

FIRST AMENDMENT TO THE FRANCHISE AGREEMENT
Between
VILLAGE OF BISCAYNE PARK
And
GREAT WASTE AND RECYCLING SERVICE, LLC.

This First Amendment to the Agreement between the **VILLAGE OF BISCAYNE PARK** (“Village”) and **GREAT WASTE AND RECYCLING SERVICE, LLC**, (the “Contractor”) executed this _____ day of June 2022 is made a part of the original Agreement (“Agreement”) between the Village and the Contractor, a copy of which is attached hereto as Attachment “A”. The Village and the Contractor hereby agree as follows:

1. **ADJUSTMENT OF RATES.** Pursuant so Section 8(A) of the Agreement, effective July 1, 2022, the Village agrees to accept the Contractor’s request of a CPI price adjustment to the schedule of charges reflected in Attachment “C” of the original Agreement to an increase of four and six tenths percent (4.6%).
2. **FUEL SURCHARGE:** Section 8 of the Agreement titled “Rates for Contractor's Services,” is hereby amended to include a new subsection (C) as set forth below:

(C) Equitable Adjustment/Fuel Surcharge. As a result of extreme or unforeseen volatility in fuel prices, the Village may, in its sole discretion, permit an equitable adjustment in the compensation paid to the Contractor upon the Contractor’s request, provided the following criteria are satisfied:

- i. the volatility is due to causes wholly beyond the Contractor’s control, and not due to any acts or omission of Contractor;
- ii. the volatility affects the marketplace or industry, not just the Contractor’s source of supply;
- iii. the effect on pricing or availability of supply is substantial (effect on pricing must exceed the Contract price by at least 10%); and
- iv. the volatility so affects the Contractor that continued performance of the contract would result in substantial loss. Any adjustment shall require irrefutable written documentation submitted to the Village Manager.

The maximum equitable adjustment permitted under this subsection shall be a five percent (5%) fuel surcharge.

The Contractor may not request, and shall not be entitled to, the fuel surcharge described herein in the event that fuel prices fall below the January 2022 diesel average of \$3.72 per gallon according to the U.S. Energy Information Administration, East Coast (PADD 1) Gasoline and Diesel Retail Price.

The Contractor’s entitlement to, and the amount of, the fuel surcharge will be reviewed quarterly, and if necessary, adjusted in accordance with the aforementioned index.

Village of Biscayne Park

3. **FRANCHISE FEE.** The Parties agrees to waive the franchise fee set forth in Section 6 of the Agreement solely for the fiscal year beginning October 1, 2022 and ending on September 30, 2023.

4. **OTHER PROVISIONS REMAIN IN EFFECT.** Except as specifically modified herein, all terms and conditions of the original Agreement between the parties with an effective date of July 1, 2021, shall remain in full force and effect.

5. **CONFLICTING PROVISIONS.** The terms, statements, requirements, or provisions contained in this First Amendment shall prevail and be given superior effect and priority over any conflicting or inconsistent terms, statements, requirements or provisions contained in any other document or attachment, including but not limited to Attachment "A".

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date mentioned above.

WITNESS:

GREAT WASTE AND RECYCLING SERVICES, LLC.

Signature

Carlo Piccinona, Managing Member

Print Name

ATTEST:

VILLAGE OF BISCAYNE PARK

BY: _____
Shantay J. Bingham, Village Clerk

BY: _____
Mario Diaz, Village Manager

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

BY: _____
Edward A. Dion, Village Attorney

**Attachment “A”
Agreement**

FRANCHISE AGREEMENT
Between
VILLAGE OF BISCAYNE PARK
And
GREAT WASTE AND RECYCLING SERVICE, LLC.

THIS FRANCHISE AGREEMENT for solid waste and recycling collections and disposal services (“Agreement”) is made and entered into on this ____ day of June, 2021 (“Execution Date”), by and between the **VILLAGE OF BISCAYNE PARK**, Florida, a municipal corporation of the State of Florida (the “Village”) and **GREAT WASTE AND RECYCLING SERVICE, LLC**, a Florida limited liability company (the “Contractor”) (collectively, the “Parties”), whose Tax ID is 45-2479744.

RECITALS

WHEREAS, on April 30, 2021, the Village issued Request for Proposal (RFP) 2021-002 “Solid Waste Collection Services” (“RFP”); and

WHEREAS, the Contractor submitted a proposal in response to the Village’s RFP; and

WHEREAS, the Village has relied upon the proposal and other information provided by Contractor concerning the Contractor’s experience and ability to provide Services to the Village; and

WHEREAS, on June 10, 2021, the Village Commission by Resolution No. R2021-35, approved the ranking of the proposers and approved an award to Contractor, subject to the terms and conditions contained in this Agreement; and

WHEREAS, the Commission finds that granting an exclusive franchise to the Contractor, subject to the terms and conditions contained in this Agreement, is in the public interest and will protect the public health, safety, and welfare; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained herein, including to be bound hereby, the Parties to this Agreement do agree for themselves, their successors and assigns that they shall be bound by and shall strictly comply with the following provisions of this Agreement:

1. **RECITALS.** The Recitals set forth above are hereby incorporated into this Agreement and made a part hereof.
2. **INCORPORATION OF DOCUMENTS.** The following documents are hereby incorporated by reference and made part of this Agreement (“Contract Documents”):
 - (i) **Specification and Proposal Documents** prepared by the Village for Solid Waste Collection Services, RFP No. 2021-002, and all addenda, attached hereto as Attachment “A” and incorporated herein by reference.
 - (ii) **Response to RFP No. 2021-002** prepared by Contractor, a copy of which is attached hereto as Attachment “B” and incorporated herein by reference.

(iii) **Rate Structure** prepared by the Parties, a copy of which is attached hereto as Attachment “C” and incorporated herein by reference.

(iv) **Affidavits** executed by Contractor and attached hereto as Composite Attachment “D” and incorporated herein by reference.

3. **TERM.** The term of this Agreement shall be for seven (7) consecutive years, commencing July 1, 2021 (“Commencement Date”), through June 30, 2028, subject to the provisions for termination as set forth in Section 13.

Thereafter, upon mutual agreement of the parties, the Parties may elect to renew the Agreement for three (3) additional one (1) year renewal terms. The Village has the right, but not an obligation, to negotiate additional renewal terms with the Contractor in addition to those already set forth herein.

4. **SERVICES.** Contractor shall provide the services as set forth in the Contract Documents, and more particularly set forth in the Scope of Services of Attachment “A” (“Services”).

Contractor shall perform the Services under the general direction of the Village and shall furnish all labor, materials, supplies, equipment, supervision and services necessary for and incident to the performance of the Services, except as otherwise noted in the specifications. By signing this Agreement, the Contractor represents that it thoroughly reviewed the Contract Documents incorporated into this Agreement and that it accepts the Services and the conditions under which the Services are to be performed.

5. **FRANCHISE.** During the term of the Agreement, subject to the conditions and limitations contained herein, the Contractor is hereby granted an exclusive franchise to provide Services in the Village. The Contractor shall have the sole right to provide the Services in the Village. The Contractor shall have the sole responsibility for providing these Services in compliance with the requirements set forth in this Agreement. Contractor is authorized by Village to enter in, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the Village (“Public Roads”) for the purposes of collecting the garbage, trash, recyclables, and other refuse of the residents, inhabitants, businesses, and other entities existing within the municipal corporate limits of the Village, Miami Dade County, Florida, or as directed in conformance with the Charter and Ordinances of the Village and other applicable law.

6. **FRANCHISE FEE.** In consideration for the exclusive franchise described in Section 5, Contractor agrees to pay an eleven percent (11%) Franchise Fee to the Village as reflected in the Rate Structure attached hereto as Attachment “B”. The aforesaid payment shall be made to the Village in the following manner:

The Village shall remit payment to the Contractor the sum of money equal to the Village's gross billing to resident per unit for solid waste collection services on a monthly basis, due on or before the 15th day of the following month.

Following payment to the Contractor of said monthly invoice by the Village, the Village will submit an invoice to the Contractor for payment of the Franchise Fee. The Contractor shall remit payment to the Village for the Franchise Fee within thirty (30) days of receipt of the invoice.

7. **QUALIFICATIONS.** Contractor and the individual executing this Agreement on behalf of the Contractor warrant to the Village that the Contractor is a Florida limited liability company authorized to do business in the State of Florida, is in good standing and that the Contractor possesses all of the required licenses and certificates of competency required by the State of Florida and Miami-Dade County to perform the Services herein described.

8. **RATES FOR CONTRACTOR'S SERVICES.** The rates set forth in the Rate Schedule, attached hereto as Attachment "C" are the maximum amounts that shall be charged for any of the Services provided by the Contractor pursuant to the Agreement. The Contractor acknowledges and agrees that the rates are inclusive of mobilization, demobilization, labor, permits, materials, equipment, subcontractors, insurance, disposal costs, profit and any other costs to provide the Services as described in the Contract Documents. The rates shall be applied uniformly to all customers receiving Services from the Contractor within the Village during the term of the Agreement. Contractor shall utilize the rates in Attachment "C", and no others, when billing its customers or the Village.
 - A. Rate Adjustments. Pricing shall remain firm during the first year of the Agreement. Beginning on the first anniversary of the Commencement Date of the Agreement and for each year thereafter, the Contractor may request a price adjustment no greater than the Unadjusted Percent Change of the Garbage and Trash Collection expenditure category in the table for the Consumer Price Index for All Urban Consumers (CPI-U) for the prior 12 months from U.S. Bureau of Labor Statistics. Contractor must make the request for a price adjustment at least three (3) months prior to the anniversary of the then-current contract year. The Village Manager, in his/her sole discretion, has the right to approve or deny a request for price adjustment. Price adjustments shall be made effective through written amendment to this Agreement signed by both parties.
 - i. The Village reserves the right to negotiate lower pricing for the additional term(s) based on market research information or other factors that influence price. The Village reserves the right to request any reduction in pricing for the additional term(s) based on the downward movement of the applicable index. Any proposed price adjustment requested by the Village pursuant to this Section 8(A)(i) shall be made effective through mutual agreement of the parties, memorialized by a written amendment to this Agreement, signed by both parties.

- ii. The Village reserves the right to reject any price adjustments submitted by the Vendor and/or to not exercise any otherwise available option period based on the proposed price adjustments. Any continuation of the contract beyond the initial period, and any option subsequently exercised shall be upon mutual agreement of the parties. Renewals shall be exercised only when such continuation is clearly in the best interest of the Village.

B. Billing Procedures. On the first day of each month, the Contract payment(s) for Residential Solid Waste Collection, Yard Trash Collection and Recycling shall be adjusted to correspond with existing, or new homes and the demolition of old homes obtained from the Village's records. Any new unit shall be considered to be occupied when a certificate of occupancy has been issued. Proof of demolition shall be determined by demolition permits issued by the Building Department. Residential unit numbers will be provided to the Contractor on the first of every month for billing of the previous month. The Village shall bill each residential service customer for services rendered in accordance with the applicable provisions of the Village's Code of Ordinances, except for Special Pick-ups as provided for in Section 3.3.8 of the Village's RFP, wherein Contractor will bill the customer directly.

9. **DISPOSAL OBLIGATION.** All garbage collected will be delivered to a permitted solid waste disposal facility operating in compliance with applicable federal, state, and local laws. The Contractor will ensure it only delivers garbage to a disposal facility that is operating and continues to operate in compliance with all applicable laws and regulations. Before disposal, all garbage collected from residential properties in the Village will be weighed and recorded. The Contractor will provide the Village with a monthly tonnage report that is to be delivered to the Village's Project Manager within ten days of the end of the month for which the data was collected. The Contractor will maintain, for a period of five (5) years, copies of weight tickets, which are to be made available for Village inspection.
10. **INDEPENDENT CONTRACTOR RELATIONSHIP.** The Contractor is an independent Contractor and shall be treated as such for all purposes. Nothing contained in this Agreement or any action of the parties shall be construed to constitute or to render the Contractor an employee, partner, agent, shareholder, officer or in any other capacity other than as an independent Contractor other than those obligations which have been or shall have been undertaken by the Village. Contractor shall be responsible for any and all of its own expenses in performing its duties as contemplated under this Agreement. The Village shall not be responsible for any expense incurred by the Contractor. The Village shall have no duty to withhold any Federal income taxes or pay Social Security services and that such obligations shall be that of the Contractor, other than those set forth in this Agreement. Contractor shall furnish its own transportation, office and other supplies as it determines necessary in carrying out its duties under this Agreement.
11. **OWNERSHIP OF DOCUMENTS AND EQUIPMENT.** All documents prepared by the Contractor pursuant to this Agreement and related Services to this Agreement are intended and represented for the ownership of the Village only. Any other use by Contractor or other

parties shall be approved in writing by the Village. If requested, Contractor shall deliver the documents to the Village within fifteen (15) calendar days.

12. **INSURANCE.** Contractor shall, at its sole cost and expense, during the period of any work being performed under this Agreement, procure and maintain the following minimum insurance coverage to protect the Village and Contractor against all loss, claims, damage and liabilities caused by Contractor, its agents or employees, as indicated below:

A. **Comprehensive General Liability Insurance.** Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per person, Two Million Dollars (\$2,000,000.00) per occurrence for Bodily Injury Liability and Property Damage Liability. Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and shall specifically include the following with minimum limits not less than those required for

Bodily Injury Liability and Property Damage Liability:

- Premises and Operation;
- Independent Contractors;
- Products and/or Completed Operations Hazard;
- Broad Form Property Damage;
- Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement;
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

The Village shall be named as an additional insured on the above-referenced policies.

B. **Automobile Liability.** Automobile Liability insurance covering all owned, non-owned, and hired vehicles used in connection with the Services with minimum limits of One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000) per occurrence. for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office.

Before starting the Services, the Contractor will file and make sure that all certificates of insurance required by this document and by the Contract are in the Village's possession. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the Village by certified mail.

The Village shall be named as an additional insured on the above-referenced policies.

- C. Worker's Compensation Insurance. Worker's Compensation Insurance as required by Florida Statute 440. Proposer agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment. Furthermore, should the Proposer be exempt from this Statute, the Proposer and each employee shall hold the Village harmless from any injury incurred during performance of the Contract. The exempt Proposer shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.
- D. Cancellation and Re-Insurance. If any insurance should be cancelled or changed by the insurance company or should any insurance expire during the period of this contract, the Contractor shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain coverage during the life of this Contract. All deductibles must be declared by the Vendor and must be approved by the Village. At the option of the Village, either the Vendor shall eliminate or reduce such deductible or the Vendor shall procure a Bond, in a form satisfactory to the Village, covering the same.

Insurance required of the Contractor shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Village. Such insurance shall not diminish Contractor's indemnification and obligations hereunder. The insurance policy shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the Village with a minimum A.M. Best rating of A-Excellent. Before any work under this Agreement is performed, and at any time upon request, Contractor shall furnish to the Village certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the Village named as additional insured. All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the Village Manager or his designee. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Village. Contractor shall also require and ensure that each of its sub-Contractors providing services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein. **ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE VILLAGE.**

13. TERMINATION AND REMEDIES FOR BREACH.

- A. Termination for Cause. If, through any cause within its reasonable control, the Contractor shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, including but not limited to the following:
- i. Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
 - ii. Contractor repeatedly fails to make prompt payments to Sub-Contractors or for labor, materials or equipment,

- iii. Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or
- iv. if Contractor disregards the authority of the Village,

the Village may, without prejudice to any other right or remedy terminate the services of the Contractor for cause.

B. Prior to the exercise of its option to terminate for cause, the Village shall notify the Contractor of its violation of the particular terms of the Agreement and grant Contractor ten (10) days to cure such default. If the default remains uncured after ten (10) days the Village may terminate this Agreement, and the Village shall take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Services by whatever method they may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Services are finished. If the unpaid balance of the amounts due to pursuant to the Agreement Contract Price exceeds the direct and indirect costs of completing the Services, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Village. Such costs incurred by the Village will be determined by the Village and incorporated into a written amendment to the Agreement. If after termination of the Contractor under this Section, it is determined by a court of competent jurisdiction for any reason that the Contractor was not in default, the rights and obligations of the Village and the Contractor shall be the same as if the termination had been issued pursuant to this Agreement.

- (i) In the event of termination, all finished and unfinished documents, data and other work product prepared by Contractor shall be delivered to the Village and the Village will only be responsible for paying the Contractor for Services satisfactorily performed prior to the date of termination. Under no circumstances will the Village be responsible for monthly service charges for the remaining, unexpired portion of the then existing term.
- (ii) Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the Village for damages sustained by it by virtue of a breach of the Agreement by Contractor and the Village may reasonably withhold payment to Contractor for the purposes of set-off until such time as the exact amount of damages due the Village from the Contractor is determined.

C. Termination for Convenience of Village. The Village may, for its convenience and without cause terminate the Services then remaining to be performed by giving Contractor thirty (30) days written notice. In the event of such a termination without cause, the Contractor shall be compensated for all services performed to the Village's satisfaction and prior to termination. Upon receipt of the notice of termination for convenience, Contractor shall promptly discontinue all work and, to the extent indicated on the notice of termination, shall terminate all outstanding subcontracts and purchase orders as they relate to the terminated portion of the Contract, shall refrain from placing further orders and/or contracting with

subcontractors, and shall complete any continued portions of the work. The terms of Paragraph 1.11A(i) and A(ii) above shall be applicable hereunder.

- D. Termination for Insolvency. The Village also reserves the right to terminate the remaining Services to be performed in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

14. **CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF AGREEMENT.**

- A. Continuation of Contractor's Service. If the Village does not exercise its right to renew this Agreement or if there are no renewal options remaining, the Village will attempt to award a new agreement at least six (6) months prior to the expiration of this Agreement. In the event a new agreement has not been awarded within such time frame, the Contractor shall provide collection services to the Village for an additional ninety (90) calendar days after the expiration of this Agreement, at the then current rates, if the Village requests this service.

- B. Sale or Lease of Contractor's Mechanical Containers. Upon request, the Contractor shall enter into good faith negotiations to allow the Village or the Village's newly selected franchise hauler to purchase or rent for up to ninety (90) days, the mechanical containers (if any) used and owned by the Contractor in the Village. The purchase price and rental fee shall be negotiated but shall not be greater than the fair market value.

- C. Schedule for Termination of Contractor's Services. Prior to the termination of this Agreement, the Contractor shall work with the Village to ensure that there is no interruption or reduction of service when the Contractor ends its services to the Village. If a new franchise agreement is awarded to a franchise hauler other than the Contractor, the Contractor shall coordinate and cooperate with the newly selected franchise hauler, as well as the Village, to minimize any disruptions in the service provided to the public.

- D. Village's Right to Procure New Services. At any time, the Village may issue a request for proposals, or commence negotiations with a hauler other than the Contractor, or take any other step deemed necessary by the Village to obtain the services of a hauler which will collect solid waste for the Village after this Agreement expires or is terminated.

15. **DAMAGE TO PUBLIC OR PRIVATE PROPERTY.** Contractor shall take extra precaution to protect all private and public property while conducting Services. If property (public or private) is damaged while Contractor is performing work specified or is removed for the convenience of the work, it shall be repaired or replaced at the expense of the Contractor in a manner acceptable to the Village. Contractor shall be responsible for applying and securing any permits that may be required to complete such repairs. Such property shall include but not be limited to: existing facilities and all of its components, site amenities,

concrete and/or asphalt surfaces, vehicles, structures, sidewalks, curbs and gutters, driveways, utilities, etc. If the subject property has any pre-existing damage, the Contractor shall notify the Project Manager in writing. Failure to do so shall obligate the Contractor to make repairs per the above section. Contractor must provide protection necessary to prevent damage to property being repaired or replaced.

16. **CONTRACTOR PERSONNEL.** The Contractor shall employ competent and qualified personnel. The Village may require the Contractor to remove an employee from providing Services under this Agreement that the Village deems careless, incompetent, insubordinate or otherwise objectionable. The Contractor is to provide appropriate uniforms with names and proper identifications.

A. **Contractor's Officer(s):** The Contractor shall assign a qualified person or persons to be a supervisor(s) of the operations within the Village. The Contractor shall give the names of the person(s) to the Village. Information regarding the person's experience and qualifications shall also be furnished. Supervisory personnel must be available for consultation with the Village Manager and/or Customers within a reasonable, practicable time after notification of a request for such consultation. The supervisor(s) shall operate a vehicle which is radio always equipped or has direct communication on his/her person such as cell phone, tablets, or any other device allowing immediate and direct communication during Contract hours of operation.

B. **Character of Workers and Equipment:** The Contractor shall ensure that direction and supervision of trash collection, disposal and salvage operation shall be by competent, qualified, and sober personnel employed by the Contractor, and the Contractor shall devote sufficient personnel, time, and attention to the direction of the operation to assure performance satisfactory to the Village. All subcontractors, superintendents, supervisors, and workers employed by the Contractor shall be careful and competent. The Contractor shall also provide uniforms for all its employees which will include reflective safety vest or shirts to be worn at all times while working in the Village.

All employees used by the Contractor during the term of the Contract, or any extension thereof, shall meet qualifications that will permit the Contractor's performance herein to be carried on harmoniously and without delay, and in no event shall employees cause any disturbance, interference or delay to any work or service rendered to the Village or by the Village and in no event shall employees conduct themselves negligently, disorderly, or dishonestly in the due and proper performance of the employees' duties. The Contractor shall ensure that its employees serve the public in a courteous, helpful, safe, and impartial manner.

The Contractor's employees collecting trash shall follow the regular walkway for pedestrians while on private property. No employee shall meddle with property

unrelated to the services. Care shall be taken to prevent damage to property, including mailboxes, shrubs, flowers, and other enhancements. After emptying container(s), Contractor's employees shall return them to the same location from which they are taken, and anything spilled shall be picked-up immediately by such employees with the proper equipment (i.e. brooms, rakes, shovels, etc.).

The Contractor's employees shall follow the proper traffic flow and not encumber nor block traffic unnecessarily. Further, Contractor's drivers shall be monitored by the Contractor for improper and/or reckless driving of equipment on the streets of the Village relative to the safety of its residents and maintenance of street infrastructure as well as proper and prudent driving behaviors generally. The Village does not have curbs along the edge of pavement; therefore, Contractor shall take extra precautions in the operations of its vehicles and equipment to not turn in such a manner as to cause damage to the right-of-way/swale. Any damage caused to the right-of-way/swale area by Contractor shall be repaired or replaced at the expense of the Contractor in a manner acceptable to the Village prior to the final acceptance of the work, as provided by in Section 14.

Only employees covered by the Contractor's Workers' Compensation Policy and liability insurance policies will be authorized to work within the Village. Occasionally, should the need for additional labor personnel arise, the Contractor must notify the Village Manager in writing either via email or facsimile of the routes affected within the Village each day this category of personnel is utilized. Only after notification to the Village Manager in a written request by the Contractor and written approval received from the Village Manager, may the Contractor use any temporary labor force within the Village.

17. **LIQUIDATED DAMAGES.** Upon failure of the Contractor to adhere to the provisions of the Agreement or to fail with respect to any of its duties provided for herein, the Contractor shall pay the sums below to the Village for each calendar day that an incident or condition continues unresolved. These amounts are not penalties but are liquidated damages payable by Contractor to Village for the failure to provide the agreed upon level of service and the cost for the Village to remedy the condition. Village is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract. In case the liquidated damage amount due to Village by Contractor exceeds monies due Contractor from Village, Contractor shall be liable and shall immediately upon demand by Village pay to Village the amount of said excess.

The Contractor will provide the requested container to each household within three (3) working days of receiving notice from the Village. Failure to deliver the container within (3) days will result in liquidated damage of \$100 per day/per household.

If a collection is missed whether the household notifies the Village, or the Village notifies the Contractor, they will return to collect the materials. In all cases, the missed collection will be handled within 24 hours of notification or during the next scheduled work shift, whichever is

sooner. Contractor will be assessed liquidated damages of \$100 for each missed household pick-up that is not resolved within 24 hours after receipt of notice by Contractor.

Failure to clean spillage (oil, hydraulic fluid, garbage, glass, trash, etc.) within 24 hours after receipt of notice by Contractor will result in Contractor being assessed liquidated damages of \$500 per incident per calendar day.

Collections outside the hours specified in this agreement, without prior approval of the Project Manager, shall result in a \$100 assessment per incident per calendar day.

18. **MISSED COLLECTIONS, COMPLAINT HANDLING, AND LIQUIDATED DAMAGES.** If a collection is missed and the Village is notified by a customer, the Village will notify the Contractor who will return to collect the materials. In all cases, the missed collection will be handled within 24 hours of notification or during the next scheduled work shift, whichever is sooner. **The Contractor will be assessed liquidated damages as provided for in Section 17 above for each missed pickup that is not resolved within 24 hours after receipt of notice by Contractor in the form of a deduction from any of the compensation due from the Village.** The Village Manager or designee will be in charge of assessing liquidated damages. The Contractor shall make note of any containers that are not at curbside during the regular collection. The liquidated damage will not be assessed for noted addresses.

- A. In the case of complaints regarding collection service or any related activities, the Contractor will, upon being notified of the complaint, resolve the complaint in a timely manner. The contractor will provide for prompt handling of complaints by maintaining an office staff that will receive, record, and handle such complaints. Such staff will be available during the hours of 7 a.m. until 5 p.m., Monday through Friday. During after hours, weekends, and holidays, the Contractor must make available a local message service to record citizen complaints. The contractor will see to it that its employees serve the public in a courteous, helpful, and impartial manner. The listing and confirmation of resolution of complaints must be submitted to the Village's Project Manager in a format approved by the Village on first day of each month.
- B. The Contractor is expected to maintain a log for all complaints and the actual or planned resolution(s). The report format is to be approved by the Village's Project Manager prior to the award of the contract. The objective of this section is the resolution of 98% of all complaints within 24 hours of the complaint.
- C. In order to streamline customer service/complaint tracking, Contractor shall utilize an automated real-time web-based complaint resolution software system in order to minimize and/or eliminate the need for customer service phone calls. Software shall remain in place for the duration of the Contract. This program shall be accessible by both the Village and the Contractor as well as the general public through the Village's web site. Software shall indicate date and time when the complaint was received, how it was handled and when the issue was resolved. Software must allow both the Village and the Contractor to prepare monthly reports tracking complaints, requests and

compliments. This program shall be utilized for all customer service complaints, compliments and requests, regardless of whether the call was received by the Village or Contractor and shall have capabilities to send automated e-mail responses to the creator of any incidents, complaints, requests, etc. A mobile app that can accomplish all of the preceding requirements will also be acceptable to the Village.

D. Legitimacy of challenged complaints shall be determined on the basis of a joint inspection by the Village Manager, and a representative of the Contractor. Disputes shall be referred to the Village Manager, whose decision shall be final. Additionally, the Village's auditors may communicate directly with the Customer for the purpose of confirming compliance with these stipulations.

19. **PHONE SERVICE.** The Contractor agrees to maintain the following phone number (305) 798-7414 for customer inquiries and the registration of complaints. Contractor will provide to the Village a monthly report of customer complaints. The report shall be given to the Village's Project Manager within ten (10) days of the month end for which the data was collected. At a minimum, the report must contain the address that is the subject of the complaint, the date of the incident, the nature of the complaint, and the ultimate disposition. THE VILLAGE SHALL NOT BE LIABLE FOR INTERRUPTIONS CAUSED BY FAILURE OF EQUIPMENT OR SERVICES, FAILURE OF COMMUNICATIONS, POWER OUTAGES, OR OTHER INTERRUPTION, NOR SHALL THE VILLAGE BE LIABLE FOR ANY PERFORMANCE DEFICIENCIES CAUSED OR CREATED BY THE PHONE LINE TRANSFER.

20. **SAFETY PRACTICES.** The Contractor must maintain and provide evidence to the Village of ongoing employee safety training and practices. The plan, at a minimum, shall include provisions for the proper training in identifying and handling unacceptable hazardous wastes and worker safety practices, which prevent compromised human health, and damage to the environment and private property.

21. **SPILLAGE.** The Contractor shall not litter or cause any spillage to occur upon private premises or the right-of-way where collection occurs. During hauling, all waste shall be containerized, tied, or enclosed so that leaking, spilling, or blowing is prevented. In the event of any spillage caused by the Contractor, the contractor shall promptly clean up all spillage and incident reported to Project Manager whose approval is necessary before closeout.

22. **CARTS.** On or before the Commencement Date of the Agreement, the Contractor shall provide all Residential Service Units as defined in the RFP with an industry standard, 96-gallon lidded, wheeled cart for solid waste. The Village will require labeling of the carts at the Contractor's sole expense. The Contractor acknowledges and agrees that the Village is ultimately the owners of the carts.

A. Any carts that need to be replaced due to damage from collection will be replaced by the Contractor at no cost to the Village or customer. All equipment will bear the name of the Village. All garbage collection equipment will be maintained in good repair and appearance. The Contractor will provide the replacement carts to each household

within three (3) working days of receiving notice from the Village. Failure of the contractor to deliver the container within (3) days will result in liquidated damages of one hundred dollars (\$100.00) per day/per household.

- B. For recycling, the Village has issued customers a green 65-gallon semi-automated wheeled recycling cart for recycling. The Contractor shall assume the responsibility of all existing carts for recycling. The Contractor shall be responsible for the replacement or repair costs of any approved container, lower restraining bar, clean, lids and broken wheels, and faulty collection equipment caused by the negligence of their agents or employees. All containers should be inspected by the Contractor and any missing carts must be reported to the Village prior to the start of this contract.
 - C. Carts shall be emptied and returned to the customer's original placement location. However, the Contractor shall ensure that no carts are left in the roadway or blocking the driveway. Carts shall remain upright with lid closed. Carts shall be left in a neat and orderly manner along the length of the neighborhood block. Carts shall be handled with due care at all times.
 - D. New replacement/additional carts, to be provided by the Contractor shall be a heavy plastic cart, with a minimum rated capacity ninety-six (96) gallons for garbage and sixty-five (65) gallons for recycling having a hinged, tight-fitting lid, and wheels that are designed or intended to be used for semi-automated collection.
 - E. Prior to the Commencement Date the Contractor will assess via survey all residential service units to assure they have recycling carts. A failure of the customer to respond to the survey shall be considered by the Contractor as the residential unit not having a cart. The Village will allow the Contractor to inspect and count the inventory of recycling carts held at the Public Works Facility.
 - F. In the event the Village terminates the Agreement without cause pursuant to Section 13(c), the Village agrees to pay Contractor the prorated depreciated value of the carts for the time remaining on the Agreement. For purposes of calculating the prorated depreciated value, the annual cost of the 96 gallon carts is \$9.28, and the annual cost of the 65 gallon carts is \$8.42.
23. **VEHICLES.** Contractor will keep all equipment in safe operating condition and in proper repair, in a clean, sanitary, and presentable condition. Vehicles must be painted uniformly with the name of the Contractor, the vehicle identification number and Contractor's telephone number printed on each side in letters not less than 9 inches in height. Vehicles are not to interfere unduly with vehicular or pedestrian traffic, vehicles are not to be left standing on streets, and alleys unattended.
- A. No advertising will be permitted on vehicles. All vehicles will be secure, and all precautions taken to prevent the leakage of any fluids or littering of materials collected. All vehicles used for garbage collection will have a fully enclosed metal top. Vehicles will not be overloaded as to scatter refuse, but when refuse is scattered

for any reason, it is the responsibility of the Contractor to immediately pick-up scattered matter.

- B. Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. All collection vehicles shall be no older than 2015 model year vehicles at the commencement of the Contract, and at no time during the duration of the Contract, may any vehicle reach an age of 9 years or greater. For residential collections, equipment shall be of the enclosed loader packer type, and all equipment shall be kept in good repair, appearance, and in a sanitary and clean condition at all times. The Contractor shall have available reserve equipment, which, can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. A list of the Contractor's equipment shall be given to the Village at the time of each annual audit.
- C. In order to track all vehicles in real-time and record movements throughout the Village, all solid waste, yard waste and recycling vehicles shall be equipped with Global Positioning Systems (GPS) vehicle tracking technology. The Village upon request shall have access to this tracking system and/or the Contractor will have to provide the Village the information immediately upon request.
- D. The Village will allow for older vehicles within the Contractor's fleet while the Contractor obtains the required trucks for this Agreement if needed.

24. **FLEET, MAINTENANCE AND OFFICE FACILITIES.** The Contractor shall establish and maintain an office, a fleet yard and a fleet maintenance facility within Miami- Dade County, or adjacent county, by the commencement date of the Contract. The operating hours of the office shall be the same as the Village of Biscayne Park, 9:00 A. M. until 5:00 P. M., Monday through Friday. The office personnel must have the capabilities to communicate effectively with the general public, have either a local phone number or a toll-free number for residents of the Village of Biscayne Park. Said office shall be equipped with sufficient personnel and telephones to receive and handle complaints, requests and concerns of the residents/customers via telephone and web-based customer service software program that is real-time and transparent between the Village and the Contractor. The office may be closed during the same holidays as the Village of Biscayne Park. The Contractor shall maintain sufficient supplies in local storage for a minimum of a 24-hour turn- around on recycling containers, etc., when required for emergency replacement, new customers, or unexpected emergencies. The Contractor will be responsible to ensure the local office meets all American Disabilities Act (ADA) requirements.

25. **SUSPENSION OF SOLID WASTE AND RECYCLING COLLECTION.** Sanitation collection service may be suspended by the Village due to extreme weather, declared emergencies by the Village, or if wind speeds exceed 35 miles per hour. The Contractor will stop all work during severe weather when so directed by the Village in writing. The Contractor will complete/resume the work as soon as the authority has been granted to proceed. If collection is suspended, the Contractor will perform the collection the next day.

Pickup days will not be reduced by holidays but may be combined or moved to the following day. Bulk Pickups normally scheduled on holidays will be rescheduled on the next weekday. The following is a list of holidays:

- a. Christmas Day

26. **DISASTER SERVICES.** In the event of a disaster such as a hurricane, the Contractor will be expected to continue with collection services until the Village declares a “State of Emergency” or until the Project Manager and Contractor agree that service shall be suspended due to unsafe conditions such as winds reaching sustained 35 mph. The Contractor will resume and continue the collection schedule as soon as safely possible as determined by the Project Manager. Due to the magnitude of the disaster, if the Contractor is called upon to assist in debris clearing or other duties under a declared “State of Emergency” (FEMA status), the Contractor may be eligible for additional compensation underrates and adjustments. No additional compensation should be expected for general windstorms, poor weather conditions, or unusual events outside the “State of Emergency” declaration. The Village will pay the Contractor directly during disaster debris pick ups.

Notwithstanding the foregoing, this Agreement does not give the Contractor the right to collect disaster debris within the public rights- of-way. Nothing herein shall require the Village to utilize the services of Contractor, or prevent the Village from hiring another vendor to collect disaster debris. Among other things, the Village may utilize a disaster debris contract in accordance with the Village's emergency management plan or the Village may utilize the Village personnel and equipment for the collection of disaster debris.

27. **RECORDS AND REPORTING.** The Contractor shall keep accurate monthly records of the number of customers served and the monthly tonnage of garbage, recycling, yard waste, bulk and white goods handled and shall provide a monthly report to the Village Manager or their designated agent including invoices. The monthly reports shall also include a summary of all complaints received and resolutions of such during the reporting period. Reports should include, but not be limited to such items as new collection locations, collection locations served which do not show on the billing register, locations of new or replacement containers placed by the contractor performing curbside collection. The required reports shall be filed not later than ten (10) calendar days after the last day of the preceding month and included as part of the monthly invoice. The final report format will be approved by the Village Manager or their designated agent. The Village reserves the right to modify the report format and require more or different information throughout the term of the contract. The Village reserves the right to terminate the awarded contract upon the contractor’s repetitive failure to comply with record keeping.
28. **COMPANY REPRESENTATIVE.** There must be an agent or supervisor on call who can be reached by phone in case equipment problems arise after delivery and afterhours. A dedicated servicing representative must be available to the Village on an on-going basis.

29. **CONFIDENTIAL INFORMATION.** The Contractor shall not, either during the term of this Agreement or any time for a period of ten (10) years subsequent to that date upon which the Contractor shall leave the employment of the Village for any reason whatsoever, disclose to any person or entity, other than in the discharge of the duties of the Contractor under this Agreement, any information which the Village designates in writing as "confidential." As a violation by the Contractor of the provisions of this Section could cause irreparable injury to the Village and there is no adequate remedy at law for such violation, the Village shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin the Contractor from violating such provisions.
30. **JURISDICTION, VENUE AND WAIVER OF JURY TRIAL.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the Eleventh Judicial Circuit in and for Miami Dade County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state court, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the Village to file a lawsuit to enforce any term or provision under this Agreement and the Village is the prevailing party then the Village shall be entitled to its costs and attorney's fees at the pretrial, trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND VILLAGE HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the Village pursuant to Section 768.28, Florida Statutes.
31. **NOTICES.** All notices and other communications required or permitted to be given under this Agreement by either party to the other shall be in writing and shall be sent (except as otherwise provided herein) (i) by certified or registered mail, first class postage prepaid, return receipt requested, (ii) by guaranteed overnight delivery by a nationally recognized courier service, or (iii) by facsimile with confirmation receipt (with a copy simultaneously sent by certified or registered mail, first class postage prepaid, return receipt requested or by overnight delivery by traditionally recognized courier service), addressed to such party as follows:

If to the Village:	Village of Biscayne Park Attn: Mario Diaz 600 N.E. 114th Street Biscayne Park, Florida 33161 Email: VillageManager@biscayneparkfl.gov	With a copy to: Ed Dion, Village Attorney 600 N.E. 114th Street Biscayne Park, Florida 33161
If to the Contractor:	Great Waste and Recycling Services, LLC. Carlo Piccinona	With a copy to: Joseph E. Altschul, Esq. 1911 NW 150th Ave., # 203

Village of Biscayne Park

	3051 NW 129 Street Opa-Locka, Florida 33054 (954) 496-3540 E-Mail Carlo@Great-waste.com	Pembroke Pines, FL 33028 (954) 556-4821 jea@bellsouth.net
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32. **PUBLIC RECORDS.** The Contractor shall be required to comply with the following requirements under Florida's Public Records Law:

(i) Contractor shall keep and maintain public records required by the Village to perform the service.

(ii) Upon request from the Village, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

(iii) Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Village.

(iv) Contractor shall, upon completion of the contract, transfer, at no cost, to the Village all public records in possession of the Contractor or keep and maintain public records required by the Village to perform the service. If the Contractor transfers all public records to the Village upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided by Contractor to the Village, upon request from the Village, in a format that is compatible with the information technology systems of the Village.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THE CONTRACTOR SHOULD CONTACT THE VILLAGE'S CUSTODIAN OF PUBLIC RECORDS: THE VILLAGE CLERK, ROSEANN PRADO, BY TELEPHONE (305) 899-8000, E-MAIL VILLAGECLERK@BISCAYNEPARKFL.GOV, OR MAIL TO VILLAGE OF BISCAYNE PARK, OFFICE OF THE VILLAGE CLERK, 600 NE 114TH STREET, BISCAYNE PARK, FLORIDA 33161.

33. **COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT SET FORTH IN 29 C.F.R. §5.5(b).** The Contractor is required to comply with the following if this Agreement exceeds \$100,000:

(1) Overtime requirements. No Contractor or subContractor contracting for any part of this Agreement which may require or involve the employment of laborers or mechanics shall

require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subContractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subContractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The Village shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subContractor under any such Agreement or any other Federal Agreement with the same prime Contractor, or any other federally-assisted Agreement subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subContractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Contractor or subContractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subContractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subContractor or lower tier subContractor with the clauses set forth in paragraphs (1) through (4) of this section.”

34. COMPLIANCE WITH THE COPELAND ANTI-KICKBACK ACT

- (1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) Subcontracts. The Contractor or subContractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subContractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subContractor or lower tier subContractor with all of these contract clauses.

- (3) Breach. A breach of the above clauses in this Agreement may be grounds for termination of the Agreement, and for debarment as a Contractor and subContractor as provided in 29 C.F.R. § 5.12.

35. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.** Agreements in excess of \$150,000 shall agree to comply with all applicable standards, orders pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

A. Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the Village and understands and agrees that Village will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

B. Federal Water Pollution Control Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to the Village and understands and agrees that the Village will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

36. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms

Village of Biscayne Park

of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subContractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subContractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

37. **SUSPENSION AND DEBARMENT.** During the performance of this Agreement, the Contractor agrees as follows:

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the Village of Biscayne Park. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Village of Biscayne Park, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

38. **BYRD ANTI-LOBBYING AMENDMENT.** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

39. **PROCUREMENT OF RECOVERED MATERIALS.** In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the Agreement performance schedule; (2) meeting Agreement performance requirements; or (3) at a reasonable price.

40. **AUDIT.** The Contractor shall make available to the Village or its representative all required financial records associated with the Agreement for a period of three (3) years.

41. **NON-DISCRIMINATION.** The Contractor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1984 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Title 1 of the Housing and Community Development

Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248 as amended by Executive Orders 11375 and 12086. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability or other handicap, age, marital/familial status, or status with regard to public assistance.

The Contractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Village setting forth the provisions of this non-discrimination clause. The Contractor agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

42. **CONFLICT OF INTEREST.** The Contractor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1, as amended, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder. The Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly which should conflict in any manner or degree with the performance of Services under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Contractor. The Contractor guarantees that he/she has not offered or given to any member of, delegate to the Congress of the United States, any or part of this contract or to any benefit arising therefrom.

43. **INDEMNIFICATION AND WAIVER OF LIABILITY.** To the fullest extent permitted by law, the Contractor agrees to indemnify and hold-harmless the Village, its agents, representatives, officers, directors, officials and employees from any claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney fees to the extent cause, in whole or in part, by the professional negligence, error or omission of the Contractor or persons employed or utilized by the Contractor in performance of Services under this Agreement.

Contractor shall at all times hereafter indemnify, hold harmless and, at the Village's option, defend or pay for an attorney selected by the Village to defend Village, its agents, representatives, officers, directors, officials and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by the intentional or negligent act of, or omission of Contractor, including those of their employees, agents, servants, or officers, or accruing, resulting from, or directly related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities,

expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against Village by reason of any such claim, cause of action or demand, Contractor shall, upon written notice from Village, resist and defend such lawsuit or proceeding by counsel satisfactory to Village.

The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Village, any sum due Contractor under this Agreement may be retained by Village until all of Village's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by Village. The parties agree that One Hundred Dollars (\$100.00) represents specific consideration to the Contractor for the indemnification set forth in this Agreement.

44. **ACCESS TO RECORDS.** The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide Florida Division of Emergency Management, The Village, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

45. **DHS SEAL, LOGO, AND FLAGS.** The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

46. **COMPLIANCE WITH LAW.** Contractor shall comply with all laws, regulations and ordinances of any federal, state, or local governmental authority having jurisdiction with respect to this Agreement (“Applicable Laws”) and shall obtain and maintain any and all material permits, licenses, approvals and consents necessary for the lawful conduct of the activities contemplated under this Agreement.

47. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

48. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative

Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

49. **NO OBLIGATION BY FEDERAL GOVERNMENT.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
50. **CONTRACT WITH THE ENEMY.** In accordance with 2 C.F.R. 200.215, it is acknowledged that no services under this contract are to be performed outside the United states and its territories nor in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
51. **MINORITY / WOMEN'S / LABOR SURPLUS FIRMS PARTICIPATION:** The Village, in accordance with the requirements as stated in C.F.R. 200.321 encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. If subcontractors are to be let, prime contractor will require compliance by all subcontractors. Prior to a contract award, the contractor shall document efforts to utilize M/WBE firms including what firms were solicited as suppliers and/or subcontractors as applicable and submit this information with their bid submittal. Information regarding certified M/WBE firms can be obtained from:
- Florida Department of Management Services (Office of Supplier Diversity)
 - Florida Department of Transportation
 - Minority Business Development Center
 - Local Government M/DBE programs in many large counties and cities

The contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used by taking the affirmative steps listed in items (1) through (6) below:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

52. **SAFE WORK ENVIRONMENT.** The Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. The Contractor will provide such safety equipment, training and supervision as may be

required by the Village, County, State, and/or Federal Government. The Contractor shall ensure that its subcontracts contain similar safety provisions.

53. **CONFLICTING PROVISIONS.** In the event of a conflict between the Contract Documents or any ambiguity or missing specifications or instructions contained in this Agreement, Request for Proposal 2021-002, and Contractor's Response to Request for Proposal 2021-002, the following priority is established:

- a. This Agreement
- b. The terms and conditions of Request for Proposal 2021-002, and all addendum thereto.
- c. Contractor's Response to Request for Proposal 2021-002, attached hereto as Attachment "B".
- d. Rate Schedule, attached hereto as Attachment "C".
- e. Affidavits/Certifications, attached hereto as Composite Attachment "D".

54. **E-VERIFY.** Florida Statute 448.095 directs all public employers, including municipal governments, to verify the employment eligibility of all new public employees through the U.S. Department of Homeland Security's E-Verify System, and further provides that a public employer may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. Florida Statute 448.095 further provides that if a Contractor enters into a contract with a subcontractor, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

In accordance with Florida Statute 448.095, Contractor is required to verify employee eligibility using the E-Verify system for all existing and new employees hired by Contractor during the contract term. Further, Contractor must also require and maintain the statutorily required affidavit of its subcontractors. It is the responsibility of Contractor to ensure compliance with E-Verify requirements (as applicable). To enroll in E-Verify, employers should visit the E-Verify website (<https://www.e-verify.gov/employers/enrolling-in-e-verify>) and follow the instructions. The Contractor must retain the I-9 Forms for inspection, and provide the attached E-Verify Affidavit, attached hereto as Attachment "D".

55. **MISCELLANEOUS.**

A. **Severability.** In the event any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provisions had been severed and deleted.

B. **Counterparts.** This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes.

C. **Entire Contract.** This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and it shall supersede all previous and

Village of Biscayne Park

contemporaneous oral and written negotiations, commitments, agreements and understandings relating hereto.

D. Amendments. Any modification of this Agreement shall be effective only if in writing and signed by the parties to this Agreement.

E. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

F. Assignment. Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of the Village. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward the Village.

G. Third Party Beneficiaries. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

H. For the term of the Agreement and any mutually agreed extensions, at the option of the Contractor, any public corporation or agency, including any county, city, town, or agency within the State of Florida, may purchase identical items or services at the same price and upon the same terms and conditions of this Agreement. The Village assumes no responsibility for any orders or contracts entered into as a result of this provision.

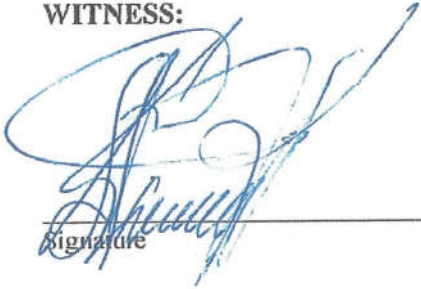
I. Representation of Authority to Contractor/Signatory. The individual signing this Agreement on behalf of GREAT WASTE AND RECYCLING SERVICES, LLC. represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The signatory represents and warrants to the Village that the execution and delivery of this Agreement and the performance of GREAT WASTE AND RECYCLING SERVICES, LLC.'s obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Contractor and enforceable in accordance with its terms.

[Remainder of page intentionally left blank]

Village of Biscayne Park


IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate on the day and year first written above.

WITNESS:



Signature

GREAT WASTE AND RECYCLING SERVICES, LLC.




Carlo Piccinona, Managing Member

SK STEINWARK
Print Name

ATTEST:

VILLAGE OF BISCAYNE PARK

BY: 

Roseann Prado, Village Clerk

BY: 

Mario Diaz, Village Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: 

Edward A. Dion, Village Attorney