

**SERVICE AGREEMENT  
FOR COLLECTION AND DISPOSAL OF RESIDENTIAL SOLID WASTE,  
YARD DEBRIS, AND BULK WASTE  
AND  
FOR THE OPERATION OF THE CITY'S GREENWASTE FACILITY**

This Service Agreement ("Agreement") is entered into this 21 day of February, 2019, commencing retroactively as of January 1, 2019 ("Commencement Date"), by and between **WASTE CONNECTIONS OF FLORIDA, INC.**, a Delaware Corporation, authorized to do business in Florida, d/b/a **WASTE CONNECTIONS OF FLORIDA**, with offices at 3 Waterway Square Place, Suite 550, The Woodlands TX, 77500 (Contractor), and the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation with offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 ("City"), for the purpose of providing for residential Solid Waste, Yard Debris ("Yard Trash"), Bulk Waste ("Bulky Waste") collection and Operations of the City's Green Waste Facility within the City of Miami Beach city limits ("Collection Area"), operation of the City's Green Waste Facility, and other such services as required by the City and more particularly set forth herein.

**RECITALS:**

**WHEREAS**, the City's current agreement for the collection and disposal of residential Solid Waste, Yard Trash and Bulk Waste and for operation of the City's Green Waste Facility expired on August 31, 2018, and is currently continuing on a month to month basis; and

**WHEREAS**, on February 20, 2018, the City issued Request for Proposals No. 2018-024-WG entitled, "Collection and Disposal of Residential Solid Waste, Yard Debris, Bulk Waste, and Operation of the City's Green Waste Facility"(the "RFP"); and

**WHEREAS**, at its regular meeting on July 25, 2018, the Mayor and City Commission adopted Resolution No. 2018-30433, accepting the recommendation of the City Manager, pursuant to Request For Proposals No. 2018-024-WG, for Collection and Disposal of Residential Solid Waste, Yard Debris and Bulk Waste and operation of the City's Green Waste Facility; authorizing the month-to-month extension of the Agreement with Progressive Waste Solutions of Florida, Inc. d/b/a Waste Connections of Florida, until such time as a new Agreement is executed; further authorizing the Administration to enter into negotiations with Progressive Waste Solutions of FL, Inc. d/b/a Waste Connections of Florida; further, if the Administration is not successful in negotiating an Agreement with Waste Connections of Florida, authorizing the Administration to enter into negotiations with World Waste Recycling; further, if the Administration is not successful in negotiating an Agreement with World Waste Recycling; authorizing the Administration to enter into negotiations with Waste Management Inc. of Florida; and further authorizing the Mayor and City clerk to execute an Agreement upon conclusion of successful negotiations by the Administration; and

**WHEREAS**, on or about June 8, 2018, Progressive Waste Solutions of FL, Inc. changed its name to Waste Connections of Florida, Inc.; and

**WHEREAS**, the City and Contractor have negotiated the foregoing Agreement to provide for residential Solid Waste, Yard Debris (hereinafter referred to as "Yard Trash"), Bulk Waste (hereinafter referred to as "Bulky Waste") collection and disposal services, and operation of the City's Green Waste Facility, as more fully set forth herein).

## **GENERAL INFORMATION**

### **1. RECITALS**

The foregoing recitals are true and correct and are hereby incorporated by reference into this Agreement.

2. [Intentionally Omitted]

### **3. COMMENCEMENT OF SERVICES**

The work and services outlined herein (the "Services") shall commence immediately upon Contractor's receipt of a Notice to Proceed by the City but, in any event, no later than January 1, 2019 ("Commencement Date").

### **4. TERM**

4.1.1 Initial Term: The initial term of the Agreement shall commence on the Commencement Date and terminate on December 31, 2023.

4.2 Renewal: Provided Contractor is not in default under the Agreement, the City upon mutual consent of the parties, has the option to renew the Agreement, subject same (or better) terms and conditions set forth herein, for up to three (3) consecutive one-year renewal terms, by giving Contractor written notice of such renewals at least thirty (30) days prior to the end of the previous term. At a minimum, any renewal term shall be at the same cost to the City as the immediately preceding term. Continuation of the contract beyond the initial period, and any option subsequently exercised, is a City prerogative, and not a right of the Contractor. This is the prerogative maybe exercised only when such a continuation is clearly in the best interest of the City. The initial term, including any approved renewal terms, may be collectively referred to herein as the ("Term").

4.3 A contract year shall begin on January 1<sup>st</sup> and end on December 31<sup>st</sup> of a given year.

### **5. DEFINITION OF TERMS**

5.1 Authorized Representative: The employee designated in writing by the City Manager to represent the City in the day-to-day administration and supervision of this Agreement and who, for purposes of the Agreement, shall be the City's Sanitation Director. The Authorized Representative shall be authorized to coordinate, direct, and review all matters related to the Services and this Agreement. The Authorized Representative shall be authorized to transmit

instructions, receive information, and interpret and define City policies and decisions with respect to the Services and the Agreement. However, the Authorized Representative is not authorized to issue any verbal written orders or instructions to contractor that would have the effect (or be interpreted as having the effect) of materially modifying or changing the Services; the Term; or the amount of compensation the City is obligated or committed to pay Contractor. Additionally, the Authorized Representative is not authorized to issue any orders, instructions, decisions, and/or approvals (whether written or verbal) where the Agreement expressly reserves any or all of the aforesaid to the City Manager and/or the City Commission.

5.2 Biohazardous Waste: Any waste which may present a threat of infection to humans. The term includes, without limitation, non-liquid human tissue and body parts, laboratory and veterinary waste which contains human-disease-causing agents, used disposable sharp instruments, human blood, human blood products, body fluids, and other materials representing a significant risk of infection to persons. The collection of Biohazardous Waste is not included in the scope of Services for this Agreement.

5.3 Bulky Waste: Any large item(s) of household refuse including, without limitation, appliances, furniture, accumulations from major tree cutbacks (exceeding ten (10) inches in diameter and four (4) feet in length or, in any event, which cannot be cut for placement in a garbage bag or Container, or bundled, due to the materials exceeding the weight and size restrictions for regular trash collection, as provided in the Agreement). Bulky Waste shall be of a type readily handled by the mechanical equipment of the Contractor. Bulky Waste does not include any matter or debris resulting from tree removal, land clearing, land development, building construction or demolition, automobiles, automotive components, boats, or internal combustion engines.

5.4 City: The City of Miami Beach, Florida, and its authorized representatives.

5.5 City Manager: The City Manager of the City of Miami Beach, Florida.

5.6 Construction and Demolition Debris: Discarded material(s) generally considered not to be water-soluble or hazardous, including, without limitation, steel, concrete, pane glass, brick, asphalt, pipe, gypsum wallboard, or lumber from a construction or demolition project, and also including rocks, soils, tree remains, and other vegetative matter which normally results from land clearing or land development operations for a construction project.

5.7 Contractor: The business entity with whom the City has executed the Agreement for performance of the Services and its duly authorized representative(s). As used in this Agreement, the term "Contractor" shall also include any successors and/or assignees.

5.8 Disposal Costs (may also be referred to as "tipping fees"): The fees charged to Contractor for disposal of solid waste, as defined in subsection 14.1.

5.9 Garbage: Every refuse accumulation of animal, fruit, vegetable, or organic matter that attends the preparation, use, cooking, consumption, storage, or dealing of meats, fish, fowl, fruit or vegetables, and other foodstuffs (including packaging materials), 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.

5.10 Garbage Can or Container: A container for collection of Solid Waste which has been approved for use in the Collection Area by the Authorized Representative, and made of galvanized metal, durable plastic or other suitable material of the capacity not less than ten (10) gallons, but not to exceed thirty (30) gallons. Such container shall have two (2) handles upon the sides thereof, or a bail, by which it may be lifted, and a tight fitting solid top.

5.11 Hazardous Waste: Any waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Waste is not included in the scope of Services for this Agreement.

5.12 Household Furniture: All movable compactable articles or apparatus, such as chairs, tables, sofas, mattresses, etc., for equipping a residence.

5.13 Household Trash: All accumulations of paper, magazines, packaging, containers, sweepings, and all other accumulations of a nature other than Garbage or Yard Trash, which are usual to housekeeping, as well as to the operation of stores, offices, and other places of business. Household Trash shall include, without limitation, small appliances, small furniture, yard toys, and building material waste from remodeling and home repair projects. Waste generated by general contractors (or their subcontractors) shall not be considered Household Trash.

5.14 Industrial Waste: Any waste including, without limitation, oil, grease and petroleum, generated by construction, manufacturing, processing, land clearing, demolition projects, and excavation of structures, roads, streets, sidewalks, or parkways. Industrial Waste is not included in the scope of Services for this Agreement.

5.15 Infectious Waste: Those wastes including, without limitation, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves, which may cause disease, or may reasonably be suspected of harboring pathogenic organisms. Infectious Waste is not included in the scope of Services for this Agreement.

5.16 Landfill: Any disposal facility, for which a permit (other than a general permit) is required pursuant to Section 403.707, Florida Statutes (as same may be amended from time to time), that receives solid waste for disposal in or upon the land, other than a land-spreading site, injection well, or surface impoundment.

5.17 Loose Refuse: Any Refuse stored in and collected from any type of container other than a mechanical container, Garbage Can or Container. Refuse which is also collected from the ground is considered Loose Refuse.

5.18 Mechanical Container: Any detachable container designed or intended to be mechanically dumped into a loader/packer type of garbage truck.

5.19 Multiple Dwelling Units: Any building containing two (2), but not more than eight (8), permanent living units, but not including hotels and motels. Buildings containing over eight (8) living units are classified as commercial accounts and not included in the scope of Services for this Agreement.

5.20 Performance Bond: The form of security furnished by Contractor, and approved by the City, as a guarantee that Contractor will execute the Services in accordance with the terms of this Agreement.

5.21 Proposal Documents: City Request for Proposals No. 2018-024-WG for Collection and Disposal of Residential Solid Waste, Yard Debris, Bulk Waste, and Operation of the City's Green Waste Facility (the "RFP"), any addendums and exhibits thereto, and Contractor's response to the RFP, incorporated herein by reference and attached as Exhibit "A" hereto.

5.22 Recyclable Materials: Those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste.

5.23 Recycling: Any process by which recyclable materials are collected, separated, or processed and re-used or returned to use in the form of raw materials or products. Recycling is not included in the scope of Services for this Agreement.

5.24 (Single Family) Residence: A detached building designed for or occupied exclusively by one person or family.

5.25 Refuse: All Garbage and Household Trash including, without limitation, paper, glass, metal, and other discarded matter, but excluding Recyclable Materials.

5.26 Refuse Regulations: Those administrative rules, regulations, and procedures as may be established from time to time, including, without limitations, Chapter 90 of the Code of the City of Miami Beach, Florida those prescribed by the City from time to time, for the purpose of carrying out or effectuating the provisions of this Agreement.

5.27 Remodeling and Home Repairs Trash: Waste materials accumulated by a homeowner, tenant, or occupant during the course of a self-performed home improvement project including, without limitation, carpeting, cabinets, drywall, lumber, pipes, paneling, and other construction related materials. Such materials shall be prepared for collection in lengths not to exceed five (5) feet or fifty (50) pounds in weight. Carpeting will only be picked up if cut to lengths of six (6) feet or less, and bundled.

5.28 Residential Service: The solid waste collection and disposal service provided to Residences and Multiple Dwelling Units which are not considered commercial accounts.

5.29 Services: the services required to be performed by the Contractor in accordance with the Agreement and attachments thereto, including the Proposal Documents, which include, without limitations, collection and disposal of Solid Waste (subsection 7.1), Regular Yard Debris and Bulky Yard Trash (subsection 8.1), and Bulky Waste pick-up services (Section 9) to all Single Family Residences and Multiple Dwelling Units within the Collection Area; and the operation of the City's Greenwaste Facility (collectively referred to as "Services").

5.30 Solid Waste: Garbage, Bulky Waste, Construction and Demolition Debris, Special Waste, White Goods, Yard Trash (Regular and Bulky), Household Furniture, Household Trash, Refuse, Remodeling and Home Repairs Trash, and any and all other discarded materials which Contractor is required to collect and dispose of pursuant to the terms of this Agreement.

5.31 Solid Waste Disposal Facility: Any fully permitted facility which, by applicable Florida law is the final resting place for Solid Waste, including Landfills and incineration facilities.

5.32 Special Waste: Waste that can require special handling and management, including, without limitation, asbestos, whole tires, used tires, used oil, lead-acid batteries, biological waste, Infectious Waste, Hazardous Waste, Loose Refuse, Industrial Waste, and Construction and Demolition Debris.

5.33 **[Intentionally Omitted]**

5.34 White Goods: Discarded refrigerators, ranges, water heaters, freezers, small air conditioning units, and other similar large domestic appliances. White goods containing refrigerants will not be accepted by the Contractor unless such white goods have been certified in writing by a professional technician to have had all such refrigerants removed.

5.35 Yard Trash – Regular: Any and all accumulations of grass, palm fronds, leaves, rock, branches, shrubs, vines, trees, tree stumps, and other similar items generated by the maintenance of yards and gardens, and by landscaping. Such debris shall be bundled or placed in containers which are susceptible to normal loading and collection in the same manner as other residential Solid Waste. No Regular Yard Trash shall be in excess of four (4) inches in diameter. No bundle or filled container shall exceed fifty (50) pounds in weight.

5.36 Yard Trash – Bulky: Large cuttings of vegetative and wood matter which are part of normal yard maintenance and landscaping and which cannot be cut for placement in a container, or bundled due to the materials exceeding the weight and size restrictions for Regular Yard Trash. Bulky Yard Trash shall not exceed six (6) feet in length. Bulky Yard Trash shall not include any form of matter or debris resulting from tree removal, land clearing, land development, building demolition, or home remodeling and/or repairs, and shall also not include automobiles and automotive components, boats, and internal combustion engines.

## **6. GENERAL CONDITIONS**

6.1 Pre-Start Route Familiarization: The Contractor hereby certifies to the City that it shall be completely prepared to start collection, and any and all other services required under this Agreement, no later than the Commencement Date. The Contractor shall meet with the

Authorized Representative for the purpose of familiarizing, without limitation, the Contractor's drivers, collectors, and other key personnel, with the City routes, collection points, and any other points of service.

6.2 Comprehensive Notifications: Within 60 days of the Commencement Date, and thereafter, at least annually during the Term of this Agreement, on the anniversary of the Commencement Date ( or such other date as may first be approved, in writing, by the City Manager), Contractor shall provide comprehensive, written notice to all customers: which notice shall include, without limitation, notice of start date, routes and schedules, description of services, customer service phone numbers, and any changes to collection schedules and/or routes. The form of any and all notice required under this subsection must be approved, in writing, by the Authorized Representative, at least two (2) weeks prior to the required date of issuance for same.

6.3 Resources: The Contractor shall provide, at its sole cost and expense, all labor, and equipment (including, without limitation, collection trucks and any other vehicles) and any other items, as necessary, to perform the Services in accordance with, and comparable to, industry standards for collection and disposal of Solid Waste, as contemplated under this Agreement.

6.4 Protection of Adjacent Property and Utilities: The Contractor shall diligently prosecute the Services and conduct all work and services related thereto in such a manner so as to reasonably avoid damage to private or public property(ies). The Contractor shall be solely responsible for any damage or destruction to such property(ies) which caused by the Contractor's operations . The Contractor shall immediately repair (or pay for the repair of) damage incurred as a result of its operations. Without limiting the generality of the foregoing, the Contractor shall take cognizance of all existing utilities; shall operate with due care in the vicinity of such utilities; and shall immediately repair (or pay for the repair of) any utility(ies) breakage or damage caused by its operations.

6.5 Spillage: The Contractor shall not litter or cause any spillage to occur on any private or public property(ies) including, without limitation, any rights-of-way. During hauling, all Solid Waste shall be contained, tied, or enclosed so that spillage is prevented. The Contractor shall immediately clean up any spillage. If the Contractor fails to promptly clean up any spillage, the City may, at its sole option and discretion, but not its obligation, clean-up such spillage, and bill the Contractor for the cost of the same. Notwithstanding the foregoing, Contractor shall not be responsible for scattered or spilled garbage, liquid, or other materials unless the same has been caused by its acts or those of any of its employees, in which case all such scattered or spilled garbage, liquid, or other materials shall be picked up immediately by the Contractor. Contractor will not be required to clean up or collect such materials not caused by the acts of its employees, but shall report the location of such conditions to the City where such debris or trash is located. Such spillage or excess materials shall be picked up by the Contractor after it is reloaded in the container, provided that such refuse is not Hazardous Waste or Special Waste.

6.6 Method of Collection: The Contractor shall make collections with a minimum of noise and disturbance to the customer and neighborhood.

Staging will not be permitted. "Staging" is defined as placing Garbage Cans or Containers, bags, and Yard Trash at one location ahead of the servicing truck.

Garbage Cans or Containers shall be handled carefully; shall not be bent or otherwise abused; shall be thoroughly emptied; and then left at the point of collection. Metal cans shall be replaced upright with covers securely and properly in place, or inverted with covers placed topside on the ground, next to the Container. Plastic cans shall be inverted with covers placed topside on the ground, next to the container. Any receptacle found in a rack, cart, or enclosure of any kind shall have the lid securely placed on top of said receptacle.

In the event of damage to Garbage Cans or Containers caused by Contractor, other than normal wear and tear, Contractor shall be solely responsible for the prompt repair or replacement of said Garbage, Cans or Containers, which, in any event, shall be no later than seven (7) days from Contractor's receipt of notice (whether verbal or written) from customer and/or Authorized Representative (as the can may be).

6.7 The City Manager reserves the right to deny the Contractor's trucks/vehicles access to any streets, bridges, alleys, or other right of way, in the event that the City Manager determines, in his/her sole and reasonable judgment and discretion, that it is in the best interest of the City to do so because of the condition of the affected street, bridge, etc., or a public health, welfare or safety concern.

The Authorized Representative shall use reasonable efforts to notify the Contractor of street closures. If a street closure impacts, or could potentially impact, a route or schedule, the Contractor shall be responsible for immediately notifying the Authorized Representative, so that (if required) alternate arrangements for service may be made in such manner as shall cause the least disruption to customers. Notwithstanding the preceding, no closures of less than eight (8) hours in duration.

6.8 The Contractor hereby acknowledges that the City has embarked on an aggressive, City-wide Capital Improvements Program (CIP) which includes, without limitation, extensive roadway and streetscape, water and sewer, and stormwater and drainage improvements. The Authorized Representative shall use reasonable efforts to notify Contractor of all CIP construction activities.

6.9 Notwithstanding anything in this Agreement, including, without limitation, subsections 6.7 and 6.8 hereof, it shall be the Contractor's sole and exclusive obligation and responsibility to ensure that the regular collection schedule and routes, and quality of the Services is not interrupted, and is provided in accordance with the industry standards contemplated under this Agreement.

6.10 Holidays: Contractor shall not be required to provide collection services on Christmas Day. For those customers whose service was missed, regular waste collection services will resume on the next regularly scheduled pick-up day. Should Christmas Day fall on a Saturday or Sunday, the Contractor is expected to work as regularly scheduled, Monday through Friday.

6.11 Storms: In case of a storm, the City Manager may, in his/her sole and reasonable judgement and discretion, grant the Contractor a temporary variance from the regular collection



routes and schedules. Notwithstanding the preceding, the Contractor must make all such requests to the City Manager, in writing; and the City Manager shall have the sole and exclusive discretion to determine whether a variance will be granted (and whether same is reasonable under the circumstances). If granted the aforestated variance, the Contractor shall advise the City and customers in the collection area affected of the estimated time before regular collection routes and schedules can be resumed.

The City Manager, in his/her sole and reasonable judgement and discretion, may require Contractor to provide additional services following a storm, which may require additional equipment and/or hiring of extra crews, in order to effectuate the efficient and rapid clean-up of the City. In such cases, the Contractor shall be entitled to additional compensation negotiated prior to the event; provided that the City Manager has authorized the Contractor to proceed with such additional services and, accordingly, the Contractor has first obtained the prior written authorization of the City Manager.

**6.12 Collection Equipment:** All equipment including any trucks/vehicles, shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. The trucks shall be of the enclosed loader/packer type, except with respect to the trucks used to collect Bulky Waste. All equipment shall at all times be maintained in good repair, working order, and appearance; kept in sanitary and clean condition; prevent any spillage or leakage; and be operated in accordance with the highest levels of safety and caution.

Trucks/vehicles are to be uniformly painted with the name of the Contractor, business telephone number, and the number of the truck/vehicle in letters not less than five (5) inches high on each side of the truck/vehicle. All trucks and vehicles shall be numbered and record kept of the truck/vehicle to which each number is assigned. The City's logo shall be displayed on all trucks/vehicles. No advertising shall be permitted on trucks/vehicles, except as provided in section 11.3 hereof.

The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size, capacity, and condition, to the equipment regularly used by the Contractor to perform the Services.

A list of the Contractor's equipment shall be provided to the Authorized Representative within thirty (30) days following the Commencement Date and, thereafter, an updated list shall be provided each year during the Term, at the time of each annual audit.

As an additional consideration for the City to enter into this Agreement, the Contractor agrees to provide three (3) new trucks; which trucks shall be provided and deployed within 4 months of the Commencement Date of the initial term.

All vehicles shall be equipped with cameras and GPS systems to monitor the safe operation of all company vehicles operating with the City.

All Contractor's equipment, including reserve equipment, will be located in the Contractor's facility in Opa-Locka, Hialeah, Florida, or such other location within 25 miles of the City limits.

6.13 Refuse Quantities: The Contractor hereby represents and warrants to the City that it has reviewed the City's waste collection and disposal records and understands that, at certain times during the year, the quantity of waste to be disposed of is materially increased by such factors including, without limitation, the influx of visitors, special events, acts of weather due to seasonal changes, etc. The Contractor hereby agrees that these fluctuations will not be justification for the Contractor to fail to maintain the regular collection schedules and routes; justify a rate increase; or otherwise result in the Contractor's failure to provide the Services, in accordance with the first-class standards contemplated under this Agreement.

6.14 Disposal at Miami-Dade County Solid Waste Disposal Facility: The Contractor hereby represents and warrants to the City that all solid waste collected by it pursuant to this Agreement will only be disposed of at an approved Miami-Dade County Department Solid Waste disposal facility. In the event the Contractor desires to dispose of and/or relocate solid waste collected hereunder from a Miami-Dade County Solid Waste disposal facility to another facility, it must notify the Authorized Representative, in writing, prior to doing so, and, further, must obtain the prior written approval of the Authorized Representative.

## **7. RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES**

7.1 Services: the Contractor shall provide residential Solid Waste collection and disposal services to all Single Family Residences and Multiple Dwelling Units within Collection Area.

In the event the Contractor is unable to provide any collection service(s), as required in this Section 7, it shall leave a written notice, in the form of a "door hanger", on the particular Single Family Residence or Multiple Dwelling Unit, explaining why service(s) could not be provided.

Contractor shall also, during regular pick-ups, clean swale and median areas, of all accumulated palm fronds and fallen branches.

As the Contractor's trucks make their service routes throughout the City, the Contractor will notify the Authorized Representative of any suspected illegal dumping.

Residential routing shall be conducted at such times so as to not impact traffic flow on major arteries during peak times.

7.2 [Intentionally Omitted]

7.3 Frequency of Collection: The Contractor shall collect Solid Waste from Residences (Single Family and Multiple Dwelling Units) at least two (2) days per week, with collections at least three (3) days apart.

7.4 Hours of Collection: Collection hours shall begin no earlier than 7:00 A.M., and shall cease no later than 7:00 P.M.

In the case of an emergency, collection may be permitted at times not set forth above, provided the Contractor has received prior approval from the City Manager, to be later evidenced by confirmation in writing. Should the Contractor not confirm and obtain in writing the

approval to operate on an emergency basis, it shall be conclusively presumed that the Contractor had not obtained such approval.

7.5 Point of Pick-up: Collection shall be at the residence (backyard or side yard), at ground level, or curbside (but, as to the latter, only if placed by the customer).

7.6 Receptacle: The Contractor shall be required to pick up all Solid Waste which has been properly containerized (or bundled, as the case may be) and timely placed for collection as follows: All Garbage, Household Trash, and other Refuse shall be placed in a Garbage Can or Container or plastic disposal bag, and shall be placed in the backyard, side yard, or at curbside. Yard Trash shall also be placed in containers. Non-containerized Yard Trash shall be collected provided that it does not exceed four (4) feet in length, nor be greater than fifty (50) pounds in weight for any piece or segment of materials; is appropriately tied and bundled; and placed at curbside.

7.7 Routes and Schedules: The initial, collection routes and schedule is set forth in **Exhibit "B"** hereto. As required in subsection 6.2 hereof, the Contractor shall provide customers with written notice of routes and schedules prior to the Commencement Date, and, thereafter, annually on the anniversary date of the Commencement Date. Contractor shall also be required to provide customers with written notice advising of any schedule and/or route changes, prior to the implementation of same.

Notwithstanding the preceding paragraph, prior to any change in collection routes or schedules, the Contractor must obtain the Authorized Representative's prior written approval. Any and all changes (in routes or schedules) that alter pick-up days are also subject to the prior written approval of the Authorized Representative.

If approved (and in addition to the required individual notice to customers), the Contractor shall publish notice of any changes to routes and schedules, at its sole cost, in a newspaper of general circulation in Miami Beach, at least seven (7) days prior to the effective date of any such route or schedule change.

## **8. YARDTRASH-BULKY, REMODELING AND HOME REPAIRS TRASH, HOUSEHOLD FURNITURE AND WHITE GOODS**

8.1 Services: The Contractor shall collect all Regular Yard Trash and Bulky Yard Trash from single family residences and Multiple Dwelling Units.

8.2 Frequency of Collection/Point of Pick-Up: The Contractor shall collect Regular Yard Debris on the scheduled pick-up day, but at least two (2) days per week.

Contractor shall pick up all Yard Trash which has been properly prepared and placed for collection as follows:

- a) Regular Yard Trash will be collected two (2) days per week; shall be placed adjacent to the pavement or travel way of the street; in containers or bundles less than fifty (50) pounds each and with no dimension over four (4) feet each; limbs/branches not greater than four (4) inches in diameter).

- b) Bulky Yard Trash will be collected on a scheduled basis, at no additional charge. Such service shall be provided up to six (6) times per year on dates scheduled between the customer and Contractor. In the event of a dispute between Contractor and a customer as to what constitutes Bulky Yard Trash, the dispute will be reviewed and decided by the Authorized Representative, whose decision will be final and binding upon all parties.
- c) The Contractor shall clean swale and median areas adjacent to the Collection Area of all accumulated palm fronds and bulky tree debris.

In the event Contractor is unable to provide any such collection services as required in this Section 8, it shall leave a written notice, in the form of a "door hanger," on the particular single family residence or multiple dwelling unit, explaining why the service(s) could not be provided.

8.3 Within thirty (30) days of the Commencement Date, the Contractor shall establish a public information program that will provide a broad and extensive understanding of the services provided pursuant to this Section 8.

## **9. BULKY WASTE PICK-UP SERVICES**

9.1 Services: Contractor shall collect from all single family residences and multiple dwelling units all household furniture, household trash, remodeling & home repair trash, white goods, and/or other waste which cannot be cut for placement into a Garbage Can or Container or plastic bag, or bundled, due to the material exceeding the weight and size restrictions for regular trash collection (collectively, for purposes of this Section 9, all of the aforesaid shall be referred to as "Bulky Waste").

9.2 Frequency of Collection: The Contractor shall collect Bulky Waste only on dates scheduled by Contractor directly with the customer. Contractor shall have a designated telephone line to allow customers to schedule appointments for Bulky Waste pick-ups.

Notwithstanding the preceding paragraph, Contractor shall collect Bulky Waste a maximum of six (6) times per calendar year, and up to twenty five (25) cubic yards, per pick-up, for each customer. In the event that a customer schedules or presents more than 25 cubic yards of Bulky Waste for collection in any scheduled pick-up, it shall be counted as an additional pick-up (for everything over the initial additional 25 cubic yards, in 25 yard increments, of waste material collected), as provided in the preceding paragraph.

In the event that a customer requests more than six (6) Bulky Waste pick-ups during any calendar year, the Contractor shall schedule a special pick-up, and may charge the customer \$20 per cubic yard for this service. Contractor shall charge customers directly. At no time shall the City be responsible for any charge by Contractor to customers for additional Bulky Waste pick-ups.

9.3 Collection Schedule: Contractor shall make the Bulky Waste pick-up within five (5) business days from the date of receipt of an appointment request from the customer. Pick-ups shall be completed on the appointment day; not before or after. Failure on the part of the Contractor to effect a pick-up of the called in amount on the scheduled date shall result in the

assessment of, a fine against Contractor, as provided in **Exhibit "C"** hereto, unless otherwise excused, in writing, at the sole discretion of the Authorized Representative.

Pick-ups will be scheduled as follows: South Beach on Mondays; Mid-Beach on Tuesdays and Wednesdays; and North Beach on Thursdays and Fridays.

Contractor shall prepare and maintain, in accordance with a format approved by the Authorized Representative, a register of all Bulky Waste pick-ups. The register shall indicate the date and time on which the pick-up request was received; the name and address of the customer requesting the pick-up; the date of the scheduled pick-up; the schedule number assigned to the pick-up; and confirmation of the completion of the pick-up. A copy of Contractor's daily Bulky Waste pick-up register shall be provided (whether by fax or e-mail) to the Authorized Representative at the end of each business day.

In the event of a dispute between Contractor and a customer as to what constitutes Bulky Waste, the dispute will be reviewed and decided by the Authorized Representative, whose decision will be final and binding upon all parties.

**9.4 Bulky Waste Collection Equipment:** The Contractor shall have on hand at all times and in good working order such equipment as needed to permit the Contractor to adequately and efficiently perform its contractual duties. Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. Collection vehicles shall be designed to allow for efficient collection of Bulky Waste. A minimum of two (2) grapple trucks shall be assigned to this Agreement. The equipment shall be kept in good repair, appearance and in a sanitary and clean condition at all times. All replacement and additional vehicles shall be new equipment unless otherwise agreed by the City. The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. A list of the Contractor's equipment shall be given to the City at the time of each annual audit.

## **10. OPERATION AND MANAGEMENT OF THE CITY'S GREEN WASTE FACILITY**

**10.1 Location:** The City's Green Waste Facility is located at 2800 Meridian Avenue, adjacent to the Miami Beach Golf Course (the "Facility").

**10.2 Description of Work:** The Contractor shall be responsible for operating and maintaining the Green Waste Facility, at its sole cost and expense, including, without limitation, providing all necessary manpower and equipment to collect dumping fees and to receive, control, secure, and dispose of all acceptable materials (which, for purposes of this Section 10, is defined as only clean Yard Trash).

The Contractor shall also be responsible for an electronic waste recycling program through a vendor that processes under the Responsible Recycling (R2) Standard for Electronics Recyclers and/or the e-Steward Standard for Responsible Recycling and Reuse of Electronic Equipment (e-stewards) or Contractor may process the electronic waste at a Miami-Dade DERM approved Electronic Recycling facility. The Contractor will work with the City (or vice versa) to secure the proper permits in order to be able to accept the e-waste drop-offs at the

Green Waste Facility. If it is not possible for the Contractor to secure the proper permits, the Contractor will work together with the City, in good faith, to come up with a suitable alternative site for collection.

The Contractor shall provide a textile drop off program for City residents at the City's Greenwaste Facility.

10.3 Hours of Operation: The Green Waste Facility shall be open six (6) days per week, Monday through Saturday, from 7:00 A.M. to 5:00 P.M. and shall be closed on Thanksgiving, Christmas Day, New Year's Day, July 4<sup>th</sup>, and Labor Day. The Contractor will post the preceding days/hours of operation (including days the Green Waste Facility is closed) in a readily visible place at the entrance of the Green Waste Facility.

Days/hours of operation shall not otherwise be extended or shortened without the prior written consent of the Authorized Representative. In the event that revised days/hours of operation are approved, the Contractor will be responsible for notifying all customers, in writing, at least two (2) weeks before such revised hours operation commence.

10.4 Eligible Users: The Green Waste Facility shall be accessible to residents of the City of Miami Beach, and landscape firms performing work within the city limits of the City of Miami Beach.

10.5 Personnel: At least one (1) designated employee of the Contractor shall be on site at all times when open to oversee the day-to-day operation and maintenance. Without limitation the designated employee's duties shall include collection of dumping fees and directing traffic to where loads should be dropped, etc.

10.6 Records: The Contractor shall keep records, in such form and manner as shall be mutually agreed upon by the Contractor and the Authorized Representative, of all ingoing and outgoing traffic.

10.7 Operations: The Contractor shall containerize all materials delivered or dropped to the Green Waste Facility; shall conduct a neat and orderly operation at all times; and shall be solely responsible for the necessary housekeeping services to properly keep and maintain the Green Waste Facility, and any equipment and facilities thereon, in good working order and in clean, sanitary, and safe condition.

No signs (other than the entrance sign described herein) shall be placed on the premises unless first approved, in writing, by the Authorized Representative. All signage shall comply with the City's established signage criteria (as same may be amended from time to time).

10.8 The Contractor shall use its best efforts to assure that its operation of the Green Waste Facility does not interfere with the existing character of the surrounding residential neighborhood.

The premises shall not be used as storage for any other equipment or materials other than what is required to perform the service provided in this Section 10.

10.9 Permits: The City has an operating permit from Miami-Dade County, Department of Environmental Resources Management, provided as **Exhibit "D"** hereto. The Contractor shall be responsible for full compliance with all the requirements of the operating permit in accordance with the service provided in this Section 10.

10.10 Fee Schedule: The Contractor shall adhere to the following fee schedule:

Charge to Residential: Free to all residents showing proof of residency

Charges to landscape Firms: \$20.00 per cubic yard

10.11 Adjustments: Upon thirty (30) days prior written notice to the City Manager and the City's Sanitation Director, the fees set forth in subsection 10.10 may be adjusted annually, on January 1<sup>st</sup> of each contract year ("date of adjustment"), commencing on the anniversary date of the Commencement Date, according to increases or decreases in the Consumer Price Index, All Urban Consumers (CPI-U): U.S. city average, Garbage and trash collection (Unadjusted percent change) ("CPI") for the period from the fifteenth month preceding the date of adjustment (October) through the third month preceding the date of adjustment (October), ;however, in the case of an increase, the annual maximum adjustment shall not exceed three percent (3%). All notifications of adjustment must be made in writing, on or before December 1st of the year preceding the date of adjustment; otherwise, the adjustment shall be deemed waived for that particular year.

10.12 All disposals shall be in accordance with current City, County, State and Federal laws and regulations.

10.13 Indemnification: Contractor shall indemnify, defend and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise), damage injury, liability, cost and expense, of whatsoever kind of nature (including, but not by way of limitation, reasonable attorney fees and court costs), by or on behalf of any person, firm or corporation, for personal injury (including death) or property damage, or other, occurring on the Facility, or in connection with the Contractor's operation, management, maintenance, and/or any other activities on or upon the Green Waste Facility, occasioned in whole or in part by:

a) any negligent act or omission or willful misconduct on the part of the Contractor or any of its employees, contractors, agents, invitees, or guests;

b) any use not permitted by this Agreement, or unlawful use of the Green Waste Facility by the Contractor, or any of its employees, contractors, agents, invitees, or guests; and any breach, violation, or non-performance of any undertaking by the Contractor, or any of its employees, contractors, or agents, invitees, or guests under this Agreement.

The Contractor further agrees to pay and for all damage to the facility caused by the Contractor or any employees, contractors, agents, guests or invitees.

The Contractor shall have no obligation to indemnify, defend and hold harmless the City from claims or causes of action, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney fees and court costs) arising out of (i) injury to persons (including death), damage to property, or environmental contamination related to operation of the Green Waste Facility prior to the Commencement Date or the date when Contractor commenced operating the Facility under the Agreement immediately preceding this Agreement, whichever occurred first; (ii) the gross negligence or willful misconduct of the City; (iii) the breach of any terms, conditions, covenants, representations, or warranties in this Agreement by the City; or (iv) the violation of any laws, rules, regulations, ordinances, orders, licenses, or permits by the City.

The provisions of this Section 10.13 shall survive the termination and/or expiration of this Agreement.

## **11. OTHER SERVICES**

11.1 Neighborhood Pride Weekend: On the first weekend of every month during the Term of the Agreement, the Contractor will place five (5), twenty (20) yard roll off Containers at such location or locations in the City, as designated by the Authorized Representative. These Containers shall be provided for residents to bring Bulky Waste to the container placement locations for free drop off. Containers must be delivered prior to 9:00 a.m. on Saturday, and picked up prior to 9:00 a.m. on Monday. The Contractor will partner with the City to advertise the Neighborhood Pride Weekends. There will be no additional cost to the City for this service.

11.2 Promotional Material: Within sixty (60) days from the Commencement Date, the Contractor will provide corporate literature and promotional materials to assist the City with its anti-litter program.

11.3 Public Advertisements: As directed by the City Manager, the Contractor will, at its sole cost and expense, place City-approved, public advertisements on its collection trucks. The Contractor shall (also at its sole cost and expense) replace any such public advertisements with new public advertisements, every six (6) months during the Term.

## **12. QUALITY OF SERVICES**

12.1 Contractor's Representative: Prior to the Commencement Date, the Contractor shall assign a qualified person, who shall be subject to the prior written approval of the City Manager, such approval not to be unreasonably withheld, to serve as the Contractor's representative under this Agreement.

The Contractor's Representative shall be authorized and responsible to act on behalf of the Contractor with respect to directing, coordinating, and administering all aspects of the Services and of the Contractor's obligations under this Agreement. Replacement (including re-assignment) of an approved Contractor's Representative shall not be made without the prior written consent of the City Manager.



Notwithstanding the preceding, the Contractor also agrees, upon fifteen (15) days of receipt of notice from the City Manager (which notice shall state the cause therefore), to promptly remove and replace a Contractor's Representative. Any replacement shall also be subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld.

In addition to Contractor's Representative, the Contractor's supervisory personnel shall also be available for consultation with City Manager or Authorized Representative, upon reasonable notice.

The Contractor's Representative and supervisor(s) shall operate vehicles which are capable of direct communications with all trucks and equipment operating within the City limits performing the Service.

**12.2 Customer Service Representative:** The Contractor shall specifically assign a primary and an alternate person (Customer Service Representative) to handle customer service issues under this Agreement including, without limitation, ensuring the prompt and satisfactory resolution of customer complaints; handling customer inquiries and requests for information; and any other customer service related issues that may arise during the course of providing the Services contemplated in this Agreement.

The Customer Service Representative shall also be responsible for faxing (or e-mailing) the Bulky Waste pick-up and customer complaint registers to the Authorized Representative.

All complaints received by the City will also be forwarded to the designated Customer Service Representative.

**12.3 Conduct of Employees:** The Contractor shall keep a record of all employees' names, truck numbers, and route assignments, so as to readily allow identification of employees at all times. The Contractor shall provide its list of current employees to the Authorized Representative, at the Commencement Date and within twenty-four (24) hours of written request for same.

The Contractor shall select, train and employ such number of employees as is necessary or appropriate for the Contractor to satisfy its responsibilities hereunder, and as required to perform the Services in accordance with the first class standards contemplated under this Agreement. The Contractor shall recruit employees consistent with standards employed by comparable operations.

Contractor shall ensure that its collection employees serve the customers, and the general public, in a courteous, helpful, and impartial manner. The Contractor's collection employees will be required to follow and keep to the walkways (or other pedestrian paths) while on private property. No trespassing by employees will be permitted, nor will crossing properties of neighboring premises (unless the occupant of both such properties shall have given Contractor prior written permission). Care shall be taken to prevent damage to private and public property (including, without limitation, cans and containers, carts, racks, structures, fences, gates, trees and landscaping, etc.).

12.4 Employee Uniform Regulation: The Contractor's collection employees shall wear a uniform or shirt bearing the company's name. The Contractor shall furnish to each employee an identifying badge, with uniform type, not less than two and one half (2 ½ ) inches in diameter, with numbers and letters at least one (1) inch high. All employees shall be required to wear such badges while on duty. Lettering stitched on or identifying patches permanently attached to, uniform shirts and jackets is also acceptable.

12.5 Vehicle Operator License: Each vehicle operator shall, at all times, carry a valid driver's license for the type of vehicle that is being driven or operated.

12.6 Safety Training: The Contractor shall provide operating and safety training for all personnel so as to ensure that the Services at all times are provided in accordance with the highest standards for safety and caution.

12.7 Residency: The Contractor shall make reasonable efforts to, whenever practical in its hiring policies, to employ personnel from among residents of the City of Miami Beach.

12.8 Non-Discrimination: The Contractor agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in the employment practice or in the performance of the Services that Contractor agreed to provide pursuant to the Agreement. All facilities and Services offered shall be made available to the public.

Additionally, Contractor shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

12.9 Compliance with Federal, State, County, and Municipal Law: The Contractor shall comply with all applicable Federal, State, County and City laws, ordinances, rules and regulations including, without limitation, those relating to employment, protection of the environment, and safety; whether now or hereafter in effect.

12.10 City of Miami Beach Living Wage Ordinance Requirements: This Agreement is subject to, and Contractor shall be required to comply with, the provisions of the City's Living Wage requirements, as codified in Sections 2-407 through 2-410 of the City Code (**as same may be amended from time to time**).

**THE CONTRACTOR, BY ITS EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE PROVISIONS OF THE CITY'S LIVING WAGE ORDINANCE, AS SAME MAY BE AMENDED FROM TIME TO TIME.**

12.11 City of Miami Beach Equal Benefits Ordinance Requirements: The Contractor, by its execution of this Agreement, acknowledges that it is required comply with all applicable

provisions of City Ordinance No. 2005-3494, as same may be amended from time to time, which requires the Contractor to provide equal benefits for domestic partners (the Ordinance). This Ordinance applies to all employees of the Contractor who work within the City limits of the City of Miami Beach, Florida, and the Contractor's employees located in the United States, but outside of the City of Miami Beach limits, which are directly performing work on a contract within the City of Miami Beach.

**THE CONTRACTOR, BY ITS EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE PROVISIONS OF THE ORDINANCE, AS SAME MAY BE AMENDED FROM TIME TO TIME.**

### **13. CONTRACTOR'S OFFICE**

13.1 General Conditions: The Contractor shall provide and maintain throughout the Term, at its sole cost and expense, a suitable office located within Miami-Dade County, with adequate staff, to include, at a minimum, Contractor's Representative and the Customer Service Representative, and telephone service (including a telephone number dedicated solely for handling and disposition of Miami Beach customer service issues including, but not limited to, incoming complaints, requests for information, etc.). The office shall be the main office for the Contractor's Representative and the Customer Service Representative, and shall be open between 8:00 A.M. and 5:00 P.M., Monday through Friday, excluding nationally recognized holidays. Between the hours of 5:00 P.M. and 8:00 A.M., Monday through Friday, all day on Saturday and Sunday, and on nationally recognized holidays, the Contractor all of which shall provide and maintain voice-mail, answering service and all messages shall be responded to by the following working day.

### **14. PAYMENT AND BILLING**

14.1 Compensation: In consideration of the Services to be provided by the Contractor pursuant to this Agreement, the City shall pay the Contractor, a per unit fee ("Unit Price"), in the amount of **\$28.89**, of which 50% (\$14.445) relates to the disposal cost ("Disposal Costs") and the remaining 50% (\$14.44) relates to the collection costs ("Collection Costs"), each of which may be subject to adjustments as described in subsections 14.3 and 15.1, respectively. The Unit Price is inclusive of all costs for the Services to be provided herein, except where the Agreement expressly provides for the payment of additional fees. Contractor further acknowledges and agrees that the payments of any such additional fees are subject to the prior written authorization and approval of the City Manager.

14.2 Billing Procedures: The Contractor shall submit an invoice by the 10<sup>th</sup> of each month for work/services rendered during the preceding month. Payments will be made to the Contractor on or before the 30<sup>th</sup> day of each calendar month upon verification of the invoice submitted.

Invoices shall be submitted to: City of Miami Beach, Florida  
Sanitation Division Director  
140 MacArthur Causeway  
Miami Beach, Florida 33139

On the first day of each month, payment(s) may be adjusted to correspond with the occupancy of existing or new buildings, and the demolition of old buildings. The adjustment shall be for buildings either occupied or demolition during the second month preceding the adjustment (For example, any adjustment made on June 1 of a contract year would be for buildings occupied or demolished in April of the subject year). Any existing unit shall be considered unoccupied whenever the City has temporarily terminated water service, at the customer's request. Any new unit shall be considered to be occupied when a Certificate of Occupancy (CO) has been issued by the City, and water service has been provided to the occupant(s). Demolition permits issued by the City's Building Department shall be proof of demolition. The City will notify the Contractor of any existing unit that is considered unoccupied and of any new unit considered to be occupied.

14.3 Adjustments in Disposal Costs: The parties acknowledge that the Unit Price is calculated in part, by taking into consideration the Miami-Dade County tipping fee, in effect as of the Commencement Date. However, it is recognized that, from time to time during the Term, the Disposal Costs (tipping fee) may change. In the event of such change in tipping fee, the Contractor shall make a request, in writing (accompanied by any substantiating documentation), to the City Manager for an increase in the Unit Price (due to an increase in the tipping fee). The City Manager shall grant the request within 30 days of receipt. Any increase granted pursuant to this subsection, at maximum, shall only be in proportion to the actual increase in the tipping fee.

Notwithstanding the preceding, decreases in the Disposal Costs shall entitle the City to receive an automatic decrease in the Unit Price (in proportion to the actual decrease in the fee).

14.4 Unusual Changes or Costs: The Contractor may request a rate adjustment, by written request (with supporting documentation) to the City Manager, on the basis of unusual changes in its cost of doing business; change in laws; or changes in location of disposal sites. The City Manager shall then submit the request( and his/her recommendation) to the City Commission for its consideration and approval, which approval, if given at all, shall be at the Commission's sole discretion, but shall not be unreasonably withheld.

Notwithstanding the preceding, any changes or any other conditions which occur that reduce Contractor's cost shall entitle the City to receive an automatic Unit Price decrease (in proportion to the decrease in Contractor's costs).

14.5 Penalties: Any monetary penalties, as listed in **Exhibit "C,"** attached hereto and incorporated herein, assessed against Contractor shall be deducted from the monthly billing to the Contractor (without liability to the City).

## **15. CONSUMER PRICE INDEX (ADJUSTMENTS TO COLLECTION COSTS ONLY)**

15.1 All Urban Consumers (CPI-U): U.S. city average, Garbage and trash collection (Unadjusted percent change): On January 1, 2020, and on January 1<sup>st</sup> of each subsequent contract year during the Term ("date of adjustment"), the compensation paid by the City to the

Contractor for Collection Costs pursuant to this Agreement shall be adjusted, upwards or downwards, as the case may be, according to the percentage of increase or decrease reflected in the Consumer Price Index, All Urban Consumers (CPI-U): U.S. city average, Garbage and trash collection (Unadjusted percent change) ("CPI") for the period from the fifteenth month preceding the date of adjustment (October) through the third month preceding the date of adjustment (October); however, in the case of an increase, the annual maximum adjustment shall not exceed three percent (3%). The CPI adjustment shall only apply to the Collection Costs. The Disposal Costs shall be subject to pass-through adjustment as described in subsection 14.3 above. All requests for adjustment must be made in writing, by the requesting party, on or before December 1st of the year preceding the date of adjustment; otherwise, the adjustment shall be deemed waived for that particular year.

## **16. CONTRACTOR'S PERFORMANCE**

16.1 Agreement Administration: If at any time during the Term, the Contractor's performance of the Services is deemed unsatisfactory, in the reasonable judgement and discretion of the City Manager, the Contractor shall immediately take any and all such actions, as may be reasonably required by the City Manager, to satisfactorily correct any such deficiency(ies); including, without limitation, increasing its workforce and equipment, or take such other actions as necessary so that the Contractor is able to perform (or continue to perform) the Services in accordance with the first-class standards contemplated in this Agreement.

If the Contractor neglects or fails to correct any deficiency(ies), and/or immediately restore performance to a satisfactory level, the City Manager may, at his/her sole discretion, and after giving the Contractor three (3) business days written notice, take such additional steps as he/she deems necessary including, without limitation, undertaking performance to correct such deficiency. This shall be without prejudice to any other remedy the City may have. In the case of bona fide emergencies, as determined by the City Manager in his/her sole and reasonable discretion, involving public health or public safety or to protect against loss or damage or to prevent or minimize serious disruption of the Services, the City may cause such work and/or services as is necessary to be performed without prior notice to the Contractor.

The City, at its discretion, may draw down from the Bond or may deduct from the compensation to be made to the Contractor, the amount of any and all actual and out-of-pocket costs incurred in correcting deficiencies made necessary by such neglect or failure. If the amount of the Bond, or if such payments to be made to the Contractor are not sufficient to cover such amount, the Contractor shall be liable in such amount to the City.

Notwithstanding the preceding, the failure of the City Manager to give such notification(s) shall not relieve nor excuse the Contractor of its obligation to perform any work and/or services required by this Agreement, in accordance with the standards contemplated in this Agreement.

16.2 Agreement Information: Upon reasonable notice from the City Manager or Authorized Representative, the Contractor shall furnish any and all information and/or supporting documentation to ascertain whether or not the Services are being performed, in accordance with the requirements and with the first class standards contemplated in this Agreement.

16.3 Inspections: The City Manager may appoint such person or persons, as the City Manager may deem qualified, in his/her sole judgement and discretion, to inspect the Contractor's operations, including its workforce and equipment, at any time during the Term, upon reasonable notice to the Contractor.

16.4 Access: The City Manager, and/or his/her authorized representatives, shall, during all reasonable times, and upon reasonable notice, be permitted free and open access to the Contractor's facilities (including the Green Waste Facility), workforce, and equipment, for the purpose of inspecting the Contractor's performance of the Services.

16.5 Authorized Representative: The Contractor shall cooperate with the Authorized Representative of the City in every reasonable way in order to facilitate any City inspections related to Contractor's facilities, equipment, workforce, and/or to the quality, performance and progress of the Service. The Contractor shall at all times have a competent and reliable, English speaking representative on duty, who is authorized to receive orders and to act for the Contractor on any operational matters related to this Agreement.

16.6 Records and Audits: The Contractor shall keep full and accurate accounting records relating to the Service, in accordance with generally accepted accounting principles. The Contractor shall maintain a system of bookkeeping adequate for its operations hereunder. The Contractor shall give the City Manager and/or his/her Authorized Representative access to such books and records, during reasonable business hours and upon reasonable advance notice. The Contractor shall keep and preserve the aforesaid records for at least three (3) years following each contract year during the Term, or for as long as such records are required to be retained pursuant to Florida Public Records Law. In addition and notwithstanding the preceding, the City Manager shall have the right, at any time (and from time to time), to cause independent auditors to audit all of the books of Contractor relating to the Services. The City shall be responsible for the costs incurred by it conducting such audit.

16.7 Failure to Enforce: The failure of either party at any time to require performance by the other party of any provision(s) hereof shall in no way affect the right of the enforcing party thereafter to enforce same, nor shall such failure be construed as a waiver by the enforcing party of the breach of any provision(s) herein; or held a waiver of any breach of such provision(s), as a waiver of the provision(s) itself.

17. [Intentionally Omitted]

## 18. COMPLAINTS AND COMPLAINT RESOLUTION

18.1 Complaints: The Contractor shall prepare and maintain, in accordance with a format approved by the Authorized Representative, a register of all customer (or City) complaints, which shall, at a minimum, indicate date and time when the complaint was received, and how and when it was resolved. Such records shall be available for City inspection at all times during reasonable hours and upon reasonable notice.

At a minimum, the Contractor shall adhere to the following schedule in the handling/resolution of complaints:

a) Any complaints received by the Contractor before 12:00 noon shall be resolved before 4:00 p.m. of the same day;

b) Complaints received after 12:00 noon, but before 12:00 midnight, shall be resolved before 12:00 noon following day;

c) Complaints received after 12:00 midnight, but before 8:00 a.m., shall be resolved before 12:00 noon of the same day; and

d) Complaints received after 12:00 noon on the day preceding a holiday, or a Saturday or Sunday; shall be resolved no later than before 12:00 noon of the next working day.

A daily listing of all complaints filed, and of their disposition, shall be provided to the Authorized Representative at the end of each business day (by fax or e-mail). Legitimacy of challenged complaints shall be determined on the basis of a joint inspection by the Authorized Representative and representative of the Contractor. Disputes shall be referred to the City Manager, whose decision shall be final and binding on all parties.

The City's auditors may communicate directly with customers, for the purpose of confirming Contractor's compliance with complaint handling/resolution.

18.2 Disputes about Collection of Certain Items: It is recognized that disputes may arise between the City and the Contractor, and between Contractor and customers, with regard to the collection of certain waste (disputed waste). The City Manager or Authorized Representative may, from time to time, require Contractor to remove any such disputed waste; irrespective of a pending or actual dispute with regard to whether or not the type of disputed waste which is being requested for removal is within the scope of this Agreement. Should the Contractor fail to remove disputed waste within twenty-four (24) hours from receipt of notification by the City, the City, at its sole option, but not its obligation may do so, and all costs incurred by the City shall be deducted from the monthly compensation due the Contractor.

18.3 Penalties: The Contractor acknowledges that it is the intent of the City to ensure that the Contractor provides the highest quality level of service pursuant to this Agreement. To further ensure the Contractor's continuous performance of the Services in accordance with the first-class standards contemplated under this Agreement, the Contractor shall use its best efforts to handle and resolve complaints, in a prompt and efficient manner, and to the reasonable satisfaction of the City Manager and the Authorized Representative.

Failure to resolve any and all complaints may result in the Contractor being assessed monetary penalties in **Exhibit "C"** hereto. Any monetary penalties assessed to the Contractor (pursuant to **Exhibit "C"**) shall be deducted from the monthly compensation due to the Contractor (without liability to the City).

19. [Intentionally Omitted]

## 20. **PERFORMANCE BOND**

20.1 Amount of Bond: Contractor shall, upon execution of this Agreement but in any event prior to the Commencement Date, furnish to the City a Performance Bond (the Bond), in the penal sum as stated below, for the payment of which Contractor shall bind itself for the faithful performance of the terms and conditions of this Agreement:

**The amount of the Bond will be one hundred percent (100%) of the annual compensation to be paid to Contractor, as calculated in Contractor's response to RFP No. 2018-024-WG.**

The Bond shall be maintained in full force and effect throughout the Term.

20.2 City's Rights: The City may "draw down" upon all or any portion of the Bond in the event that Contractor fails to comply with its obligations under the Agreement and such failure shall continue beyond any applicable grace and cure period. The Contractor shall pay for any/all reasonable outside legal fees that may be incurred by the City in prevailing in any action to collect on the Bond. If payment of any amount claimed against the Bond is not received within thirty (30) days of submission of a claim, the Contractor shall also be responsible for interest, at the greater of the statutory rate in Florida or the prime rate, to be paid on the amount claimed against the Bond. In the event the City "draws down" against all or any portion of the Bond at any time during the Term, the Contractor shall immediately replenish the amount so drawn, so that the Bond is maintained in the full required amount at all times during the Term of this Agreement.

20.3 Form of Bond: The form of the Performance Bond is subject to approval by the City's Chief Financial Officer, which approval shall not be unreasonably withheld.

20.4 Qualified of Surety: The Performance Bond must be executed by a Surety Company of recognized standing, authorized to do business in the State of Florida and having a resident agent in Miami-Dade County. The Surety Company shall hold a current Certificate of Authority as acceptable surety on Federal Bonds, in accordance with U.S. Department of Treasury Circular 570, in Current Revision.

## **21. INSURANCE AND INDEMINIFICATION**

21.1 Insurance: At all times during the Term, the Contractor shall comply with (and, in the case of insurance coverage, maintain in full force and effect) the insurance provisions set forth in RFP No. 2018-024-WG; and attached and incorporated as **Exhibit "E"** hereto.

All insurance provided for in this subsection 21.1 and **Exhibit "E"** hereto shall be in such form and shall be issued by such responsible insurance companies licensed to do business in the State of Florida with companies having a rating B+:V1 or better in Best's Insurance Guide, as published by A.M. Best and Company. Upon execution of this Agreement and, thereafter, not less than thirty (30) days prior to the expiration dates of the policies required pursuant to subsection 21.1 and **Exhibit "E"**, originals of the policies or certificates, or renewal certificates, as the case may be, bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to the City's Risk Manager at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139.



Each policy of insurance required to be carried pursuant to subsection 21.1 and **Exhibit "E"** hereto shall contain (i) a provision covering the indemnification obligations in subsection 21.2 hereof; (ii) a provision that no act or omission of the City or the Contractor shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained; (iii) an agreement by the insurer that such policy shall not be cancelled, modified or denied renewal without at least thirty (30) days prior written notice to the City Manager (with copies to the City's Risk Manager at the address provided in this subsection); and (iv) a waiver of subrogation by the insurer. All insurance procured by the Contractor in accordance with the requirements of this subsection 21.1 and **Exhibit "E"** shall be primary over any insurance carried by the City and not require contribution by the City. In addition, if the Contractor enters into any agreements during the Term herein with any subcontractors and/or independent contractors for the provision of any work and/or services hereunder, Contractor shall require such contractors to name the City as an additional insured under and insurance required by the Contractor thereunder, and to deliver to the City's Risk Manager, prior to performance of such work and/or services, a certificate evidencing the existence thereof.

21.2 Indemnification: 21.2.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Contractor shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants (collectively, the "Indemnitees"), from and against and assumes all liability for any and all claims, suits, actions, damages, liabilities, expenditures or causes of actions of whatsoever kind or nature (collectively, the "Claims") arising out of the any solid waste collection and/or disposal activities, and/or use of any public streets for the purposes authorized under this Agreement; or resulting or accruing from any negligence, act, omission or error of the Contractor, its officers, employees, contractors, agents or servants, in connection with its operations and/or the performance of the Services contemplated under this Agreement, or with any other City or County ordinance or state or federal law applicable to its activities and resulting in or relating to bodily injury, loss of life or limb or damage to property sustained by any person. Contractor shall hold the Indemnitees harmless from and against all judgments, orders, decrees, reasonable attorney's fees, costs, expenses and liabilities incurred in and about any such claim, investigation or defense thereof, which may be entered, incurred or assessed as a result of the foregoing. Contractor shall defend, at his sole cost and expense, any legal action, claim or proceeding instituted by any person against the Indemnitees, as a result of any claim, suit or cause of action accruing from activities authorized pursuant to this Agreement.

21.2.2 The indemnifications in subsection 21.2.1 shall not be limited in any way by the type or amount of insurance carried by the Contractor.

21.2.3 Subsections 21.2.1 and 21.2.2 shall survive the termination or expiration of this Agreement. The foregoing notwithstanding, the Contractor shall have no duty to indemnify, hold harmless, or defend an Indemnitee to the extent any such Claims are caused by: (i) the gross negligence or willful misconduct of any Indemnitee; (ii) the breach of any terms, conditions, covenants, representations, or warranties in this Agreement by the City; or (iii) the violation of any laws, rules, regulations, ordinances, orders, licenses, or permits by any Indemnitee.

## **22. DAMAGE TO OR DESTRUCTION OF EQUIPMENT**

If any of Contractor's equipment is damaged, destroyed, or stolen by an event which is covered by Contractor's insurance, Contractor must utilize the insurance proceeds to immediately repair or replace the equipment with similar equipment of at least equal quality. If the insurance proceeds are insufficient, or the equipment has been damaged or destroyed by an uninsured casualty, the Contractor shall be solely responsible for providing the additional funds, as needed to immediately repair or replace the equipment in accordance with the standard required by this Section 22.

## **23. EVENTS OF DEFAULT BY CONTRACTOR**

Each of the following events or conditions shall constitute an event of default by Contractor:

- a) any failure by the Contractor to perform or comply with the terms and conditions of this Agreement, and said failure continues for fifteen (15) days after written notice to Contractor demanding that such failure be cured;
- b) filing by or against the Contractor (or the Performance Bond Surety) of bankruptcy, receivership, assignment for the benefit of creditors, liquidation, dissolution, composition or reorganization petition, or other insolvency proceeding;
- c) if any work or services required under the Agreement shall be vacated or abandoned by the Contractor during the Term for a consecutive period of seven (7) days or more;
- d) any representation or warranty furnished by the Contractor under this Agreement is found to be false or misleading in any material respect when made;
- e) failure to comply with the complaint handling/resolution procedures set forth in Section 18 hereof;
- f) in excess of twenty (20) complaints in any calendar month during the Term; and
- g) not resolving complaints of missed service (within twenty four (24) hours) in excess of five (5) times in any calendar month during the Term.

## **24. REMEDIES UPON DEFAULT BY CONTRACTOR**

24.1 In the event of default by Contractor, the City may, through the City Manager and without election of remedies:

- a) immediately terminate the Agreement (without any legal action required) by delivery of a written notice to the Contractor, in which use, the termination shall become effective as of the date set forth in the City's notice. The Contractor shall, at its sole cost, remove any and all personnel and equipment from the City to relinquish the Green Waste Facility, and the City may immediately contract with another firm or firms to provide the Services contemplated hereunder to the City;
- b) withhold all or any part of Contractor's compensation hereunder;

c) seek recovery on the Performance Bond; and/or

d) exercise any and all remedies available, at law or in equity, including bringing an action or actions against Contractor for recovery of amounts due and owing to the City, and/or for damages (which shall include all costs and expenses reasonably incurred by the City in exercise of its remedy), and/or for specific performance, injunctive relief or any other appropriate equitable remedy.

If the City considers it to be in its best interests, it may elect not to declare default or to terminate the Agreement. The parties acknowledge that this provision is solely for the benefit of City and that if the City permits the Contractor to continue to perform the Services (or any portion thereof) despite one or more events of default, the Contractor shall in no way be relieved of any of its responsibilities, duties, or obligations under this Agreement, nor shall the City waive or relinquish any of its rights.

**24.2 Rights to Offset:** Any additional costs incurred by the City in the event of termination of this Agreement for default, or otherwise resulting from the Contractor's performance or non-performance under this Agreement, including (without limitation) the exercise by the City of any of the remedies available to it under subsection 24.1 hereof, and any credits due to or overpayments made by the City, may be offset by use of any payment due for the Services completed before the termination for default or before the exercise of any remedies. If such amount offset is insufficient to cover such excess costs, the Contractor shall be liable for and promptly remit to the City the difference upon written demand therefore. This right to offset is in addition to and not limitation of any other remedies available to the City.

## **25. TERMINATION FOR CONVENIENCE BY THE CITY**

The City Commission, in addition to the City's rights and options to terminate set forth in Section 24 hereof, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement at its sole option, at any time, for convenience, without cause and without penalty, when in its sole discretion it deems such termination is in the best interest of the City. Said termination for convenience shall become effective thirty (30) days following receipt by the Contractor of written termination notice. In that event, the City shall only be required to compensate the Contractor for all work/services satisfactorily performed by the Contractor up to the termination date, and such payment shall be the total extent of the City's liability to the Contractor under the Agreement.

## **26. APPLICABLE LAW AND JURY WAIVER**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be in Miami- Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND CONTRACTOR, EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

## **27. LIMATATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's maximum liability for any cause of action for monetary damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds a maximum of one hundred thousand (\$100,000.00) dollars. The Contractor hereby expresses its willingness to enter into this Agreement with recovery from the City for any damage action for breach of Agreement to be its actual damages but in no event to exceed a maximum one hundred thousand (\$100,000.00) dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, the Contractor hereby agrees that the City shall not be liable to the Contractor for damages in an amount in excess of one hundred thousand (\$100,000.00) dollars pursuant to this Agreement, for any action or claim for breach of Agreement arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

## **28. REPRESENTATION AND WARRANTIES OF CONTRACTOR**

The Contractor warrants and represents to the City, as an inducement to the City to execute this Agreement, which representation and warranties shall survive the Agreement, that:

a) That it is authorized to do business in the State of Florida and is properly licensed by, and has all necessary permits from, all necessary and required governmental and public and quasi-public authorities have jurisdiction over it and over the Services;

b) Its execution, delivery, and performance of this Agreement has been duly authorized by, or is in accordance with, its organic instruments; this Agreement has been duly executed and delivered for it by the signatories so authorized; and it constitutes its legal, valid and binding obligations;

c) Its execution, delivery, and performance of this Agreement will 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;

d) It has not received any notice, nor to the best of its knowledge is there pending or threatened 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; and

e) It has, or will have under its control on the Commencement Date, all equipment, machinery, manpower, as necessary and required to perform its obligations under this Agreement, and has sufficient experience and competence to do so;

f) It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform its obligations under this Agreement;

g) It and each of its employees, agents, and subcontractors of any tier is competent to perform its obligations under this Agreement; and

h) Its duly authorized representative has visited the Collection Area, familiarized itself with the local conditions under which the Services are to be performed, and correlated its observations with the required work and services under this Agreement.

## **29. EXCLUDED WASTE**

Notwithstanding anything herein to the contrary: (a) Contractor shall have no obligation to collect any material which is or contains, or which Contractor reasonably believes to be or contain Special Waste("Excluded Waste"); (b) if Contractor finds what reasonably appears to be discarded Excluded Waste, Contractor shall promptly notify the City and the producer of the Excluded Waste, if the producer can be readily identified; and (c) title to and liability for any Excluded Waste shall remain with the producer of the Excluded Waste, even if Contractor inadvertently collects or disposes of such Excluded Waste.

## **30. COMPLIANCE WITH APPLICABLE LAWS**

The Contractor shall perform its obligations hereunder in compliance with any and all applicable Federal, State of Florida, and local (City of Miami Beach and Miami-Dade County) laws, rules, regulations, and codes; in accordance with sound engineering and safety practices; and in compliance with any and all administrative rules, regulations, and policies of the City relative to the Services. Prior to the Commencement Date, the Contractor shall be solely responsible for obtaining any and all licenses, permits, approvals, and authorizations as may be required to perform its obligations hereunder, and shall thereafter be required to maintain same in full force and effect and in good standing, at all times throughout the Term. Except where expressly required by applicable laws and regulations, the City shall not be responsible for monitoring Contractor's compliance with any laws or regulations. When the Contractor observes conflicting regulatory requirements, it shall notify the City Manager, in writing, immediately. If the Contractor performs any of the work or services required by the Agreement knowing or having reason to know, that such work and/or services are in violation of such laws, rules and/or regulations, contractor shall be solely responsible for all costs arising directly therefrom.

## **31. TAXES, LIENS AND FEES**

The Contractor shall pay on or before the due date all taxes, fees, and assessments which may be levied upon or in respect of the equipment, or its operation, including but not limited to commercial personal property taxes, sales taxes, and intangible taxes, and the 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 equipment. In the event that any lien or encumbrance of any nature relating to the Contractor's equipment or the operation or maintenance thereof is filed upon the City, the Contractor shall have thirty (30) days from the date of written notice by the Authorized Representative to have such lien or encumbrance bonded off or discharged.

### **32. NOTICES AND CHANGES OF ADDRESSES**

All "Notices" to be given by either party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, addresses as follows:

To City: CITY OF MIAMI BEACH, FLORIDA  
OFFICE OF THE CITY MANAGER  
1700 CONVENTION CENTER DRIVE, 4<sup>TH</sup> FLOOR  
MIAMI BEACH, FLORIDA 33139

With copies to: CITY OF MIAMI BEACH, FLORIDA  
PUBLIC WORKS DIRECTOR  
PUBLIC WORKS DEPARTMENT  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139

And

CITY OF MIAMI BEACH, FLORIDA  
SANITATION DIVISION DIRECTOR  
140 MACARTHUR CAUSEWAY  
MIAMI BEACH, FLORIDA 33139

To Contractor: WASTE CONNECTIONS OF FLORIDA, INC.  
DBA WASTE CONNECTIONS OF FLORIDA  
3 WATERWAY SQUARE PLACE, SUITE 110,  
WOODLAND, TEXAS 77385  
ATTN: ROBERT A. NIELSEN, III, REGIONAL VICE PRESIDENT

Or such other addresses as either party may hereinafter designated by a Notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

### **33. FLORIDA PUBLIC RECORDS LAW.**

- a) Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time. Records made or received in connection with this Agreement are public records under Florida law, as defined in Section 119.011(12), Florida Statutes.
- b) Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Contractor shall:
  - (1) Keep and maintain public records required by the City to perform the service;
  - (2) Upon request from the City's custodian of public records, provide the City with a



copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Contractor does not transfer the records to the City;
- (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

c) REQUEST FOR RECORDS; NONCOMPLIANCE

- (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- (2) Contractor's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

d) CIVIL ACTION

- (1) If a civil action is filed against a Contractor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
  - a. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
  - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the City or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

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

CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411

**34. NO WAIVER**

The failure of the Contractor or the City 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 an continuing or subsequent default on the part of the Contractor or the City.

**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. ASSIGNMENT/SUBCONTRACTING**

The selection of the Contractor as the service provider under this Agreement is based upon its experience, capability and financial ability to perform the work. The Contractor shall not assign, delegate or subcontract any of the rights or obligations under this Agreement without the prior written consent of the City Commission, which consent shall not be unreasonably withheld.

**37. BINDING UPON SUCCESSORS AND ASSIGNS; NO THIRD-PARTY BENEFICIARIES**

37.1 This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

37.2 This Agreement and shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.



### **38. RFP AND AGREEMENT INCORPORATED BY REFERENCE**

The Proposal Documents 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:

- This Agreement, together with any exhibits and amendments thereto.
- RFP No. 2018-024-WG, together with and exhibits and amendments thereto.
- Contractor's response to RFP NO. 2018-024-WG, together with any exhibits and amendments thereto.

### **39. FURTHER DOCUMENTS**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

### **40. INDEPENDENT PARTIES**

Nothing contained in this Agreement is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and Contractor. None of the officers, agents or employees of the Contractor shall be or be deemed to be employees of the City for any purpose whatsoever. The Contractor shall be solely responsible for the acts or omissions of its officers, employees, contractors, and agents. No person performing any of the work or services described hereunder shall be considered an officer, servant or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

### **41. TIME IS OF THE ESSENCE**

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

### **42. FORCE MAJEURE**

The performance of any act by the City or the 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 the parties; provided, however, that if the hindrance of prevention of performance exceeds a period of thirty (30) days, the City may, through the City Manager, and at his/her sole option and discretion, terminate, or renegotiate the terms of this Agreement without liability to the City.

### **43. JOINT PREPARATION**

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the

resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

#### **44. ENTIRE AGREEMENT**

This Agreement, when executed, together with all exhibits attached hereto, shall constitute the entire agreement between both parties. This Agreement may not be amended, modified or terminated except in writing signed by parties hereto and, where required, as approved by the City Commission.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

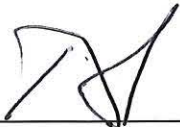
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the first date entered above.

FOR CITY:

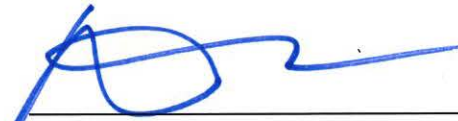
CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:



City Clerk

  
\_\_\_\_\_  
Mayor

Date

2/21/19

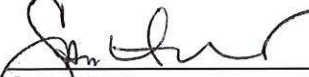
FOR CONTRACTOR:



WASTE CONNECTIONS OF FLORIDA, INC. d/b/a  
WASTE CONNECTIONS OF FLORIDA


ATTEST:

By:

  
\_\_\_\_\_  
Secretary

Date

2/14/19

  
\_\_\_\_\_  
President

ROBERT A. NIELSEN III  
REGIONAL VICE PRESIDENT

Print Name/ Title

2/14/19

Corporate Seal

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

1/29/19  
\_\_\_\_\_  
Date