Insurance to do business in this State has been met. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

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

The CONTRACTOR agrees to indemnify and save the VILLAGE and its agents, officers,

volunteers, and employees, both in their official and individual/personal capacities, harmless from all suits or actions arising from the CONTRACTOR's infringement of patent, trademark, or copyright, including any acts or non-acts of sub-contractor or sub-subcontractor or those individuals under the control or direction of any of the foregoing.

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

- Performance or the omission to perform the collection, transport, delivery, and disposal of Garbage/Rubbish, Bulk Trash, and Recyclable Materials, and Yard Trash with or without a “claw” truck, Garbage/Rubbish using Roll-Off Containers;
- The furnishing or failure to furnish, deliver, or pick-up any Garbage Containers, Commercial Garbage Containers, Recycling Containers, and Roll-Off Containers;
- The administration of or failure to administer this Agreement;
- The hiring or omission to hire or supervise any employees or labor in or for the performance of the Collection Services pursuant to this Agreement;
- The obtaining, use, maintenance, and operation of equipment in furtherance of the performance of Collection Services pursuant to this Agreement;
- The employment of or failure to employ safety measures or equipment in the performance of the Collection Services pursuant to this Agreement;
- The marketing of Recyclable Materials;
- The establishment and operation of office facilities;
- The compliance with or failure to comply with any laws, administrative rules or regulations, or ordinances in the performance of (or failure to perform) the Collection Services pursuant to this Agreement; and
- The performance or non-performance of any requirements, duties, obligations, or tasks required to be performed by or for the CONTRACTOR pursuant to or as a result of this

agreement.

The VILLAGE reserves the right to select its own attorneys and paralegals to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR under this indemnification agreement, the cost and fees or which shall be timely and promptly paid for by the CONTRACTOR. Nothing contained herein is intended to nor shall it be construed to waive VILLAGE's rights and immunities under the common law, the U.S. or Florida Constitution, or Section 768.28 Florida Statutes as amended from time to time. The CONTRACTOR agrees that this Agreement or any subcontract or sub-subcontract hereof, or agreement relating to the Collection Services shall not be construed to be an agreement subject to Section 725.06 or 725.08, Florida Statutes, and the CONTRACTOR also agrees that its obligations to indemnify the VILLAGE is not in any way limited by Section 725.06 and 725.08, Florida Statutes.

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

22. Insurance.

Upon execution of this Agreement, the CONTRACTOR shall, at their own expense, procure and maintain throughout the term of this Agreement and any renewals thereof, with insurers acceptable to the VILLAGE, the types and amounts of insurance conforming to the minimum requirements set forth herein. With respect to the Professional/Pollution policy (ies), CONTRACTOR shall provide to the VILLAGE a certified copy of the insurance policy or policies which provide the coverage described below. With respect to all other coverages, as evidence of compliance with the insurance required herein, CONTRACTOR shall furnish the Village with:

- A. A fully completed satisfactory Certificate of Insurance evidencing all coverage required herein. Also, a copies of the actual additional insured endorsements as issued on the Commercial General Liability, Automobile Liability, and Environmental/Pollution Liability policies, signed by an authorized representative of the insurer(s) verifying inclusion of the VILLAGE and the Village's council members, officials, officers and employees as additional

insureds;

- B. The original of the policy(ies); or
- C. Other certified copy evidence satisfactory to the VILLAGE.

Until such insurance is no longer required by this Agreement, the CONTRACTOR shall provide the VILLAGE with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such certified insurance.

If requested to do so by the VILLAGE, the CONTRACTOR shall, within thirty (30) days after receipt of a written request from the VILLAGE, provide the VILLAGE with a certified, complete copy of the policies of insurance providing the coverage required.

22.1 Workers' Compensation/Employer's Liability Insurance

Workers' Compensation Policy shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The policy must be endorsed to provide the VILLAGE with 30 days' notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$ 5,000,000	Each Accident
	\$ 5,000,000	Disease - Policy Limit
	\$ 5,000,000	Disease - Each Employee

The Workers' Compensation Policy must be endorsed to waive the insurer's right to subrogate against the VILLAGE, and its members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13) with the VILLAGE, and its council members, officials, officers and employees scheduled thereon.

22.2 Commercial General Liability Insurance

Commercial General Liability insurance shall be no more restrictive than that provided by the

most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the state of Florida or those described below.

The VILLAGE and the Village's council members, officials, officers, agents and employees shall be included as an "Additional Insured's" on a form no more restrictive than ISO Form CG 20 10 11/85 or its equivalent, to include coverage for products and completed operations (Additional Insured - Owners, Lessees, or Contractors). The policy must be endorsed to provide the VILLAGE with 30 days' notice of cancellation. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$ 5,000,000	General Aggregate
\$ 5,000,000	Products/Completed Operations Aggregate
\$ 5,000,000	Personal and Advertising Injury
\$ 5000,000	Each Occurrence

22.3 Automobile Liability Insurance.

Automobile Liability Insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The VILLAGE and the Village's council members, officials, officers, agents and employees shall be included as "Additional Insured". The policy must be endorsed to provide the Village with 30 days' notice of cancellation. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 5,000,000	Each Occurrence - Bodily Injury and Property Damage Combined
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22.4 Environmental / Pollution Liability Insurance.

Environmental/Pollution Liability insurance shall cover the CONTRACTOR for liability resulting from pollution or other environmental impairment arising out of, or in connection with, work performed under this Agreement, or which arises out of, or in connection with this Agreement, including coverage for clean-up of pollution conditions and third party bodily injury and property

damage claims arising from pollution conditions. Such insurance shall also include transportation coverage and non-owned disposal site coverage. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. Coverage shall not exclude the assessment, removal, remediation, transport and/or handling of hazardous materials, including but not limited to mold, asbestos, and lead. Said pollution liability policy shall include and list as “Additional Insured” the VILLAGE and the VILLAGE’s council members, officials, officers, agents and employees; the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Proposer shall obtain all necessary endorsements to support these requirements. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 1,000,000 Each Claim

\$ 2,000,000 Annual Aggregate

22.5 General Insurance Requirements.

22.5.1 The VILLAGE and the VILLAGE’s council members, officials, officers, agents and employees shall be included as an “Additional Insureds” on the policies listed in this Section 22.

22.5.2 The maximum permissible deductible for any of the policies listed in this Section 22 shall be \$25,000 per claim. The payment of any amount owed under any deductible shall be the sole responsibility of the CONTRACTOR and CONTRACTOR shall pay on behalf of the VILLAGE or the Village’s council members, officials, officers, agents and employees any deductible applicable to a claim against the VILLAGE or the Village’s council members, officials, officers, agents and employees.

22.5.3 The insurance provided by the CONTRACTOR shall apply on a primary basis and non-contributory basis. Any insurance maintained by the VILLAGE shall be excess of, and shall not contribute with, the insurance provided by the CONTRACTOR.

22.5.4 The insurance maintained by the CONTRACTOR shall apply on a first dollar basis without application of a deductible. The CONTRACTOR shall be required to provide the

VILLAGE with a secured letter of credit or bond, in a form acceptable to the Village Attorney to cover any deductibles.

22.5.5 Compliance with these insurance requirements shall not limit the liability of the CONTRACTOR. Any remedy provided to the VILLAGE by the insurance provided by the CONTRACTOR shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the CONTRACTOR) available to the VILLAGE under the Agreement or otherwise.

22.5.6 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement. Certificates of Insurance must be completed as follows:

Certificate Holder

Islamorada, Village of Islands
86800 Overseas Highway, 3rd Floor
Islamorada, Florida 33036

Additional Insured for Commercial General Liability

Islamorada, Village of Islands and its Council members, officials, officers and employees

All companies providing insurance shall be authorized to do business in the State of Florida and rated B+:VI or better by Best's Key Rating Guild, latest edition. No change or cancellation of this insurance shall be made without 30 days prior written notice to the VILLAGE.

23. Events of Default by CONTRACTOR. Each of the following events or conditions shall constitute an "Event of Default" by CONTRACTOR for the purposes of this Agreement:

23.1 Any failure by CONTRACTOR to perform or comply with any material terms and conditions of this Agreement.

23.2 Filing by or against CONTRACTOR or the Performance Bond surety of a bankruptcy, receivership, assignment for the benefit of creditors, liquidation, dissolution, composition or reorganization petition, or other insolvency proceeding.

23.3 Failure by CONTRACTOR to provide Collection Services for a period of three (3) consecutive days, excluding Sundays, Holidays and any period of time encompassing any delay of performance caused by or resulting from any national disasters or any declaration of emergency by Monroe County, Florida.

23.4 Complaints constituting verified deviations from CONTRACTOR's duties or obligations under this Agreement in any calendar month in excess of ten (10) per month.

23.5 Not resolving legitimate complaints of missed Collection Services within the time frame specified, six (6) or more times in any calendar month.

23.6 If any representation or warranty furnished by CONTRACTOR in this Agreement is found to be false or misleading in any material respect.

23.7 Sale or assignment of the franchise rights provided by this Agreement to a third party without the VILLAGE's prior written consent, which may be withheld for any reason.

23.8 Refusal of CONTRACTOR to allow inspection or review of records.

23.9 Failure to timely provide the annual report or audited financial statement.

24. Remedies Upon Default by CONTRACTOR; Termination. In the event of Default by CONTRACTOR, the VILLAGE may, without election of remedies:

24.1 Without recourse to legal process, terminate this Agreement by delivery of a written notice of default to CONTRACTOR specifying the default and providing an opportunity to cure such default within ten (10) days from the date of the notice. If such default cannot be cured within the ten (10) day period, then the VILLAGE and CONTRACTOR shall develop a plan to cure such default that is mutually acceptable. If no agreement is reached within twenty (20) days of the notice of default, the VILLAGE can terminate this Agreement immediately.

24.2 Seek recovery on the Performance Bond.

24.3 Exercise all remedies available at law or at equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and

owing to the VILLAGE, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, and/or for specific performance.

25. Representations and Warranties of CONTRACTOR. CONTRACTOR warrants and represents to the VILLAGE that:

25.1 It understands that at certain times during the year, the quantity of Solid Waste to be disposed of is materially increased by the influx of visitors. CONTRACTOR agrees that seasonal fluctuation shall not be justification for CONTRACTOR to fail to maintain the Regular Schedules or to justify a rate increase.

25.2 All Solid Waste collected by CONTRACTOR under this Agreement shall be disposed of at a duly licensed and permitted Solid Waste Disposal Facility.

25.3 All Recyclable Materials collected by CONTRACTOR under this Agreement shall be recycled at a duly licensed and permitted Recovered Materials Recycling Facility.

25.4 CONTRACTOR has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder.

25.5 CONTRACTOR's execution, delivery, and performance of this Agreement have been duly authorized by, or is in accordance with, its instruments of creation and organization, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid and binding obligations.

25.6 CONTRACTOR's execution, delivery, and performance of this Agreement shall not result in a breach of violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected.

25.7 CONTRACTOR has not received any notice, nor to the best of its knowledge is there pending or threatening any notice, or any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.

25.8 CONTRACTOR has, or shall have, under its control at the date of commencement of Collection Services under this Agreement, or will acquire as require in this Agreement,

all Collection Equipment, personnel and Solid Waste Disposal Facility necessary to perform under this Agreement.

26. Compliance with Law. CONTRACTOR shall perform its obligations hereunder in compliance with any and all applicable Federal, State, County, VILLAGE and local laws, rules, and regulations, in accordance with sound safety practices, and in compliance with any and all rules of the Village. CONTRACTOR shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder prior to beginning of providing Collection Services.

27. Taxes, Liens and Fees. At all times during the existence of this Agreement, CONTRACTOR shall pay on or before the due date all taxes, fees, and assessments which may be levied upon or in respect of the Collection Equipment, or its operation, including but not limited to commercial personal property taxes, sales taxes, and intangible taxes, and CONTRACTOR shall pay on or before the due date any other charge of any character which may be imposed or incurred by any public authority as an incident to title to, ownership of, or operation of the Collection Equipment. In the event that any lien or encumbrance of any nature relating to CONTRACTOR's Collection Equipment or the operation or maintenance thereof is filed upon the VILLAGE, CONTRACTOR shall have thirty (30) days from the date of written notice by VILLAGE to have such lien or encumbrances bonded off or discharged.

28. Access to Books and Records/Audit. CONTRACTOR shall maintain adequate records of all Collection Services. The Village Manager or his/her designee shall have the right to audit, inspect and review all records, including, but not limited to, the customer list and Complaint Register pursuant to this Agreement, maintained by CONTRACTOR at all times during which the office is open. On a monthly basis, CONTRACTOR shall provide to the VILLAGE the previous month's volume of Recyclable Materials collected under this Agreement. An annual audit of CONTRACTOR's books and records by an in-house certified public accountant prepared in accordance with generally accepted accounting principles, pertaining to the calculation of the Franchise Fee paid under this Agreement in the Service Area shall be delivered to the VILLAGE no later than December 1st of the year following the fiscal year.

If the results of any audit performed by the VILLAGE indicates that the CONTRACTOR has billed for services not performed, has improperly calculated revenue or owes additional Franchise Fees to

the VILLAGE, or if an audit reveals discrepancies in billing or payment of Franchise Fees to the VILLAGE, the CONTRACTOR shall within 30 days of receipt of a request from the VILLAGE, provide backup satisfactory to the Village Manager, credit the VILLAGE on its next monthly billing or repay such funds to the VILLAGE. In the event that the CONTRACTOR does not provide the required documentation, credit or repayment to the VILLAGE within 30 days, the VILLAGE may withhold the amount of the discrepancy as calculated by the VILLAGE from subsequent payments due to the CONTRACTOR until the discrepancy is resolved to the satisfaction of the Village Manager.

29. Public Awareness Program.

29.1 CONTRACTOR shall assist the VILLAGE with a Public Awareness Program by distributing door hangers, stickers, flyers or other media to Residential and Commercial Customers as requested by the VILLAGE. CONTRACTOR shall provide annually a written program, to the Village Manager, explaining intended engagement schedule.

29.2 The public shall also be notified of Commercial Recycling Services through CONTRACTOR's initiative through special recycling events, Hazardous Waste disposal events, workshops, educational forums and symposiums and other activities, as needed.

29.3 CONTRACTOR shall provide information and education to Residential and Commercial Customers on an annual basis in order to increase the VILLAGE's public awareness (newspaper, radio, websites) as well as educational outreach to promote these services and shall conduct complimentary waste audits for interested Commercial Customers. CONTRACTOR shall include in the Annual Report proof of informational/educational outreach efforts.

29.4 The CONTRACTOR shall produce and distribute one brochure by mail to each Residential Customer each October, at the CONTRACTOR's expense, which shall include a condensed version of the Collection Schedule, and rules and regulations. The brochure shall also include Collection Services information provided by the Agreement with the VILLAGE including the guidelines for collection of Solid Waste, Electronic Waste, Recyclables Materials, and related materials. Further, the brochure shall contain specific examples of well-known consumer products and materials capable of being recycled, which would otherwise be disposed of as Garbage/Rubbish. These brochures and the newspaper ad shall be produced under the direction of and with final approval by the Village Manager prior to

publishing. The CONTRACTOR's logo or other identifying information together with a VILLAGE seal shall be displayed on these brochures. The CONTRACTOR shall also provide a full page newspaper ad containing information similar to the brochure two times per year at a minimum in one newspaper with local circulation as approved by the Village Manager.

29.5 The CONTRACTOR shall participate in speaking engagements and attendance at local homeowners and condominium association meetings, public and private schools board meetings, and business and civic association meetings for presentation and distribution of educational brochures or other materials as deemed necessary by the Village Manager at the CONTRACTOR's expense through the duration of the Agreement. CONTRACTOR shall list in the Annual Report dates and locations of speaking engagements.

30. Notices and Changes of Address. Unless otherwise provided for in this Agreement, all notices, demands, requests and other communications required under this Agreement may be given orally (either in person or by telephone) if confirmed in writing within twenty-four (24) hours thereafter, by facsimile or in writing delivered by hand or mail and shall be conclusively deemed to have been received if delivered or attempted to be delivered by United States first class mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at its address set forth below in this section of this Agreement. Any party may designate a change of address by written notice to the other party, received by such other party at least ten (10) days before such change of address is to become effective.

The VILLAGE should be addressed as follows:

Islamorada, Village of Islands
Attn : Village Manager
86800 Overseas Highway
Islamorada, Florida 33036

With a required copy to:

Islamorada, Village of Islands
Attn: Village Attorney
Islamorada Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036

CONTRACTOR should be addressed as follows:

Island Disposal Company
Attn: Brian Lindback, President
86500 Overseas Hwy,
Islamorada, Florida 33036

31. No Waiver. The failure of CONTRACTOR or the VILLAGE to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's rights to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of CONTRACTOR or the VILLAGE.

32. Public Records. VILLAGE is a public agency subject to Chapter 119, Florida Statutes. To the extent that CONTRACTOR is acting on behalf of VILLAGE pursuant to Section 119.0701, Florida Statutes, CONTRACTOR shall:

32.1 Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by VILLAGE were VILLAGE performing the services under this Agreement;

32.2 Provide the public with access to such public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

32.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

32.4 Meet all requirements for retaining public records and transfer to VILLAGE, at no cost, all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the VILLAGE.

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 305-664-6412,

Clerk@islamorada.fl.us, or by mail: Village Clerk, 868800 Overseas Highway, Islamorada, FL 33036.

33. E-Verify. CONTRACTOR shall comply with Section 448.095, Fla. Stat., “Employment Eligibility,” including the registration and use of the E-Verify system to verify the work authorization status of employees. Failure to comply with Section 448.095, Fla. Stat. shall result in termination of this Contract. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of the statute by CONTRACTOR, CONTRACTOR may not be awarded a public contract for a period of 1 year after the date of termination.

34. Scrutinized Companies.

34.1 CONTRACTOR certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR or its subconsultants are found to have submitted a false certification; or if CONTRACTOR, or its subconsultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

34.2 If this Agreement is for more than one million dollars, CONTRACTOR certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if CONTRACTOR, its affiliates, or its subconsultants are found to have submitted a false certification; or if CONTRACTOR, its affiliates, or its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

34.3 CONTRACTOR agrees to observe the above requirements for

applicable subcontracts entered into for the performance of work under this Agreement.

34.4 As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

35. Severability. In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

36. Binding Effect. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns.

37. Assignment. CONTRACTOR shall not assign, sell, transfer or dispose of the franchise rights or obligations granted by this Agreement in any manner whatsoever without the express prior written consent of the VILLAGE. The VILLAGE shall have the full discretion to approve or deny, with or without cause, any proposed sale, transfer, or assignment by CONTRACTOR. Any assignment, sale or transfer of this Agreement made by CONTRACTOR without the express written consent of the VILLAGE shall be grounds for the VILLAGE to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to CONTRACTOR. This Agreement shall be deemed immediately terminated as of the date of such notice, and upon such termination all liability of the VILLAGE under this Agreement to CONTRACTOR shall cease, and the VILLAGE shall have the right to call the Performance Bond and shall be free to negotiate with any other person or company for Solid Waste Collection Services in the Service Area which is the subject of this Agreement. In the event the VILLAGE agrees to an assignment, sale or transfer of the franchise, the assignee shall fully assume all the liabilities and obligations of CONTRACTOR under this Agreement.

38. Complete Agreement. This Agreement, when executed, together with the Exhibits attached hereto, as provided for by this Agreement, shall constitute the entire Agreement between both parties and this Agreement may not be amended, modified, or terminated except by writing signed by the parties hereto.

39. Proposal and Agreement Incorporated by Reference. The VILLAGE's Request for Proposals for Solid Waste Collection Services, together with all addenda thereto, and CONTRACTOR's

response thereto are hereby incorporated by reference into this Agreement. In construing the rights and obligations between the parties, the order of priority in case of conflict between the documents shall be as follows:

- 39.1 This Agreement;
- 39.2 The Proposal as Addended; and
- 39.3 Request for Proposal.

40. Independent Parties. Nothing contained in this Agreement shall be deemed or construed for any purpose to establish, between VILLAGE and CONTRACTOR, a partnership or joint venture, a principal agent relationship, or any relationship other than independent contractor.

41. Force Majeure. The performance of any act by the VILLAGE or CONTRACTOR hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any other cause beyond the reasonable control of such party, provided. In such event the VILLAGE shall have the right to provide substitute service from third party contractors or VILLAGE forces. The VILLAGE may withhold payment due CONTRACTOR for any period of time the CONTRACTOR does not perform services due to Force Majeure. If the condition of Force Majeure exceeds a period of seven (7) days, the VILLAGE may at its sole option and discretion, cancel or renegotiate this Agreement.

42. Time is of the Essence. Time is of the essence with respect to each and every term and condition of this Agreement.

43. Amendment. The parties hereby irrevocably agree that no attempted amendment, modification, termination, discharge or change of this Agreement shall be valid and effective, unless both parties execute a written amendment evidencing their agreement.

44. Attorneys' Fees. If the VILLAGE or CONTRACTOR incur any expenses in enforcing the terms of this Agreement, the prevailing party shall be reimbursed by the other party for all reasonable attorneys' fees and costs.

45. Gender and Use of Singular and Plural. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the party or parties, or their personal representatives, successors, and assigns may require.

46. Counterparts. This Agreement and any Amendments may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

47. Headings. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

48. Governing Law/Waiver of Jury Trial. This Agreement shall be construed in accordance with the laws of the State of Florida and any proceeding arising between the parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be held in the Upper Keys Division of the Circuit Court of Monroe County, Florida. Each party knowingly and irrevocably waives its right to a trial by jury for any and all actions that might arise out of this Agreement.

([REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this instrument on the date first above written.

VILLAGE:

Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

By: _____

Village Manager

ATTEST

Village Clerk

APPROVED AS TO LEGAL SUFFICIENCY

Village Attorney

Witnesses:

Print Name: _____

Print Name: _____

CONTRACTOR:

ISLAND DISPOSAL COMPANY

By: _____

Print Name: _____

Title: _____