

RESOLUTION NO. 2019- 2585

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AMENDMENT NO. 1 TO THE CONNECT SERVICES AGREEMENT BETWEEN THE TOWN OF SURFSIDE AND BIGBELLY SOLAR, INC. FOR ADDITIONAL SOLAR POWERED TRASH/RECYCLE COMPACTION CONTAINERS; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AMENDMENT TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as approved in Resolution No. 17-2414 on January 10, 2017, the Town of Surfside ("Town") entered into that certain Connect Services Agreement with BigBelly Solar, Inc. ("Bigbelly") dated January 24, 2017 for 12 solar powered trash/recycle compaction containers that include hardware and software with data collection and monitoring capability for waste and recycling operations ("Agreement"); and

WHEREAS, Resolution No. 17-2414 waived the bid process pursuant to Section 3-13(6) of the Town Code, and made a determination that Bigbelly is the sole source provider to the Town of solar powered trash/recycle compaction containers that include hardware and software with data collection and monitoring capabilities for waste and recycling operations; and

WHEREAS, the parties wish to amend the Agreement in order to add 13 additional units or equipment at a cost of \$2,124.20 monthly service fee (together with a one-time shipping fee for the equipment of \$4,820.00), and to amend other provisions of the Agreement, all as set forth in Amendment No. 1 to the Agreement attached hereto as Exhibit "A" ("Amendment"); and

WHEREAS, the Town Commission finds that the Amendment is in the best interest and welfare of the Town and its residents and wishes to approve same in substantially the form attached hereto as Exhibit "A."

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Approval of Amendment to Agreement and Authorization. The Amendment between the Town and Bigbelly, substantially in the form attached hereto as Exhibit "A", is hereby approved. The Town Commission authorizes the Town Manager to execute the

Amendment on behalf of the Town, together with such non-substantive changes as may be approved by the Town Manager and Town Attorney as to form and legal sufficiency.

Section 3. Implementation. The Town Manager is authorized to take all action necessary to implement the purposes of this Resolution and the Amendment.

Section 4. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 14th day of May, 2019.

Motion by Commissioner Karukin.
Second by Commissioner Cohen.

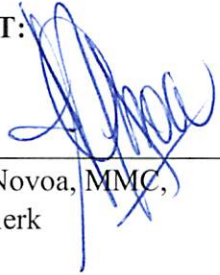
FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	<u>Yes</u>
Commissioner Michael Karukin	<u>Yes</u>
Commissioner Tina Paul	<u>No</u>
Vice Mayor Daniel Gielchinsky	<u>Absent</u>
Mayor Daniel Dietch	<u>Yes</u>




Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC,
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helman Cole & Bierman, P.L.
Town Attorney



AMENDMENT TO CONNECT SERVICES AGREEMENT

Reference: Service Schedule No. 00001 to Bigbelly Connect Services Agreement No. 10071 between Town of Surfside, FL and Big Belly Solar, Inc. (together, the "Agreement")

This First Amendment to Connect Services Agreement ("Amendment") is entered into effective as of _____, 2019 (the "Effective Date") by and between Town of Surfside, FL ("Customer") and Big Belly Solar, Inc. ("Bigbelly"), a Delaware corporation, registered and authorized to transact business in the State of Florida .

WHEREAS, Bigbelly and Customer are parties to the above-referenced Agreement dated as of January 24, 2017; and

WHEREAS, Customer desires to add additional Equipment to the Agreement and further amend certain provisions as set forth herein.

NOW, THEREFORE, for good and valuable consideration, intending to be legally bound, Bigbelly and Customer agree as follows:

A. New Equipment.

1. Effective as of the Effective Date, the Equipment/Hardware Configuration table set forth on the first page of the Agreement is amended by adding the additional Equipment identified below ("New Equipment"), which is in addition to the Equipment already contracted for under the Agreement ("Existing Equipment"):

New Equipment/Hardware Configuration			
13	HC5/SC5.5 Double Stations with Side Message Panels and [HC] Foot Pedals		
	New Equipment Service Fee: Total Monthly System Cost		\$2,124.20
	New Equipment Shipping: One Time Fee		\$4,820.00
	<i>Current Monthly Fee (Existing Equipment)</i>		\$1,764.00
	<i>Total Aggregate Monthly Fee (New and Existing Equipment)</i>		\$3,888.20

2. The monthly rates and fees set forth in Section A(1) above shall be effective upon delivery of the New Equipment subject to this Amendment.
3. The Term of the Agreement with respect to the New Equipment shall be sixty (60) months, as the same may be extended, commencing upon delivery of the New Equipment subject to this Amendment.
4. The Term of the Agreement with respect to the Existing Equipment shall be extended for a new sixty (60) month period, commencing upon delivery of the New Equipment subject to this Amendment, to be made coterminous with the New Equipment.

B. Renewal Maintenance

1. The Agreement is hereby amended to incorporate the following provision as Section 4.1(J):

Renewal Maintenance. Based on the renewal of the Existing Equipment as described in Section A(4) above, Bigbelly will perform certain maintenance services on Qualifying Equipment at no additional cost as further set forth in "Attachment B", which is attached hereto and incorporated herein. (For clarification, this is in addition to the annual cleaning and inspection visit already provided under Section 4.2 of the Agreement.)

C. Public Records.

1. The Agreement is hereby amended to delete Section 6.20 in its entirety and replaced with the following:

6.20 Ownership and Access to Records; Public Records. The following provision is added to the Agreement: Notwithstanding anything to the contrary in the Agreement, the Agreement and all work, deliverables and services provided by Bigbelly are subject to Florida's Public Records Law (Chapter 119, Florida Statutes), including but not limited to the following:

- 6.20.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from Bigbelly providing the Services to the Town under the Agreement shall be the property of the Town.
- 6.20.2 Bigbelly agrees to keep and maintain public records in its possession or control in connection with its performance under the Agreement. Bigbelly additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Bigbelly shall 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 Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 6.20.3 Upon request from the Town custodian of public records, Bigbelly shall provide the Town 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 6.20.4 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 6.20.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of Bigbelly shall be delivered by the Bigbelly to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Bigbelly shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Bigbelly shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 6.20.6 Any compensation due to Bigbelly shall be withheld until all records are received as provided herein.
- 6.20.7 Bigbelly's failure or refusal to comply with the provisions of this section may result in the immediate termination of the Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

IF BIGBELLY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LEVEL ACCESS' DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: SANDRA NOVOA, MMC, TOWN CLERK
Mailing address: 9293 Harding Avenue, Surfside, Florida 33154
Telephone number: 305-887-9541
Email: snovoa@townofsurfsidefl.gov

D. Insurance.

1. The Agreement is hereby amended to add the following provisions as Section 4.2(I):

4.1(I) Insurance to be Provided by Bigbelly.

- 4.1 Bigbelly shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of Bigbelly's insurance and shall not contribute to Bigbelly's insurance.
- 4.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- 4.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of Bigbelly shall be allowed to provide Services pursuant to the Agreement who is not covered by Worker's Compensation insurance.
- 4.4 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- 4.5 Certificate of Insurance. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured with respect to the Commercial General Liability and Business Automobile policies, no later than ten (10) days after award of this Agreement and prior to the execution of the Agreement by Town and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation of said policies or insurance. Bigbelly shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of the Agreement, including any extensions or renewals that may be granted by the Town. The

Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to the Agreement and shall state that such insurance is as required by the Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished as soon as reasonably practical. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled. Acceptance of the Certificate(s) is subject to approval of the Town.

4.6 Additional Insured. The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of Bigbelly in performance of the Agreement. Bigbelly's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Bigbelly's insurance. Bigbelly's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

4.7 Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. Bigbelly shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

4.8 The provisions of this section shall survive termination of the Agreement.

E. Miscellaneous.

1. For purposes of this Amendment, capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.
2. Except as modified hereby, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first set forth above.

Customer: Town of Surfside, Florida

Big Belly Solar, Inc., a Delaware Corporation

By: _____

By: _____

Name: _____

Name: Jeff Wakely

Title: _____

Title: CFO

Date: _____

Date: _____

Attest:

Town Clerk

Approved as To Form and Legal Sufficiency:

Weiss Serota Helfman Cole & Bierman, P.L.

ATTACHMENT B

Renewal Maintenance

In accordance with and subject to Section 4.1(J) of the Agreement, Bigbelly will perform the following maintenance services identified below as part of a one-time system refresh on Qualifying Equipment. “Qualifying Equipment” includes only the Existing Equipment that was originally procured under this Agreement that will have reached 5-years from the date of original purchase. Bigbelly will work with the Town to schedule an onsite visit to perform such services upon the Qualifying Equipment reaching 5-years in service. (For avoidance of doubt, the term with respect to the Existing Equipment commenced on April 1, 2017, thus they will have reached 5 years in service as of March 31, 2022).

Service	Description
Station deep cleaning	Power wash, both interior and exterior
Replace the station solar bubble	Cosmetic replacement
Replace station plastic side skins	Cosmetic replacement
Replace station hopper liner	Consumable item
Replace technology that has gone obsolete	This applies chiefly to cellular networks repurposing spectrum for other uses and affects 3G modems