

RESOLUTION NO. 2020- 2712

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT FOR THE COLLECTION, HAULING AND PROCESSING OF COMMERCIAL AND MULTI-FAMILY SINGLE STREAM RECYCLING WITH WASTE CONNECTIONS OF FLORIDA, INC.; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) seeks to enter into an Agreement for the Collection, Hauling and Processing of Commercial and Multi-Family Single Stream Recycling (“Services”) with Waste Connections of Florida, Inc. (“Service Provider”); and

WHEREAS, Service Provider has agreed to provide the Town with the Services pursuant to the Agreement for the Collection, Hauling and Processing of Commercial and Multi-Family Single Stream Recycling attached hereto as Exhibit “A” (the “Agreement”); and

WHEREAS, the Town Commission wishes to approve the Agreement with the Service Provider, in substantially the form attached hereto as Exhibit “A”, subject to final review and approval by the Town Manager and Town Attorney; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the Town.

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

Section 1. Recitals. Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval of Agreement. The Town Commission hereby approves the Agreement with Service Provider, in substantially the form attached hereto as Exhibit “A.”

Section 3. Implementation. The Town Commission hereby authorizes the Town Manager to execute the Agreement with the Service Provider, together with such changes as may be approved by the Town Manager, subject to approval by the Town Attorney as to form and legality, and to take any action which is reasonably necessary to implement the Services and the purposes of this Resolution.

Section 4. Authorization to Expend Funds. The Town Manager is authorized to expend funds in accordance with the Agreement attached hereto as Exhibit "A."

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

PASSED AND ADOPTED this 11th day of August, 2020.

Motion By: Vice Mayor Paul
Second By: Commissioner Velasquez


FINAL VOTE ON ADOPTION:

Commissioner Charles Kesl	<u>Yes</u>
Commissioner Eliana R. Salzhauer	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

ATTEST:

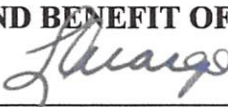


Sandra McCready, MMC
Town Clerk



Charles W. Burkett, Mayor

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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

**FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND PROCESSING OF
COMMERCIAL AND MULTIFAMILY SINGLE STREAM RECYCLING IN THE TOWN
OF SURFSIDE, FLORIDA**

March 1, 2020

**FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND PROCESSING OF
COMMERCIAL AND MULTIFAMILY SINGLE STREAM RECYCLING IN THE TOWN
OF SURFSIDE, FLORIDA**

STATE OF FLORIDA

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of _____, 2020, by and between Waste Connections of Florida, Inc., (the "Service Provider"), and the Town of Surfside, Florida (the "Town").

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and process Municipal Single Stream Recycling (as such terms are defined herein) within the Town's corporate limits for Commercial and Multi-Family Units.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the Town hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total capacity of a bag will be between thirty to thirty-five (30-35) gallons and the weight of a bag and its contents shall not exceed thirty-five (35) pounds.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the Town.

Commercial Unit – Any non-manufacturing commercial facility that generates and accumulates Municipal Single Stream Recycling during, or as a result of, its business, including, but not

limited to, restaurants, stores, warehouses, factories, malls, schools, hospitals, health care facilities, sports facilities or complexes.

Container – Any receptacle, including, but not limited to, dumpsters, Carts and Roll-Outs, whether utilized by a Commercial, Industrial, Municipal or other application for collecting Municipal Single Stream Recycling. Containers are designed to hold between two to four yards and Carts are designed to contain 95 gallons Municipal Single Stream Recycling Materials .

Excluded Materials - Any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, or toxic material as defined by applicable federal, state or local laws or regulations, and Hazardous Waste.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

Collections will be made-up on the next scheduled collection day.

Industrial Unit – Any manufacturing, minim, or agricultural facility that generates and accumulates Municipal Single Stream Recycling during, or as a result of, its operations.

Municipal Facilities – Only those specific municipal locations as set forth in Section 6.A.

Multi-Family Residential Unit – Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Single Stream Recycling

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste, Hazardous Waste, or Excluded Waste.

Recyclable Materials – Any non-contaminated materials, which may include but may not be limited to paper, cardboard, plastics, Ferris and non-Ferris cans, glass bottles. . Recyclable Materials does not include Municipal Solid Waste, Construction and Demolition Waste, Hazardous Waste, or Excluded Waste.

Residential Unit - Any residential dwelling that a Multi-Family Residential Unit. This definition does NOT include Single-Family Residential Units.

Roll-Off – A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

Roll-Out – A Container with ninety-five (95) gallons of capacity.

Rubbish – All waste wood, wood chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp, and other products such as are used for packaging, or wrapping crockery and ashes, cinders, floor sweepings,, mineral or metallic substances, and any other waste materials not included in the definition of Excluded Waste.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Florida's applicable statutes whether such waste is mixed with or constitutes recyclable materials.

SECTION 2. FRANCHISE GRANT.

The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and Processing of Single Stream Recyclable Materials for Commercial and Multi-Family Residential Units, the exclusive franchise, license and privilege to collect, haul and Process Municipal Single Stream Recycable Materials over, upon, along, and across the Town's present and future streets, alleys, bridges and public properties. In order to maintain the franchise in favor of the Service Provider contained herein, the Town may take any appropriate action against any company, customer or third party

infringing upon the rights of the Service Provider. In addition (and regardless of the Town's actions), the Service Provider may independently enforce the provisions of this Agreement against third-party violators, including, but not limited to, seeking injunctive relief, and the Town shall reasonably cooperate in such enforcement actions brought by the Service Provider.

The Town hereby grants to the Service Provider a right of first refusal on the collection of Solid Waste, Recycling and Construction and Demolition Materials within the Town limits for Industrial, Commercial, and Residential Units. The Town will enforce Service Provider's right to collect Recyclable.

SECTION 3. OPERATIONS.

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and process all of the Municipal Single Stream Recyclable Materials (as provided herein) (i) generated and accumulated by Commercial, Industrial, Multi-Family, and Municipal Facilities (ii) set out for collection. all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement (the "Services").

B. **Nature of Operations.** The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and processing of Municipal Single Stream Recyclable Materials, the title to all Municipal Single Stream Recyclable Materials collected, hauled and processed by the Service Provider over, upon, along and across the Town's present and future streets, alleys, bridges and public properties.

C. **Title to Municipal Single Stream.** and liability for Municipal Single Stream Recyclable Materials shall pass to the Service Provider upon loading of such materials into the Service Provider's trucks. The residents of the Town shall not deposit in the Service Provider's equipment or place for collection by the Service Provider any Excluded Waste. Notwithstanding any other term contained herein, the Service Provider shall have no obligation to collect any waste which is, or which the Service Provider reasonably believes to be, Excluded Materials Title to and liability for any Excluded Materials shall remain with the resident/business/generator of such Excluded Materials, even if the Service Provider inadvertently collects and disposes of such Excluded Materials. If the Service Provider finds what reasonably appears to be discarded Excluded Materials, Service Provider shall notify such resident/business/generator and the Town that the Service Provider may not lawfully collect such Excluded Materials.

D. The owners and occupants of any Commercial, Industrial and Residential Multi-Family Units, and the Town, as applicable, agree to comply with any description of and/or procedures with respect to removal of contaminants or preparation of Recyclable Materials as reasonably provided by Service Provider. If any Commercial, Industrial, and Residential Multi-Family Unit, or the Town, as applicable, fails to do so, Service Provider may decline to collect such materials without being in breach of this Agreement. Service Provider shall not be responsible for and has not made any representation regarding the ultimate recycling of such Recyclable Materials by any third party facilities.

SECTION 4. RESERVED.

SECTION 5. COMMERCIAL, INDUSTRIAL, AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.

The Service Provider will collect Municipal Solid Waste from Commercial, Industrial, and Multi-Family Residential Units at least once per week, as provided for in Section 9.B. hereof. The Service Provider shall only be responsible for collecting, hauling, and disposing of Municipal Solid Waste placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial, and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial, and Multi-Family Residential Units' Municipal Solid Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereof.

SECTION 6. RESERVED

SECTION 7. RESERVED.

SECTION 8. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 9. RATES AND FEES.

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are set forth on Exhibit A, attached hereto and incorporated herein.

A. Reserved

B. Commercial, Industrial, and Multi-Family Residential Unit Services. For the Services provided to Commercial, Industrial, and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge the rates set forth on Exhibit A.

C. Roll-Off Services. Subject to adjustment by the Service Provider in its sole discretion for the Services provided under Section 7.A. and 11 hereto, the Service Provider shall charge the rates set forth on Exhibit A.

SECTION 10. RATE ADJUSTMENT.

A. CPI-U Adjustment. On each anniversary date of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the Town, to increase or decrease the rates set forth in Section 9 hereof (the "Initial Rates") in accordance with the CPI-U. The rates for all services shall escalate at a rate equal to the rise of the Consumer Price Index ("CPI-U") for All Urban Consumers, US City Average, All Items, Detailed by Expense Category Garbage and trash collection (Unadjusted percent change) 1982-84=100, as prepared by the United States Department of Labor, Bureau of Labor Statistics ("BLS"), or its successor, for the most recent twelve (12) month period for which such index is available. The annual increases shall be applied on each anniversary date of this Agreement and shall never cause the rates to increase by more than five percent (5%) in any twelve (12) month period during the Term of the Agreement.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., at any time during the term of this Agreement, the Service Provider may petition the Town for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its costs of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the Town with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The Town shall not unreasonably withhold, condition or delay its consent to any requested rate increase. In the event the Town fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate

that such rate increase is necessary to offset the Services Provider's increased costs in connection with performing the Services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days' written notice to the Town.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Single Stream Materials covered by this Agreement will be processed by the Service Provider and Residue or Materials with Excessive Contamination may be disposed of at Landfill(s) (the "Initial Landfill(s)"). The Town shall approve the use of the Initial Landfill(s), but such approval shall not be unreasonably withheld, conditioned, or delayed. In the event the Service Provider is unable to use the Initial Landfills) due to reasons out of its control, the Service Provider shall have the right, in its sole discretion, to dispose of the Residue or Materials with Excessive Contamination covered by this Agreement at another Landfill of its choosing. D. Governmental Fees. The parties acknowledge that the rates include all applicable fees, taxes, or similar assessments incurred under federal, state, and local laws, rules, and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

E. Fuel Cost Adjustment. The Service Provider shall adjust all the rates herein for any calendar year in which the average price of diesel fuel during the preceding calendar year exceeded \$2.75 per gallon (the "Base Price"). This adjustment shall take place on an annual basis. The average price of diesel fuel will be determined by reference to the U.S. Energy Administration / Department of Energy published price for diesel fuel gulf coast region. The following website (or any successor website) will be the source for such information: http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report_combined.asp. The average price of diesel fuel for each calendar year (each, a "Average Annual Price") shall be the average of the weekly fuel prices published for each week during such year.

The fuel cost adjustment for any calendar year (each, a "Fuel Cost Adjustment") shall be the produce of (i) 6.60% and (ii) a fraction the numerator of which is equal to the difference between the Base Price and the Average Annual Price and the denominator of which is the Base

Price. In the event the Average Annual Price is greater than the Base Price, the Fuel Cost Adjustment shall be an upward adjustment to all rates herein. In the event the Average Annual Price is less than the Base Price, the Fuel Cost Adjustment shall be a downward adjustment to all rates herein; provided, however, any Fuel Cost Adjustment shall not decrease the rates below the rates specified in Section 9 hereof. Each Fuel Cost Adjustment shall be effective during the calendar year immediately following the calendar year for which Fuel Cost Adjustment was determined.

SECTION 11. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Excluded Waste, Hazardous Waste, animal or human, dead animals, auto parts, used tires, concrete, dirt, gravel, rock or sand; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial, or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of Construction and Demolition Waste, auto parts, used tires, concrete, dirt, gravel, rock or sand by utilizing the Service Provider's Roll-Off Services.

SECTION 12. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of 5 years, commencing on _March 1, 2020 and concluding on February 28,2025 (the "Initial Term"). At the expiration of the Initial Term of this Agreement, the Town shall have the option, upon Service Provider's consent, which shall not be unreasonably withheld, to extend the Agreement for successive periods of five (5) years, unless the Service Provider provides notice of its intent not to renew this Agreement at least one hundred eighty (180) days prior to the end of the Initial Term (the "Renewal Term," and together with the Initial Term, the "Term").

SECTION 13. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity

succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the Town's consent.

SECTION 14. ENFORCEMENT.

The Town shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial, or Residential Multi-Family Units utilizing such Containers. To the maximum extent allowed by applicable law, the Town also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial, and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Monthly Statement. On a monthly basis, the Town agrees to bill and collect the rates and fees charged under Section 9 hereto for all Commercial, Industrial, and Residential Multi-Family Units requested by the Town. (the "Monthly Statement"). Thereafter, the Town will remit to the Service Provider an amount equal to such Monthly Statement. Such remittance shall be made by the Town on or before the 15th day of each month (for the immediately preceding month's service) commencing on April 15, 2020. B. Taxes. In addition to the amounts billed and collected by the Town above under Section 15.A., the Town shall also be responsible for paying any and all sales, use, and service taxes assessed or payable in connection with the Services, unless the Town is tax exempt as evidenced by an exemption certificate provided to Service Provider.

C. Bad Debt: Unpaid Rates/Fees. The Town agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owed to Town for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Commercial, Industrial, or Residential Multi-Family Unit.

D. Billing for Roll-Off Services. Notwithstanding the above, the Service Provider will bill and collect all Commercial, Industrial, and Residential Multi-Family Units for services performed with respect to Roll-Off Containers.

SECTION 16. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Single Stream Recyclable Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Single Stream Recyclable Materials placed outside of the Containers by any Commercial, Industrial, or Multi-Family Residential Unit. The Service Provider may report the location of such conditions to the Town so that the Town can issue proper notice to the owner or occupant of the Commercial, Industrial, or Multi-Family Residential Unit instructing the owner or occupant to properly contain such Municipal Single Stream Recyclable Materials. Should such excess Municipal Single Stream Recyclable Materials continue to be placed outside of the Containers, the Town shall require such Commercial, Industrial, or Multi-Family Residential Units to increase the frequency of collection of such Municipal Solid Waste or Construction or Demolition Waste, or require the Commercial, Industrial, or Multi-Family Residential Units to utilize a Container with sufficient capacity so the excess Single Stream Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial, or Multi-Family Residential Unit fails to timely place a Container as directed in Sections 4 and 5 hereof, or is otherwise in violation of the Town's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume, or weight of Municipal Single Stream Recyclable Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Single Stream Recyclable Materials and will notify the Town within twenty-four (24) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial, and Multi-Family

Residential Units of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial, or Multi-Family Residential Units' failure to timely place the Containers, Bulky Items, or Bundles out for collection. Such written notice shall be attached to the Container, Bulky Items, or Bundles out for collection. Such written notice shall be attached to the Container of the uncollected Municipal Single Stream Recyclable Materials , shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Single Stream Recyclable Materials may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the Town is notified by an owner or occupant of a Commercial, Industrial, or Multi-Family Residential Unit that Municipal Single Stream Recyclable Materials has not been removed from such Commercial, Industrial, or Multi-Family Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the Town from the Service Provider, or the Service Provider has failed to collect Municipal Single Stream Recyclable Materials from the Commercial, Industrial, or Multi-Family Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or Construction and Demolition Waste on the day a collection order is issued by the Town; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the Town, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for such original non-collection or late collection so long as the Service Provider makes such collection within such time.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such Services on the immediately following Business Day. Collections services will only occur between the hours set forth in this Section 18. To ensure Service Provider's compliance with the hours of service, a fine of not more than \$50 may be imposed by the Town for each violation of this limitation on hours of operation. Service Provider shall be given written notice of violation of this limitation on hours of operation

before the aforementioned administrative penalty may be assessed on subsequent violations. The Service Provider shall not be deemed to be liable for the aforementioned administrative penalty where its inability to perform collection service is the result of conditions of Force Majeure as set forth in this Agreement. Service Provider may also obtain approval for the limitation on hours of operation as needed, and such approval shall not be unreasonably withheld, conditioned, or delayed.

SECTION 19. CUSTOMER SERVICE.

The Town shall field all inquiries and complaints from Commercial, Industrial, and Multi-Family Residential Units and Municipal Facilities relating to the collectionhauling and processing of Municipal Single Stream Recyclable Materials and. The Service Provider and the Town agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. In order to assist the Town in is obligations under this Section 19, the Service Provider agrees to provide Town Hall with a primary contact and toll free telephone number, as well as Service Request Forms for customer service issues, such as changes in service, container repair requests, and missed collections.

SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and processing of Municipal Single Stream Recyclable Materials including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 20. Service Provider shall maintain books and financial records in accordance with generally accepted accounting principles. Such books and financial records, together with any documentation necessary for verification of Service Providers compliance with the terms of this Agreement, shall be made available to the Town upon request. The Town shall have the authority to audit, examine, and make excerpts or transcripts from said books and records. Notwithstanding the foregoing or anything else herein to the contrary, the Town shall provide to Service Provider not less than five (5) business days' written notice before any such audit, and

any such audit shall be at the Town's sole cost and expense. The parties expressly agree that the foregoing shall create no right in favor of the Town to examine Service Provider's confidential, proprietary, or privileged information, as determined in the sole and absolute discretion of Service Provider.

SECTION 21. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling and processing of Municipal Single Stream Recyclable Materials shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Single Stream Materials onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week.

SECTION 22. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the Town's public and private property, including streets and parking areas, will be protected and preserved. Notwithstanding the foregoing, the Town warrants that the Town's pavement, curbing or other driving surface or any right of way reasonably necessary for the Service Provider to provide the Services described herein are sufficient to bear the weight of all of the Service Provider's equipment and vehicles reasonably required to perform such Services. The Service Provider will not be responsible for damage to any such pavement, curbing, driving surface or right of way, except to the extent resulting from the Service Provider's negligence or willful misconduct.

SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 24. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker’s Compensation	Statutory
(2) Employer’s Liability	\$500,000
(3) Bodily Injury (except automobile)	\$500,000 per occurrence; \$1,000,000 in the aggregate
(4) Property Damage Liability (except automobile)	\$500,000 per occurrence; \$500,000 in the aggregate
(5) Automobile Bodily Injury Liability	\$500,000 per person; \$1,000,000 per occurrence
(6) Automobile Property Damage Liability	\$500,000 per occurrence
(7) Excess or Umbrella	\$5,000,000 per occurrence

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider’s parent corporation. The form and limits of insurance shall be in compliance with this Section 24, and shall name the Town as an additional insured. It shall be the responsibility of the Service Provider to maintain adequate insurance coverage at all times. Upon the Town’s request, the Service Provider shall furnish the Town with a certificate of insurance verifying the insurance coverage required by this Section 24.

SECTION 25. INDEMNITY.

The Service Provider agrees to indemnify and hold harmless the Town and its agents, directors, employees, officers and servants (collectively, the “Indemnified Parties”), individually and collectively, from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys’ fees) (collectively, the “Claims”) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. Notwithstanding anything to the contrary contained herein, the Service Provider shall have no obligation to indemnify the Indemnified Parties to the extent any such Claims arise out of: (i) the negligence or willful misconduct of any Indemnified Party, (ii) the Town’s breach of any of the terms, conditions, representations, or warranties contained in

this Agreement, or (iii) the violation of any law, rule, regulation, ordinance, order, permit, or license by any Indemnified Party.

SECTION 26. RESERVED.

SECTION 27. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 28. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void. Independent of termination for material breach of cause, this Agreement may be terminated in its entirety by the Town by giving ninety (90) days' written notice to the Service Provider. The Town retains this termination option without liability for default. If the Service Provider terminates this Agreement or any portion thereof, the Service Provider must notify the Town in writing not less than ninety (90) days prior to termination. Service Provider's termination, in absence of default by the Town, shall subject Service Provider's performance bond to Town's right to call or draw, according to the terms of this Agreement. . In the event of termination by the Town for any reason, the Service Provider shall be paid in full for all services performed up to the termination date, subject to offsets of adjustments, if any, as may be necessary to continue customer services.

SECTION 29. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire,

flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 30. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Florida, without giving effect to the conflict of laws rules thereof.

SECTION 31. WAIVER. Any failure by either party to enforce the provisions of this Agreement shall in no way constitute a waiver by such party of any contractual right hereunder, unless such waiver is in writing and signed by such party.

SECTION 32. ATTORNEYS' FEES. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which it may be entitled.

SECTION 33. NOTICES.

Any notices required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective party at the address set forth below:

If to the Town:

Town of Surfside, Florida

Attn: _____

If to the Service Provider:

Waste Connections of Florida, Inc.

3840 NW 37th Court

Miami Florida

Attn: Bret Boccabella

With a Copy to:

Waste Connections US, Inc.

3 Waterway Square Place, Suite 110

The Woodlands, Texas 77380

Attn: Legal Department

or such other addresses as the parties may hereafter specify by written notice and delivered in accordance herewith.

(Remainder of page intentionally left blank.)

PASSED AND APPROVED BY THE TOWN OF SURFSIDE COMMISSION MEETING AT A TIME, AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF FLORIDA AND ALL OTHER APPLICABLE LAWS THIS ___ DAY OF _____, 2019.

SERVICE PROVIDER:

TOWN:

WASTE CONNECTIONS OF FLORIDA, INC.

TOWN OF SURFSIDE, FLORIDA

By: _____
Its: _____
Name: _____

By: _____
Its: _____
Name: _____

ATTEST:

By: _____
Name: _____
Title: _____

Exhibit A

Rates for Services

Roll-out Cart-96 Gallon 1XW	\$ 27.95 per month/per container
Dumpster – 2 yard 1XW	\$119.08 per month/per container
Dumpster – 4 yard 1XW	\$238.15 per month/per container
Fuel Surcharge	Approximately 14% or total charges

These rates are for the initial term and are subject to Rate Adjustment and Fuel Charges as defined in Section 10 of this agreement.