SOLID WASTE COLLECTION CONTRACT

Between

The Town of Sunset Beach
and

Waste Industries, LLC

November, 2010

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

AGREEMENT

THIS COLLECTION AND DISPOSAL AGREEMENT, hereinafter "Contract", is entered into this 30th day of DECEMBER 2010 by and between the **TOWN OF SUNSET BEACH,** a municipal corporation organized and existing under the laws of the State of North Carolina, hereinafter "Town", and **WASTE INDUSTRIES, LLC,** a limited liability company with its principal office in Raleigh, North Carolina, organized and existing under the laws of the State of North Carolina, hereinafter "Contractor".

WITNESSETH

WHEREAS, the Town desires to ensure the economical and environmentally sound collection of Residential Trash and Recyclable Materials (as defined herein); and,

WHEREAS, the governing authority of the Town has the power to negotiate and enter into service contracts and extensions of contracts for the collection of Residential Trash and Recyclable Materials.

NOW, THEREFORE, in consideration of these premises, the parties hereby agree:

Section 1: Definitions

The following terms shall, for the purpose of these specifications and this Contract, have the meanings indicated as follows:

1.1 Recyclable Materials shall mean materials generated from general household use; aluminum and bi-metal beverage cans; clear, green or brown glass bottles and food jars; plastic items #1 thru #7 (it does not include containers that are intended for sale or use of motor oil); newsprint and inserts; mixed paper (copy paper, notebook paper, stationary, office & computer paper, junk mail, shoe, soap and cereal boxes); magazines (slick, shiny pages not over ¼ inch thick); and as may be mutually agreed by the Town and Contractor and amended from time to time.

1.2 Recycle Container(s) shall mean containers of (40) cubic yard capacity made of metal or like materials to be used for the purpose of the residents storing Recyclable Materials for collection.

1.3 Trash Cart(s) shall mean containers of (96) gallon capacity made of plastic or like materials used for the purpose of the residents storing household trash for collection.

1.4 Service Location shall mean and include a residential dwelling unit or other location a authorized by the Town to receive service under this Contract by utilizing Trash Carts..

1.5 DENR shall mean the Department of Environment and Natural Resources or any successor department or agency performing the same or similar duties for the State of North Carolina.

1.6 Public Street shall mean one which is open to and used by the public.

1.7 Curbside shall mean that six (6) feet to eight (8) feet portion of the right of way immediately adjacent to the paved or traveled roadway of a Public Street and on private roadways set aside for public use and delivery of services.

Section 2: Trash / Recycling Curbside Collection Service

2.1 Trash shall be collected within the entire Town municipal limits once per week under the Brunswick County Curbside program. The schedules are Seaside and Shoreline Woods will be picked up on Saturday and the remainder of the mainland and the Island will be picked up on Wednesday. A second pickup from May – September for the Island, the Club Villas, River Creek Condos I & II, the Colony I & II, Royal Poste, Osprey Ridge, Champion, Regency, Sunset Village at Sandpiper Bay and Waterway Condos. This will also include the beach accesses once per week year round and twice per week from May – September and also the Gazebo Parking Lot.

Section 3: Collection Services – General

3.1 The Town and Contractor shall establish the regular weekly service day schedule for collection. Changes to collection hours and regular weekly service day(s) will be upon the mutual agreement of the Town and the Contractor when a reasonable change is necessary to improve efficiencies, adjust for Town growth or due to unforeseen circumstances. Contractor agrees to assist the Town in distributing notification of route or service changes to the residents of the Town.

3.2 Contractor will provide special collection services to elderly, injured, ill or handicapped residents receiving Town provided trash collection, who are incapable of placing items at curbside, when identified and approved by the Town. Qualifications for such special collection shall be determined by a written doctors authorization. The Town shall maintain and provide the Contractor monthly with a list of addresses qualified for such special service. Such collection of the Trash Cart will be from the back door or front door of the residence closest to the street nearest to the residence and passable as detailed in 3.3 below. All other items to be collected shall be placed curbside.

3.3 Except as provided in 3.2 above and as in this paragraph otherwise provided, items for collection shall be placed curbside on Public Streets and on private roadways set aside for public use and delivery of services within the Town limits by residents by 6:00 AM on the regular day of pick up. Contractor is not required to provide collection to any street that is not safely passable by the Contractor's equipment. Contractor shall notify the

Town of the limitations and impassability of Contractor's equipment on such streets so items for collection can be relocated and placed where practicable for collection.

3.4 Any spillage caused by the Contractor during collection of materials shall be immediately cleaned up. All materials hauled in the Contractor's equipment shall be contained so that leaking, spilling or blowing is prevented.

Section 4: Insurance and Indemnity

4.1 Insurance: The Contractor shall at all times during the term of this Contract and any renewals thereof, maintain in full force and effect Workers' Compensation, Employers' Liability, Automobile Liability and General Liability coverage written by insurance companies licensed to do business in the State of North Carolina. The Contractor agrees to furnish the Town certificates or other evidence reasonably satisfactory to the Town to the effect that such insurance has been procured and is in force. The certificates shall contain a provision that the policies will not be canceled without providing the Town at least thirty days' (30) written notice. The Town shall be listed as an additional insured.

Commercial General Liability – Each Occurrence:	
General Aggregate	$ 1,000,000
Product – Comp./Op. Aggregate	$ 1,000,000
Personal & Adv. Injury	$ 1,000,000
Each Occurrence	$ 1,000,000
Fire Damage (Any One Fire)	$ 100,000
Medical Expense (Any One Person)	$ 5,000
Automobile Liability – Any Auto:	
Combined Single Unit	$ 1,000,000
Excess Liability:	
Each Occurrence	$10,000,000
Aggregate	$10,000,000
Workers' Compensation – Statutory Limits:	
Each Accident	$ 100,000
Disease – Policy Limit	$ 500,000
Disease – Each Employee	$ 100,000

4.2 Indemnification: The Contractor will indemnify and save harmless the Town, its officers, council persons, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, cost, expenses, and reasonable attorneys' fees to the extent resulting or claimed to result from a willful or negligent act or omission of the Contractor, its officers, agents, or servants; provided, however, that the Contractor will not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of the award of this Contract or

for a willful or negligent act or omission of the Town, its officers, council persons, agents, servants, and employees.

Section 5: Contractor's Personnel and Equipment

5.1 The Contractor's employees will be required to wear clean, appropriate clothing and the Contractor agrees to dismiss any employee of the Contractor who violates these provisions or who is negligent or discourteous in the performance of his/her duties in accordance with the Contractor's disciplinary policies. The Contractor agrees that all employees will be required to wear uniforms that display the name of the Contractor. Each employee will carry a valid North Carolina operator's license for the type of vehicle he/she is required to operate. The Contractor will provide operation and safety training of all operational personnel.

5.2 The Contractor will assign a qualified person to be in charge of the operations contracted for and agrees that the information regarding experience will be furnished to the Town upon request. The wages for all the Contractor's employees will equal or exceed the minimum hourly wages established by law, and no person shall be denied employment by the Contractor for reasons of race, creed, religion, sex, national origin or disability. The Contractor's personnel will not use alcohol or unlawful drugs while providing service under the Contract.

5.3 The Town shall have no responsibility or liability whatsoever for acts or omissions of the Contractor's personnel nor for the selection, hiring, disciplining, or firing of the Contractor's personnel.

5.4 Contractor agrees that its collection trucks and equipment will be properly maintained at all times and will have additional or auxiliary equipment in case of mechanical malfunction.

Section 6: Contract Term and Performance

6.1 The term of the Contract will be for a period of two (2) years beginning January 1, 2011 and ending December 31, 2012. The parties hereto may mutually agree to continue or extend this Contract for an additional three (3) year period. In the event the parties do not mutually agree to extend the term of the Contract upon approval of both parties in writing at least 30 days prior to the expiration of the then existing term, for additional periods, the Contract will terminate at the expiration of the then current term or extension terms. This provision for continuity of the Contract is designed to allow the Contractor and Town to consider the Contractor's performance, the best interest of the Town, service changes, long-term aspects of the disposal/collection system and/or capital purchases. The Town and Contractor agree to meet annually, by February 1 in each year of the Contract, or any extension thereof, to discuss these items.

6.2 The Contract may be terminated by Town upon (a) seven (7) days' prior written notice to the Contractor if the Contractor becomes insolvent or declares bankruptcy or commits any act of bankruptcy or insolvency or (b) thirty (30) days prior written notice to the Contractor if the Contractor allows any final judgment for the payment of money to stand against it unsatisfied unless Contractor provides the Town with evidence of satisfaction hereof within such thirty (30) day period.

6.3 If either party breaches the Contract or defaults in the performance of any of the covenants or conditions contained within the Contract for fifteen (15) consecutive days (the "Breaching Party") after the other party (the "Non-Breaching Party") has given the Breaching Party written notice of such breach or default, unless a longer period of time is required to cure such breach or default and the Breaching Party will have begun to cure such breach or default within said period and pursues diligently to the completion thereof, the Non-Breaching Party may: (1) terminate the Contract as of any date which the said Non-Breaching Party may select provided said date is at least ten (10) days after the expiration of the fifteen (15) day cure period; (2) cure the breach or default at the expense of the Breaching Party; and/or (3) pursue any other right or remedy to which it may be entitled by law, including, but not limited to, the right for all damages or loss suffered as a result of unjustified termination. In the event either party waives default by the other party, such waiver will not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

Section 7: Rates

7.1 The Contractor will provide and perform all the work and services specified herein at the following monthly rates:

a. The **second pickup of the trash cart** will be a fee of $5.90 per cart per month. In the event that the Towns house count for the second pickup increases from its current count of 2163 (minimum) on the Island and Mainland, a modification of the contract price will be effective the month following the count.

b. **Beach access carts** will a fee of $5.90 per cart for once per week service, or $11.80 for twice per week service or $17.70 for three times per week service.

Section 8: Billing

8.1 The Contractor will bill the Town for services within ten (10) days following the end of the month. Provided Contractor submits a timely bill, the Town will pay the amount billed by the twenty-fifth (25th) day of the month in which the billing was issued. Such billing and payment will be based on the number of bins times the rates listed in Section 7.1.

8.2 It is understood and agreed that the minimum number of Service Locations and/or carts upon which the monthly billing is based will be minimum of 2163 carts. The Town shall notify the Contractor of any additions or deletions to Service Locations and/or bins added or subtracted for collection within the Town as a result of new construction, annexation, new request for service, request for additional bins at a Service Location, demolitions, redevelopment, etc. Such notification shall occur from the Town to the Contractor by the last working day of each month and documentation supporting the change shall be provided. Such changes shall increase or decrease the number of Service Locations and/or carts used in calculating the monthly compensation paid by the Town to the Contractor so long as the minimum number of Service Locations and/or bins is exceeded. Periodically, the Town and Contractor will perform an audit of Service Locations and the number of bins at Service Locations within the Town will be adjusted accordingly.

Section 9: Modification of Rates

9.1 Excluding subsequent rate modifications for other reasons defined in this Section, there will be a regular adjustment in the price paid for services provided by the Contractor beginning January 1, 2012 and occurring at the end of each twelve (12) months thereafter. The adjustments will be no more than the percentage increase in the Consumer Price Index- Water & Sewer & Trash Collection, as reported in January of the year of adjustment for all Urban Consumers, as published by the US Department of Labor or successor agency. The adjustment calculation shall be made by multiplying the percentage increase in the above stated Consumer Price Index over the most recent twelve (12) months period ending October 31 of the previous year of adjustment times the recent unit price of the contract item.

9.2 The Town and Contractor recognize the Contractor's cost of doing business may change due to one or all of the following and both parties agree to negotiate adjustments to the monthly per unit rates:

a. Changes in government rules or regulations or events beyond the Contractor's and/or Town's control such as, but not limited to, mandated recycling changes or Government taxes.

b. Changes in the facilities receiving trash and/or recyclables collected, including, but not limited to, processing fees, processing site locations, pass through charges or other event(s) beyond the Contractor's and/or Town's control which increase or decrease the cost of the final disposition of these materials collected.

9.3 The Town and Contractor recognize the normal volume of trash and/or recyclables to be collected by the Contractor may change temporarily as a result of a natural disaster or other acts of nature such as flooding or hurricanes and may require extra service and work outside of the Contract's normal working hours. The Town and Contractor may agree to immediately negotiate changes to compensation for the Contractor to collect the changed volume of trash and/or recyclables and/or work outside of the normal working hours associated with such an event.

Section 10: Holidays

The Collection services shall be performed year-round, excluding pre-determined holidays observed by the Town to include the days listed below:

New Years Day	Christmas Day
	Independence Day
Good Friday	Labor Day
Memorial Day	Thanksgiving Day

To compensate for the holidays, the schedule day of collection for the Town will either be moved back one or two days or forward one or two days, depending on what day of the week the holiday occurs, so that each Service Location receives its normal weekly level of service. Services will return to the normal work schedules the following week. The Contractor will give the Town at least twenty eight (28) days' notice of the proposed holiday schedule, so that the Town may give prompt written or published notice to the affected Service Locations.

Section 11: Complaints and Service Request

11.1 Complaints resulting from the Contractor's failure to provide collection service will be resolved no later than the next working day. When a complaint is received on the day preceding a holiday or on a Friday, the Contractor will resolve the complaint no later than the next working day.

11.2 Contractor shall respond promptly and effectively to service requests during working days. In cases where such request cannot be completed by the next scheduled collection day for a Service Location, the Contractor shall notify the Town of the disposition of the request so that it can be completed.

11.3 Notification of complaints and/or service requests shall be by the Town to the Contractor either by fax or written notification between the hours of 8:00 AM and 5:00 PM each and every working day (Monday through Friday). The Contractor shall maintain forms or logs indicating when a complaint or service request is received, nature of the complaint or request and the disposition of same. Such records shall be forwarded to the Town at least monthly. The Town may require the Contractor to make a personal supervisory visit to a Service Location to resolve a service complaint.

Section 12: Notices

All notices or other communications to be given hereunder will be in writing and will be deemed given when mailed postage prepaid by certified or registered mail, return receipt requested, through the United States Postal Service addressed to the Town, or addressed to the Contractor at the addresses given following their respective executions of this Contract. Changes of address by either party will be by notice given to the other in the same manner as above specified.

Section 13: Compliance with Laws

The Contractor will conduct operations under the Contract in compliance with all applicable laws, rules, ordinances and permits. All equipment utilized will comply with all axle weight restrictions.

Section 14: Licenses and Taxes

The Contractor will obtain all licenses and permits (other than the license and permit granted by the Contract) required by any governmental unit at its own expense.

Section 15: Force Majeure

15.1 In the event the Contractor or the Town is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of their obligations under this Contract, then, in addition to the other remedies provided in this Contract, the obligations of the Contractor or the Town may be suspended during the continuation of any inability so caused by the event of Force Majeure, but for no longer period. Any time that the Contractor or the Town intends to rely upon an event of Force Majeure to suspend obligations as provided in this Section, the Contractor or the Town shall notify the other party to this Contract as soon as reasonably practicable (and, where possible, give the other party reasonable notice prior to the suspension of the contract obligations) describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall again be given when the effect of the event of Force Majeure has ceased.

15.2 For purposes of this Contract, "Force Majeure" means any act, event or condition that is beyond the reasonable control of the Contractor or the Town, including, without limitation: (i) an act of God or similar occurrence; (ii) substantial interference by third parties which significantly inhibits or prevents any recycling, transfer or processing operations or any other duties of the Contractor or the Town hereunder; (iii) an act of public enemy, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence; (iv) a strike, work slowdown, or similar industrial or labor action; (v) any order or judgment or other act of any federal, state, county, or local court, administrative agency or governmental office or body, including, without limitation, such an order or judgment which limits the duration of this Contract to less than the term as set forth in Section 1 of this Contract or which stays, invalidates, or otherwise inhibits the performance of the parties hereunder; (vi) the denial, loss, suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval required by the parties to

perform hereunder which does not result from any negligent or willful act or omission of the Contractor or the Town; (vii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, Town or local law, rule, permit, regulation or ordinance after the effective date hereof, applicable to the Town, the Contractor or the parties' subcontractors, significantly adversely affecting the parties' obligations hereunder; (viii) the institution of a legal or administrative action, or similar proceeding, by any person, firm, corporation, agency or other entity which delays or prevents any material aspect of performance of the parties hereunder; or (ix) either party is for any reason (other than any reason resulting from their own negligent or willful act or omission) delayed or barred by governmental or judicial action from collecting all or any part of the fees to be paid under this Contract, as may be from time to time adjusted.

Section 16: Grant or Right

During the term of this Contract and during any authorized extension or renewal, the Contractor will be the only person(s) or organization(s) authorized by the Town to provide curbside trash cart services within the corporate limits of the Town which services are paid for by the Town. Other than by operation of law or an assignment to a subsidiary or affiliate of Contractor, no assignment of the Contract or any right accruing under the Contract will be made in whole or in part by the Contractor without express written consent of the Town, which consent will not be unreasonably withheld. In the event of an assignment consented to by Town, the assignee will assume the liability of the Contractor.

Section 17: Modifications to Ownership

Title to recyclable material shall pass to the Contractor upon Contractor's collection of said materials and financial amounts recovered from the sale of this material shall remain with the Contractor.

Section 18: Modifications to Contract

This Contract will be modified, amended or changed only in writing signed by each of the parties hereto.

IN WITNESS WHEREOF, this Contract has been signed in triplicate and sealed by the respective parties hereto.

TOWN OF SUNSET BEACH

By: Ronald F. Klein
Mayor

Attest:

By: Lisa H. Cribb
Town Clerk

(SEAL)

Address: 700 Sunset Blvd. N.
Sunset Beach, NC
28468

WASTE INDUSTRIES, LLC

By: Thomas Winstead
Thomas Winstead, Vice President

Attest:

By: Robert Lohr
Robert Lohr, Assistant Secretary

(SEAL)

Address: PO Box 1831
Wilson NC 27894-1831
3031 Black Creek Rd., SE
Wilson NC 27893-9560