

## SOLID WASTE AND RECYCLING SERVICES AGREEMENT

This Solid Waste and Recycling Services Agreement (“Agreement”) is entered into on this 1<sup>st</sup> day of October 2019, between the City of Belle Isle, a Florida municipal corporation whose address is 1600 Nela Avenue, Belle Isle, Florida 32809 (“City”), and JJ’s Waste and Recycling, LLC, whose address is 3905 El Rey Road, Orlando, Florida 32808 (“Contractor”). Sometimes, herein, the City and Contractor shall be collectively referred to as the “Parties.”

### WITNESSETH:

**WHEREAS**, City issued a Request for Proposals for Solid Waste and Recycling Services - RFP #19-06 ("the RFP"); and

**WHEREAS**, Contractor submitted a proposal in response to the RFP on or before July 23, 2019; and

**WHEREAS**, City received and evaluated proposals from vendors in response to the RFP; and

**WHEREAS**, the Contractor submitted the lowest and best proposal in response to the City's RFP; and

**WHEREAS**, City has the power to execute this Agreement; and

**WHEREAS**, Contractor has the power to execute this Agreement; and

**WHEREAS**, City desires to hire Contractor to provide those services specified hereinafter and as set forth in the RFP relating to solid waste and recycling services; and

**WHEREAS**, Contractor desires to provide those services specified hereinafter and as set forth in the RFP relating to solid waste and recycling services.

**NOW, THEREFORE**, in consideration of the above premises and of the mutual obligations undertaken herein, and such other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

### 1. DEFINITIONS:

As used herein, the capitalized terms, phrases, words, and their derivations shall have the meanings as set forth herein.

1.1. **Acceptable Solid Waste:** Acceptable Solid Waste shall mean Solid Waste which is not Unacceptable Waste and which is Collected within the City pursuant to this Agreement.

1.2. **Agreement:** Agreement shall mean this document, including any written amendment thereto, as agreed upon by City and Contractor and executed by the Parties.

1.3. **Agreement Year:** Agreement Year shall mean the period beginning October 1<sup>st</sup> of each year and ending on September 30<sup>th</sup> of the subsequent year for the term of the Agreement.

14. **Applicable Law:** Applicable Law shall mean any permits, licenses and approvals issued for or with respect to Contractor, equipment utilized by Contractor, properties (or any component thereof) utilized by Contractor, or the performance of Contractor's obligations hereunder, and any statute, law constitution, charter, ordinance, resolution, judgment, order, in any case, that shall be enacted, adopted, promulgated, issued or enforced by a governmental body, regulatory agency and/or court of competent jurisdiction that relates to or affects City, Contractor, any of their equipment or any properties (or any component thereof) utilized by Contractor or the performance of Contractor's obligations hereunder.
15. **Basic Service:** For Residential Services, Basic Service shall mean the following: (1) twice per week unlimited Solid Waste and Bulky Waste Services; (2) once per week Program Recyclable Materials Services; (3) once per week Yard Waste Services
16. **Brush:** Brush shall mean Yard Trimmings that cannot be easily contained in a Yard Trimmings Can, Yard Trimmings Bag or Bundle.
17. **Bulky Waste:** Bulky Waste shall mean Acceptable Solid Waste composed of materials not easily contained in a Solid Waste Bag or Can such as, but not limited to White Goods, furniture, Brush, carpet, and other Acceptable Solid Waste not easily contained in a Solid Waste Bag or Can.
18. **Bulky Waste Services:** Bulky Waste Services shall mean the Collection and Disposal of Bulky Waste.
19. **Bundle or Bundles:** Bundle or Bundles shall mean Yard Trimmings securely tied together forming a package that may be easily handled, not to exceed four (4) feet in length or fifty (50) lbs. in weight.
- 1.10. **Business Day:** Business Day shall mean any day, Monday through Friday, from 8:00 AM, Eastern Time until 5:00 PM, Eastern Time, which is not a holiday designated as such in the Agreement.
- 1.11. **Can:** Can shall mean a receptacle owned by the Customer used for Solid Waste, including Yard Trimmings, Set-outs.
- 1.12. **City:** City shall mean the City of Belle Isle, Florida.
- 1.13. **City Facility:** City Facility shall mean any City owned or operated facility designated by the Contract Administrator as a City Facility to receive City Services. The City has the sole authority to add or eliminate City Facilities to receive City Services. Solid Waste or Bulky Waste for transport to a Disposal Site or the act of removing Program Recyclable Materials for transport to a Processing Facility.
- 1.14. **Commencement Date:** Commencement Date shall mean October 1, 2019, the date on which the Contractor shall begin performing Solid Waste Services and Recycling Services in accordance with this Agreement.

- 1.15. **Commercial Container:** Commercial Container shall mean a Cart, Dumpster, Dumpster Compactor, Roll-off, or Roll-off Compactor.
- 1.16. **Commercial Cart Service Unit:** Commercial Cart Service Unit shall mean a Commercial Service Unit which Set-outs no more than two (2) Solid Waste Carts per calendar week.
- 1.17. **Commercial Service Unit:** Commercial Service Unit shall mean all establishments other than Residential Service Units within the corporate limits of the City.
- 1.18. **Construction and Demolition Debris:** Construction and Demolition Debris shall mean waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.
- 1.19. **Contamination:** Contamination shall mean the existence of any material or substance on or contained in Program Recyclable Materials other than Program Recyclable Materials.
- 1.20. **Contract Administrator:** Contract Administrator shall mean the person, or his designee, designated by the City to administer and monitor the provisions of this Agreement.
- 1.21. **Contractor:** Contractor shall mean \_\_\_\_\_.
- 1.22. **Contractor's Representative:** Contractor's Representative shall mean an employee of the Contractor designated in charge of Contractor's operations under the Agreement and who is authorized to make decisions and act on Contractor's behalf.
- 1.23. **Curbside:** Curbside shall mean a location designated by the Contract Administrator for Collection of Solid Waste and Recyclable Materials from a Residential Service Unit. The location shall be within four (4) feet of the curb or traveled portion of any roadway and outside any fence.
- 1.24. **Customer:** Customer shall mean (i) the City; or (ii) the owner or tenant of a Residential Service Unit or Commercial Service Unit, as the case may be, located within the City, and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.25. **Dead Animals:** Dead Animals shall mean animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.26. **Dispose or Disposal:** Dispose or Disposal shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any Solid Waste or hazardous waste (whether containerized or non-containerized) into or on any land or water so that such Solid Waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. Contractor shall Dispose of materials at a Disposal Site.

- 1.27. **Disposal Site:** Disposal Site shall mean a Landfill or other Solid Waste management facility permitted under all applicable local, state, and federal laws and regulations for Disposal of Solid Waste. The Disposal Site shall be selected by Contractor.
- 1.28. **Dumpster:** Dumpster shall mean a metal receptacle with a tight-fitting lid and a minimum capacity of two (2) cubic yards, a maximum capacity of eight (8) cubic yards, and designed to be lifted and emptied mechanically.
- 1.29. **Dumpster Compactor:** Dumpster Compactor shall mean any Dumpster, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.30. **Effective Date:** Effective Date shall mean the date set forth in the first sentence of this Agreement.
- 1.31. **Eligible Disaster Debris:** Eligible Disaster Debris shall mean Solid Waste qualifying for and meeting the most current stipulated requirements for debris removal reimbursement as stipulated by Federal Emergency Management Agency.
- 1.32. **Garbage:** Garbage shall mean Solid Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.
- 1.33. **Hazardous Waste:** Hazardous Waste shall mean any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.34. **Handicapped Residential Unit:** Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste at the curbside, and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by the City Manager and agreed to by Service Provider.
- 1.35. **Landfill:** Landfill shall mean a Solid Waste management unit where Solid Waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.
- 1.36. **Missed Collection:** Missed Collection shall mean a Collection that was not provided as scheduled.
- 1.37. **May:** Something that is not mandatory but permissible.
- 1.38. **Medical Waste:** Medical Waste shall mean treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk

human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in state law, as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5).

- 1.39. **Multi-family Property:** Multi-family Property shall mean a property (A) located within the City; (B) with more than four separate units for residential dwellings; and (C) designated by the City to receive Solid Waste collection via Dumpster or Roll-off.
- 1.40. **Party:** Party shall mean Contractor or City.
- 1.41. **Process or Processed or Processing:** Recovery of Recyclable Materials, treatment into Recovered Materials, and marketing of Recovered Materials to end markets. Recovery of Program Household Hazardous Waste and Electronics, treatment of Program Household Hazardous Waste and Electronics, and marketing of Recovered Materials to end markets.
- 1.42. **Processing Facility:** Processing Facility shall mean a facility permitted under all applicable local, state, and federal laws and regulations for Processing of Recyclable Materials and/or Program Household Hazardous Waste and Electronics. The Processing Facility shall be selected by the Contractor.
- 1.43. **Program Introduction Notice:** Program Introduction Notice shall mean a public education notice developed by the Contractor, approved by City, and printed and distributed by the Contractor.
- 1.44. **Program Recyclable Materials:** Program Recyclable Materials shall include those Recyclable Materials listed in Orange County Think 5 Program for Recycling:

The definition for Program Recyclable Materials will be updated based on the Orange County Think 5 Program.

- 1.45. **Recovered Materials:** Recovered Materials shall mean Recyclable Materials.
- 1.46. **Recyclable Material:** Recyclable Material shall mean a material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not Solid Waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or Disposed of rather than recycled, whereupon it will be Solid Waste, with respect to the person actually abandoning or Disposing of such material.
- 1.47. **Recycling:** Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or Processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional

sources, recycling includes the composting process if the compost material is put to beneficial use.

- 1.48. **Recycling Services:** Recycling Services shall mean the Collection and Processing of Program Recyclable Materials.
- 1.49. **Refuse:** Refuse shall mean Rubbish.
- 1.50. **Residential Service Unit:** Residential Service Unit shall mean a residential dwelling within the service area of the City occupied by a person or group of persons excluding separate units on Multi-Family Properties. A Residential Service Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, not on a Multi-Family Property, shall be treated as a Residential Service Unit, except that each single-family dwelling within any such Residential Service Unit shall be billed separately as a Residential Service Unit.
- 1.51. **Roll-off:** Roll-off shall mean a metal receptacle with a minimum capacity of approximately ten (10), a maximum capacity of forty (40) cubic yards, intended for high-volume generation of Solid Waste, and designed to be transported to a Disposal Site by loading of receptacle onto rear of transporting vehicle.
- 1.52. **Roll-off Compactor:** Roll-off Compactor shall mean any Roll-off, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.53. **Rubbish:** Rubbish shall mean no putrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible Rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, Yard Trimmings, leaves, or similar materials; noncombustible Rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.54. **Scheduled Collection Day:** Scheduled Collection Day shall mean the specific day or days of the week on which Collection shall be provided by Contractor to Customer.
- 1.55. **Services:** Services shall mean Solid Waste Services and Recycling Services.
- 1.56. **Set-out:** Set-out shall mean material(s) placed by a Customer for Collection by Contractor.
- 1.57. **Shall:** Something that is mandatory and not merely discretionary.
- 1.58. **Single Stream:** Single Stream shall mean commingled and not required to be subdivided by the Customer prior to collection.
- 1.59. **Solid Waste:** Solid Waste shall mean Garbage, Rubbish, Refuse, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from

industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Florida Code;
- b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement; or Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by state or federal government, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or re-pressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 *et seq.*).

- 1.60. **Solid Waste Bag:** Solid Waste Bag shall mean a Non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a Solid Waste Bag and its contents shall not exceed fifty (50) pounds.
- 1.61. **Solid Waste Services:** Solid Waste Services shall mean the Collection and Disposal of Acceptable Solid Waste, including Yard Trimmings, and Bulky Waste.
- 1.62. **Special Waste:** Special Waste shall mean waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) Containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) Residue and debris from the cleanup of a spill or release of chemical, or (H) any other waste defined by Florida law, rule or regulation as "Special Waste".
- 1.63. **Unacceptable Set-out:** Unacceptable Set-out shall mean a Set-out for Collection that does not comply with the requirements of the Agreement.
- 1.64. **Unacceptable Set-out Notice:** Unacceptable Set-out Notice shall mean a public education notice developed by the Contractor, approved by City, and printed and distributed by the Contractor.
- 1.65. **Unacceptable Waste:** Unacceptable Waste shall mean any Solid Waste, the acceptance and handling of which by Contractor would cause a violation of any permit or regulatory requirement, including, but not limited to, Special Waste (except as otherwise provided herein), untreated Medical Waste, Dead Animals weighing fifty pounds (50 lbs.) or greater from Customers other than the City Facility, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges

subject to regulation by permit.

- 1.66. **White Goods:** White Goods shall mean refrigerators which have CFCs removed by a certified technician, stoves and ranges, water heaters, freezers, swing sets, bicycles (without tires) scrap metal, copper, and other similar domestic and commercial large appliances.
- 1.67. **Yard Trimmings:** Yard Trimmings shall mean any cuttings or trimmings from trees, shrubs, or lawns, and similar materials. Yard Trimmings specifically excludes Eligible Disaster Debris.
- 1.68. **Yard Trimmings Bag:** Yard Trimmings Bag shall mean Kraft bag or other sack authorized by the Yard Trimmings Processing Facility, designed to store Yard Trimmings with sufficient wall strength to maintain physical integrity when lifted. Total weight of a Yard Trimmings Bag and its contents shall not exceed fifty (50) pounds.

**2. GRANT OF EXCLUSIVE FRANCHISE:**

Contractor is hereby granted for the term of this Agreement, as defined in Section 3 unless sooner terminated, the exclusive right and privilege and sole obligation within the corporate limits of the City to operate and conduct business for the following:

- a) Collection and Disposal of Acceptable Solid Waste for Residential Service Units;
- b) Collection and Processing of Program Recyclable Materials for Residential Service Units;
- c) Collection and Disposal of Solid Waste for Commercial Service Units except for roll-off services and except for as provided in the RFP concerning the City's ability to allow other commercial haulers to provide such services within the City at lower rates than Contractor through direct negotiations and contracting with commercial businesses; the City shall have the right to amend its code of ordinances and enter into contract(s) with other parties to implement these exceptions; in the event of a conflict between this provision and any other provision in this Agreement, this provision shall control; and
- d) Collection and Disposal of Yard Waste.

Contractor is hereby granted for the term of this Agreement, as defined in Section 3 unless sooner terminated, a nonexclusive right and privilege within the corporate limits of the City to conduct business for the following:

- a) Collection and Processing of Program Household Hazardous Waste and Electronics for Residential Service Units;
- b) Collection and Processing of Program Recyclable Materials for Commercial Service Units;
- c) Collection and disposal of Special Waste; and
- d) Roll-off services.

### 3. TERM:

- 3.1. **Initial Term:** Unless sooner terminated in accordance with the Agreement, the initial term of this Agreement shall commence October 1st, 2019 at 12:00 AM, Eastern Time, (“Commencement Date”) and shall continue in effect until September 30<sup>th</sup>, 2024 at 11:59 PM, Eastern Time.
- 3.2. **Optional Renewal Terms:** The parties may renew this Agreement for up to three (3) additional one (1) year optional renewal terms by mutual agreement in writing. The City must advise the Contractor at least nine (9) months from expiration of the initial term or a renewal term. If Contractor does not agree to the renewal within one (1) month of such notification, it will be assumed they do not agree. This provision in no way limits City’s right to terminate this Agreement at any time during the initial term or any optional renewal term thereof pursuant to the provisions in this Agreement.

### 4. RESIDENTIAL SERVICE UNIT COLLECTION:

- 4.1. **Acceptable Solid Waste Collection:** Contractor shall Collect from each Residential Service Unit, each scheduled collection day, all Acceptable Solid Waste, including Yard Trimmings, contained in Solid Waste Bags and Cans and all Yard Trimmings contained in Yard Trimmings Bags, Bundles, and Cans.
- 4.2. **Program Recyclable Materials Collection:** Contractor shall Collect from each Residential Service Unit, on the Scheduled Collection Day such Residential Unit receives Solid Waste Collection, all Program Recyclable Materials in, under, or adjacent to that Residential Service Unit’s Recycling Cart per Scheduled Collection Day.
- 4.3. **Bulky Waste Collection:** Contractor shall Collect from each Residential Service Unit, one day per week on a Scheduled Collection Day, the greater of one item or two (2) cubic yards of Bulky Waste per Scheduled Collection Day. Contractor shall Collect additional Bulky Waste per request of a Residential Service Unit Customer.
- 4.4. **Program Household Hazardous Waste and Electronics Collection:** Twice each contract year the Contractor, in coordination with the City, shall conduct a one-day Program Household Hazardous Waste and Electronics Collection event developed by Contractor and approved by Contract Administrator. Contractor will be responsible for obtaining all permits and regulatory approvals.
- 4.5. **Roll-off Collection:** Upon request of a Residential Service Unit Customer, Contractor may provide Roll-off Collection in accordance with Commercial Service Unit Collection described in Section 5.1(c).
- 4.6. **Provision of Service:** The residential services of the Contractor, and all labor, equipment and other matters required to provide said service, are agreed to be

**5. COMMERCIAL SERVICE UNIT COLLECTION:**

**5.1 Acceptable Solid Waste Collection:**

- a) Commercial Cart Service Unit: Contractor shall Collect from each Commercial Cart Service Unit, one day per week on a Scheduled Collection Day, all Acceptable Solid Waste contained in one (1) or two (2) Solid Waste Cart(s) per Scheduled Collection Day.
- b) Commercial Service Units Dumpster Collection: For Commercial Service Units requesting Acceptable Solid Waste Collection via Dumpster(s), Contractor shall Collect, on a Scheduled Collection Day(s), all Acceptable Solid Waste in Dumpsters per Scheduled Collection Day. Contractor and Customer shall mutually decide upon the number, size, and location of Dumpsters. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.
- c) Commercial Service Units Roll-off Collection: For Commercial Service Units requesting Acceptable Solid Waste Collection via Roll-off(s), Contractor may Collect, on a Scheduled Collection Day(s) or upon request of Customer, all Acceptable Solid Waste in Roll-off. Contractor and Customer shall mutually decide on the number, size, and location of Roll-offs.

**5.2. Program Recyclable Material Collection:** Upon Request of a Multi-family Property Customer, Contractor shall Collect, on a Scheduled Collection Day(s), all Program Recyclable Materials in or adjacent to Recycling Carts or Recycling Commercial Containers. Contractor shall provide such services at a rate equal to or less than the rate for Solid Waste Collection at the same service level (i.e. receptacle size, Collection frequency). Contractor and Customer shall mutually decide on the number, size, and location of Recycling Carts, Dumpsters and/or Roll-offs. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.

**5.3 Provision of Service:** The commercial services of the Contractor, and all labor, equipment and other matters required to provide said service, are agreed to be provided by Contractor for the monthly Base Fee identified in Exhibit "1" attached hereto.

**6. CITY SERVICES**

The Contractor shall provide City Services at the sole cost of Contractor and shall not bill the City or other person for City Service unless explicitly authorized in this Section.

**6.1 City Facilities Solid Waste Collection:** For all City Facilities, Contractor shall Collect, on a Scheduled Collection Day(s), all Acceptable Solid Waste in Commercial Containers per Scheduled Collection Day.

**6.2 City Facilities Program Recyclable Material Collection:** For all City Facilities,

Contractor shall Collect, on a Scheduled Collection Day(s), all Program Recyclable Materials in, under, or adjacent to Recycling Carts or Recycling Commercial Containers per Scheduled Collection Day. Contractor and Customer shall mutually decide on the number, size, and location of Recycling Carts, Dumpsters and/or Roll-offs. In addition, Contractor and the Customer shall mutually decide on the frequency of Collection and Scheduled Collection Days.

**6.3 City Services:** Upon request of Contract Administrator, Contractor shall provide the City up to four (4) 8 CY dumpsters for Collection of Acceptable Solid Waste and/or Program Recyclable Materials throughout the contract year. City shall solely decide the location of the dumpsters. Contractor will provide 48 collections and disposals at no cost to the City. Thereafter, the City shall pay the Collection Fee and Disposal Fee for any pulls at then-current rate schedule as reflected in Exhibit 1.

**7. EXCEPTION TO RESIDENTIAL SERVICES SET-OUT RESTRICTIONS:**

The Contractor shall Collect all Acceptable Solid Waste, including excess Solid Waste Bags, a maximum of 2 cubic yards from each Residential Service Unit for the following days:

- a) first Collection following a holiday as defined by Section 17.2;
- b) first Collection following a move-out or move-in; and
- c) Monday of last full week in December to Saturday of first full week in January.

**8. COLLECTION LOCATIONS:**

**8.1 Residential Service Unit Collection:** Contractor shall Collect Solid Waste, Program Recyclable Materials, and Yard Waste Curbside for Residential Service Units excluding Residential Service Units that qualify for Handicapped Residential service. For Residential Service Units that qualify for Handicapped Residential service, Contractor shall collect Solid Waste and Program Recyclable Materials at a location designated by the Contract Administrator and agreed upon by the Contractor. For Handicapped Residential service, Contractor's employees shall not be required to enter any gated areas or garages for Collection of Solid Waste and Program Recyclable Materials. Contractor shall return all Cans and Carts to approximately original location.

**8.2 Commercial Service Unit Collection:** The Commercial Container shall be located on or at a location reasonably acceptable to Contractor and Customer and subject to approval by Contract Administrator. Contractor shall open the enclosure for the Commercial Container and unlock the Commercial Container prior to Collection. Upon completion of Collection, Contractor shall return all Commercial Containers to approximately original location, lock the Commercial Containers, and close the enclosure for such Commercial Containers.

**9. DISPOSAL AND PROCESSING SERVICES:**

**9.1 Disposal of Contractor Collected Materials.** Excluding Roll-off, Contractor agrees

that the then-current rate schedule as reflected in Exhibit "1" includes the costs for Disposal of Acceptable Solid Waste and Bulky Waste Collected by Contractor. Disposal of material Collected via Roll-off shall be in accordance with the then current Disposal Fee as reflected in Exhibit "1."

**9.2 Processing of Contractor Collected Materials.**

- a) Program Recyclable Materials. Customers may set-out Single Stream Program Recyclable Materials for Collection. Contractor agrees that the then-current rate schedule as reflected in Exhibit "1" includes the costs for Processing of Program Recyclable Materials, including Single Stream Program Recyclable Materials, Collected by Contractor.

**9.3 Disposal and Processing Capacity:** Contractor shall have and maintain during the term hereof, adequate Disposal and Processing capacity for the City's needs.

**10. DISPOSAL AND PROCESSING LOCATIONS:**

The Contractor shall deliver materials Collected to the following locations selected by Contractor and operated in compliance with Applicable Law including rules stipulated by the local, state, and federal laws and regulations including Florida Department of Environmental Quality and/or the U.S. Environmental Protection Agency:

- a) Solid Waste to a Disposal Site;
- b) Program Recyclable Materials Collected to a Processing Facility for Program Recyclable Materials; and
- c)

Contractor shall maintain a record containing the gross weight, tare weight, net weight, date, time, and vehicle identification of each vehicle entering and exiting the Disposal Site and Processing Facility. Contractor shall weigh, record, and tabulate materials from the City and other generators separately. Contractor shall test the scales as required by Applicable Law.

**11. PROCESSING REQUIREMENTS:**

Contractor commits to utilizing the Orange County Materials Recovery Facility (MFR), and will comply with its Current and Future Think 5 Program

**12. ADDITION AND DELETION OF PROGRAM RECYCLABLE MATERIALS**

City reserves the right to add other Recyclable Materials to the program or delete

Recyclable Materials from the program if the Parties agree it is economically and technically feasible. An increase or decrease in fees, if any, for addition or deletion of Recyclable Materials may be negotiated and implemented as a change in rate schedule by an amendment to this Agreement executed by the Parties.

**13. COMMINGLING OF MATERIALS PROHIBITED:**

Except, when approved in writing by the Contract Administrator, Contractor shall not commingle the following materials:

- a) Program Recyclable Materials from Residential Service Units Collected under this Agreement with yard waste materials;
- b) Program Recyclable Materials with other materials; or
- c) Program Household Hazardous Waste and Electronics from Residential Service Units Collected under this Agreement with recyclable materials.

**14. DISPOSAL OF PROGRAM RECYCLABLE MATERIALS:**

Contractor shall not dispose of any Program Recyclable Materials to markets that Contractor knows or reasonably should have anticipated will dispose of the Program Recyclable Materials except when approved in writing by the Contract Administrator. Disposal of such materials or marketing of such materials to markets that Contractor knows or reasonably should have anticipated will dispose of such materials, except when approved in writing by the Contract Administrator, is a breach of this Agreement and may result in termination by City of this Agreement with Contractor. Failure of Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by City of this Agreement.

**15. INSPECTION OF SET-OUTS AND UNACCEPTABLE SET-OUTS:**

**15.1 Contractor's Right to Inspect Set-Outs:** Contractor may inspect each Set-out prior to Collection for compliance with the requirements of this Agreement.

**15.2 Unacceptable Set-outs:** Prior to Collection of the Set-out, Contractor may designate a Set-out as an Unacceptable Set-out for the following reasons:

- a) Set-out of Program Recyclable Materials contains more than ten percent (10%) of non-Recyclable Materials by weight; or
- b) A Set-out contains Unacceptable Waste that cannot be easily separated, such as by manual efforts.

Contractor may not designate a Set-out as an Unacceptable Set-out for any reason other than those identified in this section.

If Contractor designates a Set-out or a portion of a Set-out as an Unacceptable Set-out for any of the reasons set forth in this section, Contractor shall:

- a) Collect the portion of the Set-out that is properly Set-out; and
- b) Immediately provide an Unacceptable Set-out Notice to the Customer stating the reason the Set-out or portion of the Set-out was designated as an Unaccepted Set-out.

For all Unacceptable Set-outs, Contractor shall provide a written report of the Unacceptable Set-outs including the address, reason Set-out was an Unacceptable Set-out, and other information as requested by Contract Administrator to the Contract Administrator by 10:00 AM, Eastern Time the next Business Day. If Contractor fails to provide a written report in accordance with this section, Contractor shall be subject to administrative charges as set forth in this Agreement.

**16. RESIDENTIAL SERVICE UNITS COLLECTION ROUTES:**

Contractor shall submit Residential Service Units Collection routes to the Contract Administrator for approval a minimum of sixty (60) calendar days prior to the Commencement Date. Contractor shall not amend, change, or alter the day without Contract Administrator's approval.

**17. HOURS OF OPERATION AND HOLIDAYS:**

**17.1 Hours of Operation:** Contractor shall provide Collection to Residential Service Units from Monday through Friday. Collection from Residential Service Units and all other Customers adjacent to Residential Service Units shall begin no earlier than 7:00 AM, Eastern Time and shall not extend beyond 7:00 PM, Eastern Time unless approved by the Contract Administrator. Collection from Commercial Service Units not adjacent to Residential Service Units shall be collected at such hours as may be determined by Contractor. No Collection shall be made on Sunday, unless requested by a Customer and agreed to by Contractor and City. Contract Administrator reserves the right to restrict the hours of operation based on customer complaints.

**18. DAMAGE TO PROPERTY:**

Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. Contractor shall repair or replace any private or public property which is damaged by Contractor. Contractor shall notify the property owner within forty- eight (48) hours of the the intent to review the damage and how the damage will be resolved.

Within fifteen (15) Business Days of the Effective Date, Contractor shall submit for approval to the Contract Administrator a procedure for management of property damage consistent with the requirements set forth in this Agreement.

**19. COMPLAINTS AND OFFICE:**

**19.1 Complaints:** Customer complaints shall be directed to Contractor, and Contractor shall promptly resolve such complaint based on the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints and shall provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Any alleged missed pickups will be investigated and, if such allegations cannot be disproved, Contractor shall arrange for Collection on the next Business Day after receipt of such complaint.

**19.2 Local Office:** Contractor shall maintain an office within forty (40) street miles of City Hall. Contractor shall ensure the local office may be contacted by telephone without charge. Such office shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 AM, Eastern Time and the later of 5:00 PM, Eastern Time or completion of Collection from Residential Service Units, Monday through Friday. For after office hours, the local office must have a voicemail system. Voicemails from Customers shall be returned on the next Business Day.

**20. EQUIPMENT AND LABOR:**

Contractor, at its sole cost and expense, agrees to furnish, all equipment, excluding equipment explicitly stated in this Agreement to be provided by City. Equipment shall include, but is not limited to, trucks, machines, and labor which are reasonably necessary to adequately, efficiently, and properly provide the services in accordance with this Agreement.

Excluding Roll-off Collection, Contractor shall provide Collection using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any materials. For Roll-off Collection, Contractor shall provide Collection using vehicles equipped with a cover which may be netted with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of materials. Contractor shall maintain such cover in good order and use such cover when going to and from the Disposal Site, during loading operations, or when parked if contents are likely to be scattered. Contractor shall not overload Collection vehicles as to scatter material.

Contractor shall maintain all vehicles and Collection equipment in a first class, safe, and efficient working condition throughout the term of this Agreement. Contractor shall maintain, including sanitizing and painting, all vehicles and Collection equipment as often as necessary to preserve and present a well-kept appearance, and Contractor shall have a regular preventative maintenance program. No third-party advertising shall be permitted on Contractor's vehicles or Collection equipment.

All Collection vehicles used in performance of the obligations herein created shall be less than ten (10) years old and clearly marked with the Contractor's name, telephone number, and unit number legible from 150 feet. Contractor shall maintain Collection vehicles in a neat

and sanitary condition and are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Contractor agrees to collect all municipal solid waste using refuse bags, receptacles, containers, equipment and vehicles of safe design, solid construction, sanitary condition, good repair, and good and clean appearance. Contractor further agrees to use collection vehicles which are water tight with a tight cover to prevent offensive odors from escaping and garbage from being scattered. Collection vehicles shall be of 30 cubic yard size or smaller, so as to minimize damage to City streets.

City may inspect Contractor's equipment at any time to insure compliance with this Agreement. Upon notification from the City, Contractor shall be required to repair or replace equipment that is no longer in acceptable condition for their intended purpose.

## **21. SPILLAGE AND LEAKAGE, LITTER, AND ODOR**

**21.1 Spillage and Leakage:** Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles, or by Contractor's employees or subcontractors while performing services pursuant to this Agreement. During transport, all materials shall be contained, covered and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage caused by Contractor, Contractor's vehicles or Contractor's employees or subcontractors. Contractor shall perform all clean-ups within two (2) hours of the earliest of either: the (i) notification of spillage or leakage; or (ii) knowledge of spillage or leakage by Contractor or Contractor's employees or subcontractors.

**21.2 Litter:** Contractor shall be required to pick up any and all litter caused by the provision of services in connection with this Agreement.

**21.3 Odor:** Contractor shall maintain equipment used for purposes of this Agreement in a manner that eliminates odors. Contractor shall routinely clean equipment used for purposes of this Agreement by Contractor in a manner that eliminates odors.

## **22. RECORDS AND REPORTS:**

Contractor agrees to maintain at the local office, see Section 19.2, adequate records relating to the performance of their respective duties under this Agreement. Such records shall be made available at any time during reasonable business hours for inspection by the City. At a minimum, Contractor shall create, maintain, and make available records as defined herein and/or required by Applicable Law, and any reports as are agreeable to the Contract Administrator

Contractor shall provide the City with a quarterly report within fourteen (14) calendar days following the end of the quarter and an annual report within thirty (30) calendar days following the end of the agreement year summarizing the above information and identifying the number of Residential Service Units serviced in the previous time period.

**23. INSPECTION RIGHTS:**

**23.1 City's Right to Inspect Records, Books, Data and Documents:** City shall have access, within one Business Day of advanced written notification to Contractor, to all books, records, data and documents of Contractor that are relevant or related to this contract for inspection, and audit, at City's own expense.

**23.2 City's Rights to Inspect Facilities and Equipment and Audit Performance:** City shall have access, within one business day of advanced written notification to Contractor, to inspect Contractor's facilities and equipment as City deems reasonably necessary to determine whether the services required to be provided by Contractor under this Agreement conform to the terms hereof. Additionally, City may perform field audits, including but not limited to route audits, without prior notice to Contractor, to assure that services required to be provided by Contractor under this Agreement are conducted in compliance with the terms of this Agreement, if applicable. City shall conduct the inspection of facilities and equipment and field audits, including route audits, during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections of facilities and equipment and field audits by City.

**24. RECYCLABLE MATERIALS REVENUES, BILLING FEE, AND FRANCHISE FEE:**

**24.1 Recyclable Materials Revenues:** Contractor shall retain all revenues from the sale of Recyclable Materials.

**24.2 Franchise Fee: After passage of an ordinance by the City of Belle Isle, the** City shall receive a five percent (5%) franchise fee (the "Franchise Fee") for all Residential Services and fifteen percent (15%) on Commercial Services and Roll-off Services. Contractor shall pay the City the Franchise Fee based on gross billings for services provided via the Agreement within the City within thirty (30) calendar days after the last day of the month Contractor provided such services.

**25. BILLING:**

**25.1** A minimum of thirty (30) calendar days prior to the Commencement Date, Contract Administrator will provide Contractor with a then-current Customer List for Residential Service Units identifying each by address. City shall update the list each month from the Commencement Date until expiration or termination of the Agreement. Within five (5) Business Day(s) of receipt of a Customer List, Contractor will report in writing to the Contract Administrator the address of a Residential Service Unit where materials are placed at the curbside and that is not on the then current Customer List. Contract Administrator will thereafter update the Customer List as applicable. Regardless of the Customer List, Contractor shall provide services to all Residential Service Units in accordance with this Agreement.

**25.2** City shall provide billing and bill Base Services for Residential Service Units during the term of this Agreement. Contractor shall provide billing and bill services for all

services to Commercial Service Units and services other than Base Services to Residential Service Units, such as additional Bulky Waste services and Roll-off Services.

- 25.3** Contractor shall bill City and Customers in accordance with Agreement and the then-current rate schedule as reflected in Exhibit "1." Contractor shall not bill City or Customers for any fees other than those specifically authorized in this Agreement.
- 25.4** Within thirty (30) calendar days of receiving the list provided by the City, Contractor shall submit to the City an invoice setting forth sums due by the City to Contractor for Base Services for Residential Service Units for the prior month. The City shall remit to the Contractor payment, less any Billing fees, Franchise Fees, disputed amounts, administrative charges, and payments withheld in accordance with this Agreement, for services rendered by Contractor to Residential and Commercial Cart Service Units within thirty (30) calendar days after receipt of invoice.
- 25.5** Within thirty (30) calendar days of the end of each month during which services are provided by Contractor hereunder, Contractor shall remit to the City payment for any Franchise Fees, and other payments in accordance with this Agreement, for services rendered by Contractor or payments due within thirty (30) calendar days after receipt of invoice.

**26. MODIFICATION TO RATES:**

The Contractor may submit a written request for modification to fees on or before July 1<sup>st</sup>, 2019 and every July 1<sup>st</sup> thereafter. If Contractor fails to submit a written request for modification to rates on or before July 1<sup>st</sup>, Contractor waives the right for a modification to rates.

All fees in Exhibit "1" shall remain fixed from the execution of this Contract through October 1<sup>st</sup>, 2020.

- 26.1 Base Rate Adjustment.** Contractor shall attempt to maintain rates herein during the term of this Agreement. Compensation payable to Contractor for all solid waste collection and disposal services hereunder shall be at the rates set forth, and adjusted for the next fiscal year, as follows: For the annual periods of this Agreement, the Contractor shall adjust rates reflective of the Consumer Price Index ("CPI-U") Water, Sewer and Trash Collection Services (CUSR0000SEHG) as published by the U.S. Department of Labor for the immediate preceding 12-month period. Commencing October 1, 2020, and thereafter annually, on the anniversary date of this Agreement, both residential and commercial collection rates shall be adjusted to reflect changes in CPI for the preceding calendar year using May's CPI numbers. Any increases in rates shall be capped annually at the amount of the increase in the CPI or three percent (3%), whichever is lower; such cap shall be calculated separately for residential and commercial rates. CPI can increase/decrease each year. If there is a decrease in CPI, Belle Isle can request for a reduction in rates. However, if there is an increase in CPI, the vendor can request a change in rates providing evidence in a letter to the City of Belle Isle. If a CPI adjustment is not requested by May 31<sup>st</sup> each year, the rate

adjustment for that particular 12-month period shall be deemed **waived** and shall not be taken into consideration in the future rate adjustments. The City, upon receipt of the rate adjustment, shall ratify all rate adjustments by resolution within 15 days of the CPI increase notification.

26.2 Pass-through of Increased Governmental Costs or increased Landfill Disposal Costs. The Contractor may request and City will approve an increase in the monthly rate hereunder if, during the term of this Agreement, the Contractor's costs increase solely as a result of an increased or new fee, charge, or assessment imposed by any relevant governmental authority including, a city, county, municipality or the Federal or State government on the Contractor's business capital or operations or due to increased disposal costs (including landfill and alternative disposal or recycling facility costs) after the date of this Agreement, provided that the fee, charge, or assessment was not imposed due to the Contractor's violation of any applicable legal requirement. Such adjustment will not be limited by the 3% maximum adjustment related to any CPI based adjustment. To obtain an increase in the monthly rate under this subparagraph, the Contractor must submit documentation confirming the amount of or increase in the fee, charge, or assessment and the effective date of the increase, and must provide the City proportionate share of the increased cost. No pass-through will be effective until the City has approved the increase and made an appropriate adjustment to its rate order; however, City will not unreasonably condition or delay any such pass-through increase.

**27. LICENSE AND TAXES:**

Contractor shall obtain, at its sole expense, all licenses and permits required by the local, state, and federal government, and shall maintain same in full force and effect. The City is exempt from sales and use taxes, and if necessary, the Contractor shall obtain an exemption certificate from the City.

**28. COMPLIANCE WITH LAWS:**

Contractor, its officers, agents, employees, contractors, and subcontractors, shall abide by and comply with any and all Applicable Law including all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation.

**29. ENFORCEMENT:**

City grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's exclusive franchise rights granted herein. Furthermore, Contractor shall have

all rights and remedies available to it under Florida law to collect delinquent payment of fees by City and/or Commercial Service Unit Customers.

**30. ADMINISTRATIVE CHARGES:**

Contractor understands that if Contractor does not timely perform its obligations pursuant to the terms of this Agreement or violates any provision of this Agreement, City will suffer damages which are difficult to determine and adequately specify.

The Contract Administrator shall notify Contractor in writing or electronically of each act or omission under the terms of this Agreement reported to or discovered by City or its designee.

Contractor and Contract Administrator will meet to discuss and agree on any administrative charges that may be applied by the City to the Contractor.

For the purposes of this Agreement, Contractor shall not be deemed to be liable for such charges where its inability to perform Collection service is the result of an event of Force Majeure as set forth in this Agreement.,

Contractor's obligations to make payments for such charges under this section occurring prior to the expiration or termination of this Agreement shall survive termination or expiration of this Agreement.

**31. TERMINATION:**

City may terminate this Agreement without liability to Contractor, except for conforming services provided to the date of termination which are due and unpaid, and pursue all of its legal, contractual and equitable remedies for default upon Contractor based upon the following:

- a) The filing of a voluntary petition for bankruptcy by or on behalf of the Contractor, or the filing of an involuntary petition for bankruptcy relief against the Contractor, which is not dismissed or otherwise Disposed of to the City's satisfaction within thirty (30) days thereafter;
- b) The appointment of a receiver of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty days (60) thereafter;
- c) Filing of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding;
- d) Committing an act of default of a provision of this Agreement and failing to correct such default to the satisfaction of the City, acting reasonably within 30 days' notice of such default from the City;
- e) Failing to timely and fully pay any or all impositions pursuant to this Agreement and failing to remedy the such within 30 days' notice of such failure to fully pay;
- f) Where there have been previous failures to perform in accordance with this Agreement that were cured after notice, but such breaches continue to

- occur on a frequency unacceptable to the City, on 30 days written notice regardless of cure; and/or
- g) As otherwise provided by this Agreement.

This Agreement shall further terminate upon any one of the following:

- a) The written agreement of the Parties;
- or b) The expiration of this Agreement.

### **32. DISPUTE RESOLUTION:**

Any disputes, differences, claims, or counterclaims between City and Contractor arising out of or in connection with this Agreement which cannot be amicably resolved by the Parties through good faith negotiations shall first be submitted to nonbinding mediation for resolution. As a condition precedent to the filing of any suit or other legal proceeding, the Parties shall endeavor to resolve all claims, disputes, or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The Parties shall, by mutual agreement, select a mediator within fifteen (15) days of the date of the request for mediation. If the Parties cannot agree on the selection of a mediator, then the City shall select the mediator who, if selected solely by the City, shall be a mediator certified by the Supreme Court of Florida. No suit or other legal proceeding shall be filed until (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation; provided however, a lawsuit may be filed prior to the satisfaction of the mediation requirement in order to preserve a claim that will elapse due to an immediate forthcoming expiration of an applicable statute of limitation. In the event a lawsuit is filed prior to completion of the mediation requirement, the lawsuit shall be abated upon motion of either party until such time as the mediation requirement has been satisfied. The Parties shall share the mediator's fee equally. The mediation shall be held in Orange County, Florida, unless another location is mutually agreed upon by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event these efforts are unsuccessful, the matter may be submitted to the Circuit Court in and for Orange County, Florida for trial and determination by the court sitting without jury. Said Parties hereby consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of any such court in any matter so to be submitted to it, and they expressly waive the right to a jury trial.

### **33. FORCE MAJEURE:**

Except for any payment obligation by either Party, if the City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of an event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period

thereafter as may be reasonably necessary for City or Contractor to correct the adverse effect of such event of Force Majeure.

An event of Force Majeure shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

- a) Acts of God, including but not limited to, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence, in whole or in part, of Contractor, its agents, or assigns), landslides, earthquakes, epidemics, quarantine, and pestilence; and
- b) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this Section, time is of the essence. Notice of using this section will also require an estimate of the amount of time needed.

#### **34. PERFORMANCE BOND:**

Upon Contractor's execution of this Agreement, Contractor shall make, execute, and deliver to City a good and sufficient performance bond in a form approved by the Contract Administrator, to secure the full, complete and faithful performance of the terms and conditions herein. For the first Agreement Year ("Initial Agreement Year"), Contractor shall make, execute, and deliver to City a good and sufficient Performance Bond in an amount equal to the Contractor's estimated amount of gross billings to the City pursuant to this Agreement for the year of commencement being October 1, 2019 to September 30, 2020. For each Agreement Year after the Initial Agreement Year, Contractor shall make, execute, and deliver to the City a good and sufficient Performance Bond in an amount equal to or greater than the amount of Contractor's gross billings to the City, pursuant to this Agreement, from the prior Agreement Year. Contractor shall renew the Performance Bond in accordance with this Agreement each year throughout the term of the Agreement and any renewal periods. Contractor shall ensure the Performance Bond is signed by the president or authorized officer of Contractor, together with the signature of the corporate secretary and the imprint of the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Florida; have an "A" or better rating by either A. M. Best Company or Standard & Poor's; be included on the list of surety companies approved by the Treasurer of the United States of America; and be acceptable to City.

#### **35. INSURANCE:**

**35.1 No Insurance Provided by City:** Contractor shall be solely responsible for any and all insurance coverage required under the terms of this Agreement and for any

additional insurance that Contractor deems necessary. City does not, shall not, and shall not be required to carry insurance policies providing coverage for or on behalf of Contractor.

**35.2 Contractor Insurance Requirements:** Contractor shall procure and maintain, during the term of this Agreement and any extensions thereof, at its sole cost, the insurance coverage listed below. If Applicable Law requires a higher insurance limit, Contractor shall procure and maintain the policy limit as specified by the Applicable Law.

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
<u>Commercial General Liability</u>	
BI & PD    Each Occurrence	\$1,000,000
BI & PD    General Aggregate	\$3,000,000
 <u>Medical Expenses</u>	 \$5,000
 <u>Workers' Compensation</u>	 Per Statutory Provisions \$100,000/accident
 <u>Commercial Auto Liability</u>	
Bodily Injury Each Person	\$1,000,000
Bodily Injury Each Accident	\$3,000,000
Property Damage Each Occurrence	\$1,000,000
Combined Single Limit	\$5,000,000

Umbrella Liability (Excess)

Over GL, Auto & Employers Liability

\$3,000,000

City must be an additional insured on liability policies, except workers' compensation. Such coverages must be PRIMARY and not merely contributory with reference to the City's own insurance coverages. Necessary endorsements must be obtained and provided to the City upon execution of the contract.

Waiver of subrogation against the County required on all insurance, including workers' compensation

30 day termination notice to additional insureds endorsement required.

Proof of insurance must be submitted within 10 business days of execution of the Agreement, and before any work begins.

Subcontractors either must carry workers' compensation insurance or be covered by the contractor's workers' compensation insurance.

Coverages must be provided by insurers authorized to provide that type of insurance in Florida, and who are acceptable to the City.

**35.3 General Requirements.** Contractor's and its subcontractors' insurers must be authorized to transact business in the State of Florida.

Contractor shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing all required insurance before commencement of the work.

All policies required herein, unless specific approval is given by City, are to be written on an occurrence basis and the insurers shall agree to waive all right of subrogation against the City. Additionally, all policies other than Workers' Compensation policies shall name the City as an additional insured.

Contractor shall ensure that the insurance coverage required under this Agreement is obtained and maintained by Contractor or its subcontractors for its subcontractors to cover their work hereunder. Contractor shall be held responsible for any modification, deviation, or omissions in these insurance

requirements as they apply to all subcontractors. Each insurance policy required by this Agreement shall meet each of the following requirements:

- a) Each policy shall apply separately to each insured against whom a claim is made and suit is brought, except with respect to the limits of the insurer's liability;
- b) Each policy except Workers' Compensation policy(ies) shall include an endorsement by the insurer that coverage shall not be suspended, voided or canceled by insurer or insured, reduced in coverage or in limits except after twenty (20) calendar days' prior written notice by certified mail, return receipt requested, has been given to City. Workers' Compensation policy(ies) shall include an endorsement by the insurer that coverage shall not be suspended, voided or canceled by insurer or insured, reduced in coverage or in limits except after at least ten (10) calendar days' prior written notice by certified mail, return receipt requested, has been given to City;
- c) City shall retain the right at any time to review coverage, form and amount of insurance;
- d) The procuring of each required policy or policies of insurance shall not be construed to limit Contractor's liability to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Contractor shall be obligated for the full and total amount of any damages, injury or loss caused by the action or inaction of Contractor or its subcontractors in connection with this Agreement;
- e) Contractor shall be solely responsible for payment of all premiums for insurance contributing to the performance of this Agreement and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not City is an insured under the policy;
- f) Claims made policies will be accepted for professional and hazardous materials liability coverage and such other risks as are authorized by City. All such policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of no fewer than two (2) years. If provided an option, Contractor agrees to purchase the extended reporting period coverage on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year;
- g) Certificates of Insurance evidencing claims made or occurrence form coverage and conditions to this Agreement, as well as City's Agreement and description of work, are to be received and approved by City upon execution of this Agreement by Contractor and thirty (30) calendar days in advance of expiration of the insurance when applicable. All insurance certificates shall be received and approved by City before Contractor will be allowed to commence or continue work; and

- h) Notice of Accident (occurrence) and notice of claim shall be given to the insurance company and the Contract Administrator as soon as practicable after notice to the insured of any incident (occurrence) or claim.

The obligations of Contractor pursuant to this Section shall survive expiration or termination of this Agreement.

Failure to comply with any term of this Section is a breach of this Agreement and may result in termination by City of this Agreement at City's option.

**36. INDEMNITY:**

Contractor shall indemnify and hold the City and its officials, officers, employees, and agents harmless from all claims, losses, expenses, and damages, including, but not limited to, attorneys' fees and litigation costs at trial and appellate levels, for personal injury, sickness, disease, death, and real property damage, and personal property damages that may arise or arise solely from errors, omissions, negligent acts, recklessness, wrongful acts, or gross negligence of the Contractor or its employees, subcontractors, or agents during the performance of services under this Agreement. For purposes of compliance with Florida law, Contractor acknowledges that this provision shall be deemed a part of the specifications and the procurement documents for the work and services. The maximum monetary limit of indemnification under this section and other indemnifications contained in this Agreement is five million dollars (\$5,000,000) per occurrence, which the Parties agree bears a commercially reasonable relationship to the Agreement and the scope of work and services under this Agreement. This indemnification obligation remains separate and apart from the Contractor's obligation to obtain and maintain specified insurance coverages throughout the term of this Agreement. This paragraph survives expiration and termination of this Agreement, and nothing in this paragraph or this Agreement shall be considered or construed as a waiver of the City's sovereign immunity protections, including without limitation, those set forth in Section 768.28, Florida Statutes.

**37. OWNERSHIP AND RISK OF LOSS:**

Title and risk of loss to Solid Waste, Program Recyclable Materials, Yard Waste, and Program Household Hazardous Waste and Electronics shall pass to Contractor when placed in Contractor's Collection vehicle.

**38. SEVERABILITY:**

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

**39. ATTORNEY'S FEES, VENUE, AND CHOICE OF LAWS:**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Regardless of anything herein to the contrary, the sole and exclusive venue for any litigation arising out of or concerning this Agreement shall be in Orange County, Florida. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO A TRIAL BY JURY. In the event any litigation or lawsuit is filed regarding this Agreement, the Parties agree that they shall be responsible for their own attorneys' fees regarding same except as otherwise set forth in this Agreement (i.e., indemnification, public records lawsuit).

**40. MOST FAVORED NATIONS:**

If during the term of this Agreement, Contractor enters into or amends a contract with another municipal customer in Orange County, Florida providing each of the following: (i) an initial term at least as long as the initial term of this Agreement, (ii) uninterrupted service, (iii) Collection and Disposal of a volume of Solid Waste at least equal to the volume of solid waste under this Agreement, for lower than rates per this Agreement, then the City and the Contractor shall meet to negotiate any applicable rates of such municipal customer per request of the City.

**41. NOTICES:**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. Notwithstanding anything contained herein to the contrary, any notice of default under this agreement must be both (i) mailed by Certified Mail, Return Receipt Requested and (ii) faxed to the alleged defaulting party to constitute proper notice hereunder. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) calendar days' notice to the other party in the manner set forth herein.

If to the City, at:

City of Belle Isle  
City Manager  
1600 Nela Ave  
Belle Isle, Florida 32809

If to the Contractor at: \_\_\_\_\_  
\_\_\_\_\_

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

**42. DISCRIMINATION PROHIBITED:**

Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, gender, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, gender, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**43. NO CONTINGENT FEES:**

Contractor warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate this Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**44. CONFLICT OF INTEREST:**

Contractor agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, corporation, or governmental unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with City. Contractor agrees that it will neither take any action nor engage in any conduct that would cause any City employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government. In the event that Contractor causes or in any way promotes or encourages a City officer, employee, or agent to violate Chapter 112, Florida Statutes, City shall have the right to terminate this Agreement.

**45. SUBCONTRACTORS:**

In the event that Contractor, during the course of the services under this Agreement, requires the services of any subcontractors or other professional associates in connection with the services covered by this Agreement, Contractor must first secure the prior written approval of City. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, Contractor shall remain fully responsible for the services of subcontractors or other professional associates. Notwithstanding the preceding, City reserves the right to accept the Contractor's use and selection of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to properly perform under this Agreement. Should a subcontractor fail to perform as required by this Agreement and it becomes necessary to replace the subcontractor, the Contractor shall promptly do so, subject to acceptance of the new subcontractor by the City.

**46. ALL PRIOR AGREEMENTS SUPERSEDED:**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document or the RFP relating thereto. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**47. MODIFICATIONS, AMENDMENTS, OR ALTERATIONS:**

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

**48. INDEPENDENT CONTRACTOR:**

It is agreed that nothing herein is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the Parties or as constituting Contractor (including its officers, employees, and agents) as an agent, representative, or employee of City for any purpose, or in any manner, whatsoever. Contractor is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

**49. EMPLOYEE STATUS:**

Persons employed by Contractor in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to City's officers and employees either by operation of law or by City.

**50. PUBLIC RECORDS LAW:**

Contractor acknowledges and agrees that the City is a public entity that is subject to Florida's Public Records Act (Chapter 119, Florida Statutes) and as such, records in Contractor or City's control and possession generated or received concerning the services performed under this Agreement are subject to public inspection pursuant to Chapter 119, Florida Statutes, unless there is an applicable exemption or confidential provision under state law. Records, documents, computerized information and programs, e-mails, electronic files, memos, drawing, audio or video tapes, photographs, or other records of Contractor regardless of form are subject to Chapter 119, Florida Statutes, and applicable retention schedules, and may not be destroyed without the specific written approval of the City's Clerk. While in the possession and control of Contractor, at Contractor's expense, all public records shall be secured, maintained, preserved, and retained in the manner specified and pursuant to the Florida Public Records Act and Contractor must comply with all "Contractor" provisions of Section 119.0701(2), Florida Statutes, and further Contractor shall allow inspection of such records in accordance with the Public Records Act. Contractor hereby indemnifies and holds harmless the City concerning any claims, damages, suits, judgments, losses, expenses, and penalties arising out of or concerning Contractor's violation of the Public Records Act or this provision, including for attorneys' fees and costs at all trial and appellate levels. **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Yolanda Quiceno, City Clerk, 1600 Nela Avenue, Belle Isle, Florida 32809; Telephone (407) 851-7730; e-mail [yquiceno@belleislefl.gov](mailto:yquiceno@belleislefl.gov).** This Section shall survive expiration and termination of this Agreement.

**51. SOVEREIGN IMMUNITY:**

Nothing contained in this Agreement or any record or communication arising out of or relating to this Agreement shall be considered or deemed a waiver of the City's sovereign immunity protections or any other defenses or immunities afforded under law to the City and its officials, employees, and agents, including those set forth in Section 768.28, Florida Statutes.

**52. RIGHTS AT LAW RETAINED AND NON-WAIVER:**

The rights and remedies of the City provided for in this Agreement are in addition and supplemental to any other rights and remedies provided by law. Additionally, any failure by the City to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and the City may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

**53. ARREARS:**

The Contractor shall not pledge the City's credit or make it a guarantor of payment or

surety for any contract, debt, obligation, judgment, lien, or any of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**54. EXPRESS WAIVER OF CONSEQUENTIAL DAMAGES:**

Accept as provided for in any other provisions of this Agreement, in no event shall either party be liable for any indirect, incidental, special or consequential or delay damages, including loss of profits, loss of revenue, or loss of use, or cost of coverage incurred by Contractor or any third parties arising out of this Agreement and/or concerning the performance of services under this Agreement.

**55. NO LIENS.**

Contractor acknowledges and agrees that the City is a Florida municipality, and as such, the City's public property and various work site(s) involved are not subject to construction or mechanic's liens pursuant to Chapter 713, Florida Statutes, and any other liens. Contractor and its subcontractors shall not file or record claims of lien or any other liens against any project or property owned by the City. Contractor hereby agrees to indemnify, defend, and hold the City harmless from all liens filed by the Contractor and its subcontractors and all others claiming through Contractor against any project, work, or property owned by the City, including for the City's attorneys' fees and costs.

**56. PUBLIC ENTITTY CRIME:**

Any Person or affiliate, as defined in 287.133, Florida Statutes, shall not be allowed to contract with the City, nor be allowed to enter into a subcontract for work on this Agreement, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date this Agreement was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date this Agreement was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation. Any Agreement with the CITY obtained in violation of this Section shall be subject to termination for cause. A contractor or subcontractor who obtains a subcontract in violation of this Section shall be removed from the Project and promptly replaced by a contractor or subcontractor acceptable to the City.

**57. HEADINGS:**

The headings of the Sections or Subsections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions

contained in such Sections or Subsections.

**58. NON-APPROPRIATION/NO PLEDGE:**

Regardless of anything to the contrary contained in this Agreement, the City's payment and performance of obligations under this Agreement for each and every fiscal year of the City beyond the fiscal year when this Agreement is executed shall be subject to discretionary annual appropriation by the City's City Council of funds therefore. When sufficient funds are not appropriated or otherwise made available to support the continuation of payment and performance in a subsequent fiscal period, this Agreement shall be deemed terminated on the last day of the fiscal period for which appropriations were made or at such other time as the City may determine, without further cost, penalty, or obligation to the City; provided however, Contractor will be paid for services rendered prior to termination of this Agreement. In no event shall any obligation under this Agreement result in, be or constitute: (i) a general obligation or indebtedness of the City within the meaning of the Constitution of the State of Florida, the City's charter and ordinances or any other applicable laws, (ii) a pledge of ad valorem taxes or taxing power, non-ad valorem revenue or any other revenue source of the City, or (iii) a lien on any real or personal property of the City.

**59. FALSE CLAIMS:**

If Contractor is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentations of fact or fraud on the part of the Contractor, Contractor shall be liable to the City for an amount equal to such unsupported part of the claim in addition to all costs to the City attributable to the cost of reviewing said part of Contractor's claim. The City and Contractor acknowledge that the "Florida False Claims Act" provides for civil penalties of not more than \$10,000 plus remedies for obtaining treble damages against contractors or persons causing or assisting in causing Florida governments to pay claims that are false when money or property is obtained from a Florida government by reason of a false claim. Contractor agrees to be bound by the provisions of the Florida False Claims Act for purposes of this Agreement and the services performed hereunder.

**60. ELIGIBLE DISASTER DEBRIS:**

Contractor and City understand and agree that also, in the event of a hurricane, tornado, major storm, natural disaster, Contractor shall have no obligation under this Agreement to Collect any Eligible Disaster Debris resulting therefrom, except as set forth in Agreement.

**61. ASSIGNMENT:**

This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the Parties hereto without the prior written

consent of the other party and in such cases only by a document of equal dignity herewith.

EFFECTIVE AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

**City of Belle Isle, a Florida municipal corporation**

\_\_\_\_\_  
Nicholas Fouraker, Mayor

Attest: \_\_\_\_\_  
Yolanda Quiceno, City Clerk

Date: \_\_\_\_\_

CONTRACTOR

**JJ's Waste and Recycling, LLC**

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_