

RESOLUTION NO. R-2019-165

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE A SECOND AMENDMENT TO THE AGREEMENT WITH WASTE CONNECTIONS OF FLORIDA, INC., FOR RECYCLABLES PROCESSING SERVICES IN AN ESTIMATED ANNUAL AMOUNT OF \$430,000.00.

WHEREAS, the Department of Public Works, Environmental Services Division requires an agreement with a qualified contractor to provide recyclable processing services Citywide; and

WHEREAS, on May 7, 2014, the City Commission passed and adopted Resolution No. R-2014-111, which authorized the City to enter into an agreement with Progressive Waste Solutions of FL, Inc., f/k/a Waste Services of Florida, Inc., d/b/a Waste Connection of Florida ("Waste Connections"), to provide recyclables processing services, in accordance with Bid F-4365-13-IS, under the same terms and conditions as the initial term for an annual estimated revenue amount of \$226,560.00; and

WHEREAS, on June 6, 2018, the City Commission passed and adopted Resolution No. R-2018-193, which approved and authorized the execution of a First Amendment to the Agreement to allow for an interim contract term and revised compensation in order to allow the City to evaluate its Solid Waste and Recyclable Processing Services; and

WHEREAS, in accordance with the First Amendment to the Agreement, the term will expire on July 3, 2019; and

WHEREAS, the interim agreement was at no cost to the City, but the recyclable processing revenue share (rebate) set forth changed from 35.5% per ton to 0% per ton during this extension period; and

WHEREAS, on October 17, 2018, a Solid Waste Workshop was conducted and the City Commission supported Public Works recommendation to negotiate with Waste Connections for both a solid waste disposal agreement and a recyclable processing services agreement; and

WHEREAS, the Department of Public Works and its Consultant have negotiated a recyclable processing services agreement with Waste Connections that revises the revenue calculations to be paid by Waste Connections to the City based upon the revenue requirements set forth in Exhibit "A" of the Second Amendment entitled Section 6.1.7 Payment Calculation; and

WHEREAS, the proposed Second Amendment to the Agreement also sets forth that the City shall remit payment, if any, due to Waste Connections based upon the calculations

set forth in Exhibit "A" of the attached Second Amendment Agreement; and

WHEREAS, the proposed Second Amendment to the Agreement provides that the term will expire on July 2, 2023 and may be extended for one additional five year term under the same terms and conditions, subject to City Commission approval; and

WHEREAS, Section 38.48 (C)(8) of the Purchasing Ordinance provides that, when the Commission declares by a five-sevenths (5/7ths) affirmative vote that competitive bidding and competitive proposals are not in the best interest of the City, such purchases are exempt from the competitive bidding and competitive proposal requirements; and

WHEREAS, funding for this service has been provided in the FY 2019 budget in the Department of Public Works Budget Account Number 445.520102.53400.531170.000000.000.000.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

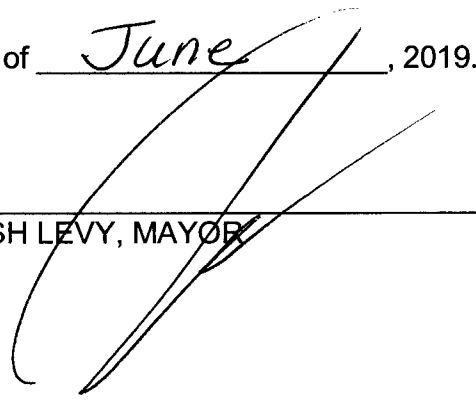
Section 2: That it approves and authorizes the execution, by the appropriate City officials, of the attached Second Amendment to the Recyclables Processing Services Agreement with Waste Connections of Florida, Inc., together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 19 day of June, 2019.

ATTEST:


PATRICIA A. CERNY, MMC, CITY CLERK



JOSH LEVY, MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.



DOUGLAS R. GONZALES, CITY ATTORNEY

**SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF
HOLLYWOOD, FLORIDA AND WASTE CONNECTIONS OF FLORIDA, INC
FOR RECYCLABLES PROCESSING SERVICES**

THIS SECOND AMENDMENT is hereby made and entered into on _____, 2019 (the "Effective Date"), by and between the City of Hollywood, a municipal corporation of the State of Florida ("City") and Waste Connections of Florida, Inc., f/k/a Progressive Waste Solutions of FI, Inc., a Florida Corporation, authorized to do business in the State of Florida ("Contractor").

RECITALS

WHEREAS, on May 8, 2014, the City and Progressive Waste Solutions of FI, Inc. f/k/a Waste Services of Florida, Inc. and now known as Waste Connections of Florida, Inc., entered into an agreement pursuant to Bid No. 4365-13-IS for Progressive Waste Solutions, of FI, Inc. to provide recyclable processing services; and

WHEREAS, on June 6, 2018, the City Commission passed and adopted Resolution No. R-2018-193 which approved and authorized the execution of a First Amendment to the Agreement to allow for an interim contract term and revised compensation in order to allow the City to evaluate its Solid Waste Disposal Services; and

WHEREAS, on _____, 2019, the City Commission passed and adopted Resolution No. R-2019-_____ which approved and authorized the execution of this Second Amendment to the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. That Article II of the Agreement entitled "Term" is amended as follows:

The Term of the Agreement shall be extended from July 31, 2019 and will expire on July 2, 2023. The Agreement may be extended for one additional five year term under the same terms and conditions. Any renewal shall be subject to City Commission approval.

2. That Article IV of the Agreement entitled "Revenue" is amended as follows:

Any and all Revenue from the Contractor shall be calculated and remitted to the City based upon the Revenue requirements set forth in the attached Exhibit "A". The City shall remit any amounts, if any, due to the Vendor based upon the calculations set forth in Exhibit "A."

3. That Section 1.17 entitled "Definitions" shall be amended to include the following:

Contamination means non-recyclable materials found in the Program Recyclables stream, except for de minimis materials often placed with Recyclable Materials such as caps and labels.

4. That Exhibit "A" entitled Scope of Work, Technical Specifications/Scope of Services for Recyclables Processing is amended and restated as more specifically set forth in the attached Exhibit "A".
5. That all other terms and conditions of the May 8, 2014 Agreement shall remain in full force and effect.

IN WITNESS OF THE FOREGOING, the parties have set forth their hands and seals the day and year first written above.

CITY OF HOLLYWOOD, a municipal corporation of the State of Florida.

ATTEST;

By: _____
Josh Levy, Mayor

Patricia A. Cerny, MMC
City Clerk

Approved By: _____
Cintya Ramos, Director
Financial Services

Approved As To Form And Legal Sufficiency for the use and reliance of the City of Hollywood, Florida, only.

Douglas R. Gonzales, City Attorney

Exhibit "A"
Scope of Work
Technical Specifications/Scope of Services For
Recyclables Processing

6.1 Contractor's Recyclables Processing Responsibilities.

6.1.1 Designated Facilities.

- (i) The facility at which the Contractor will receive delivery of the Program Recyclables (Designated Receiving Facility) shall be the Contractor's facility located at 1899 SW 31st Avenue, Pembroke Park, Florida 33009.
- (ii) The facility at which the Contractor will process Program Recyclables (Designated Processing Facility) shall be the Contractor's facility located at 3840 NW 37th Court, Miami, Florida 33142.
- (iii) The Designate Receiving Facility and Designated Processing Facility may be changed only with prior approval by the Contract Administrator.
- (iv) The Contractor shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Receiving Facility and Designated Processing Facility.
- (v) The Contractor shall ensure that the Designated Receiving Facility and Designated Processing Facility are operated at all times in full compliance with all applicable Federal, State and Local laws, regulations, permits, and similar requirements.
- (vi) The City shall have the right, during the Contractor's hours of operation, to inspect both the operating and maintenance practices of the Designated Receiving Facility and Designated Processing Facility. Operating practices shall include but not be limited to: the receipt, separation, processing, loading, storage, and transport of Recyclable reasonably accommodate the City's inspection rights

described herein, provided it does not create a safety hazard.

6.1.2. Materials Acceptance.

- (i) The City shall direct the City's Contract Hauler to deliver all Program Recyclables to the Designated Receiving Facility during the scheduled receiving hours specified in this Contract. Program Recyclables will be delivered Single Stream. The City makes no assurances or guarantees regarding the quantity of Program Recyclables that will be delivered to the Designated Receiving Facility.
- (ii) The Contractor shall accept deliveries of Program Recyclables at the Designated Receiving Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Receiving Facility may be closed on Holidays as defined in this Contract. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (iii) Program Recyclables shall include newspapers (including inserts), corrugated cardboard, mixed paper (including but not limited to brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, and aseptic containers. The City reserves the right to add or remove Recyclable Materials to the list of Program Recyclables upon mutual agreement by the contracting parties.
- (iv) The Designated Receiving Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the facility site to exit from the facility site shall not exceed 20 minutes. Delays caused by equipment failure not due to negligence of the Contractor or other fault of the delivery vehicle shall not be included in the turn-around time computation. The Contractor will provide the City with access to its records to verify vehicle turnaround time within 24 hours' notice.
- (v) The Designated Receiving Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and

recording all incoming Program Recyclables delivery vehicles. Such scales shall be permitted and in compliance with applicable Florida laws. The Contractor shall calibrate and certify scales no less frequently than annually.

- (vi) The Contractor shall weigh all trucks transporting Program Recyclables that enter the Designated Receiving Facility, record such weights separate from all other materials, and generate reports of incoming Program Recyclables as required herein or requested by the City. The Contractor may use tare weights. If the Contractor chooses to do so, all tare weights must be recalibrated at least every 60 calendar days.
- (vii) If a truckload of Program Recyclables delivered to the Designated Receiving Facility contains more than 30 percent Contamination by volume (Excessively Contaminated), the Contractor shall immediately notify the Contract Administrator and document the incident with digital photographs of the load and the truck, including the truck number that delivered the load.
 - a. If the Contract Administrator concurs with the Contractor, then the Contractor shall dispose of the entire load and charge the City the then current Solid Waste Disposal Rate.
 - b. If the Contract Administrator disputes the Contractor's claim, then the Contract Administrator will visit the Designated Receiving Facility to observe the load and make a final determination. If the Contract Administrator concurs with the Contractor, then the Contractor shall dispose of the entire load and charge the City the then current Solid Waste Disposal Rate. If the Contract Administrator determines the load does not contain 30 percent Contamination by volume, then the Contractor shall process the load. The Contract Administrator's determination shall be final.
- (viii) If Hazardous Waste is found within a load of Program Recyclables delivered by the City or its agents to the Designated Receiving Facility, the Contractor shall immediately notify the Contract Administrator and document the incident with digital photographs of the Hazardous Waste and the truck, including the truck number, that delivered the load. The Contractor is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by

the City, provided that the Contractor has adequately documented that such waste was delivered by or on behalf of the City.

- (ix) In the event the Contractor fails, refuses, or is unable to accept Program Recyclables at any time during the term of the Contract, the Contractor will be liable for all hauling, processing, transportation, disposal charges, and any other related costs that may be incurred by the City with respect to recycling and marketing such materials.

6.1.3 Transport, Processing, Marketing, and Disposal

- (i) Upon acceptance of Program Recyclables at the Designated Receiving Facility, the Contractor shall bear all costs associated with processing and transporting Program Recyclables and marketing and transporting Recovered Materials. The Contractor is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue unless otherwise specified in this Contract, resulting from the processing of Program Recyclables.
- (ii) Unless the Contractor has prior permission from the City, the Contractor shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. The Contractor shall not knowingly, or without reasonable assumption, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.

6.14 Record Keeping

- (i) The Contractor shall create, maintain, and make available records as required in this Contract or as required by all applicable local, State, and Federal laws, rules, and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (ii) The Contractor shall maintain records of the amounts of Program Recyclables received at the Designated Receiving Facility. Such records shall be kept separate and apart from all other records maintained by the Contractor.
- (iii) The Contractor shall maintain such records in accordance with generally accepted management principles and practices. The City shall have access to such books, records, documents,

and other evidence for inspection, review, and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, as amended, may have application to records or documents pertaining to this Contract, and Contractor acknowledges that such laws have possible application and agrees to comply with all such laws.

- (iv) The Contractor will maintain and allow access to books, records, data, documents, and reports relating to this Contract for five years following the conclusion or termination of this Contract.

6.1.5 Reporting

- (i) Prior to the 15th calendar day of each month during the term of this Contract, the Contractor shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Receiving Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity.
- (ii) Within 30 days of the end of each Contract Year, the Contractor shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclable delivered to the Designated Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the Contractor shall submit a copy of the annual report submitted to the Florida Department of Environmental Protection summarizing Recyclable Materials by type, quantity, and source.
- (iii) At least 30 days prior to the end of each Contract Year during the term of this Contract, the Contractor shall ensure and certify to the City that all required documents are current and on file with the City. Such documents include, but are not limited to, certificates of insurance and performance bond.

6.1.6 Public Education and Information

- (i) The Contractor shall, at no cost to the City, provide an educational presentation and educational materials for distribution at up to two events per Contract Year as requested by the City.
- (ii) The Contractor shall, at no cost to the City, provide tours of the Designated Receiving Facility and/or Designated Processing Facility upon at least seven calendar days' notice

by the City. The Contractor shall provide personnel (trilingual upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the City and the Contractor prior to conducting any tours.

6.1.7 Payment Calculation

(i) The amount owed by the City to the Contractor or owed by the Contractor to the City shall be calculated monthly as set forth below:

(a) The "Southeast USA Region Average" commodity price for each "Material" listed in Exhibit A first posted in the month for which payment is being made in www.secondaryfiberpricing.com and www.secondarymaterialspricing.com shall be obtained. The Southeast USA Region Average for each Material shall be based on the "Index Description" for that Material provided in the attached Exhibit "B" except as specified in this section.

(1) If the Contractor modifies or upgrades the Designated Processing Facility or uses another processing facility with improved processing capabilities, then the Index Description for Newspaper shall change from PS54 to PS56 or similar index representative of sorted residential paper as agreed upon by the contracting parties.

(2) If during the term of this Contract www.secondaryfiberpricing.com and/or www.secondarymaterialspricing.com no longer post or otherwise fail to provide the applicable commodity prices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals typically use to obtain reliable Recovered Material pricing information.

(b) The Southeast USA Region Average shall be converted to an equivalent dollar per ton value for each Material ("Market Value" in Exhibit "B") except as specified as follows:

If the Southeast USA Region Average for PS54 falls below negative \$5.00, then the Market Value assigned to Newspaper and Mixed Paper in Exhibit "B" will equal the disposal cost of Residue at the Designated Processing Facility, currently at negative \$21.00.

- (c) The Average Market Value (AMV) of Program Recyclables shall be calculated as the sum of the products of the Market Value for each Material times the "Material %" noted in Exhibit A for that Material.
- (d) The amount of the AMV credited to the City (City's Share of the AMV) shall be calculated by multiplying the AMV by the associated "% to City" in the table below.

When the AMV is	% to City
<\$30.00	0%
\$30.00 - \$39.99	40%
\$40.00 - \$49.99	40%
\$50.00 - \$59.99	75%
\$60.00 - \$69.99	75%
\$70.00 - \$79.99	75%
\$80.00 - \$89.99	75%
\$90.00 - \$94.99	80%
\$95.00 - \$99.99	80%
\$100.00 - \$104.99	80%
\$105.00 - \$109.99	80%
\$110.00 - \$114.99	80%
\$115.00 - \$119.99	80%
\$120.00 - \$124.99	80%
\$125.00 - \$129.99	85%
\$130.00 - \$134.99	85%
\$135.00 - \$139.99	85%
\$140.00 - \$144.99	85%
\$145.00 - \$149.99	85%
\$150.00 - \$154.99	85%
\$155.00 - \$159.99	85%
\$160.00 - \$169.99	85%
\$170.00 - \$179.99	85%
>\$179.99	85%

- (ii) A Processing Fee of \$85.00 per Ton shall be deducted from the City's Share of the AMV. The Processing Fee shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Processing Fee shall be adjusted based on 75 percent of the percentage change in the Consumer Price Index (CPI) between the month of April in the previous year and the month of April in the current year. The CPI will be the Consumer Price Index

for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. The total adjustment to the Processing Fee in any given year shall not exceed 2 percent of the previous year's Processing Fee. If the CPI Index is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

- (iii) The Net Payment shall be calculated by deducting the Processing Fee from the City's Share of the AMV and then multiplying that number by the total tons of Program Recyclables received at the Designated Receiving Facility during that month, as recorded by the Designated Receiving Facility's scales. A sample calculation of the Net Payment is provided in Exhibit "C".
- (iv) If the Net Payment is greater than \$0.00, the Contractor shall make payment to the City. If the Net Payment is less than \$0.00, the City shall make payment to the Contractor.
- (v) The City or Contractor may conduct a composition study of Program Recyclables delivered to the Designated Receiving Facility prior to transfer or processing (Inbound Program Recyclables). The party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the City. The City reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the Material % provided in Exhibit B shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.

6.1.8 Invoicing and Payment

- (i) No later than the 15th day of each month, the Contractor shall submit a monthly report, in a form acceptable to the City, detailing the payment calculations specified in this Contract.
- (ii) If the City owes the Contractor, the City shall remit payment no later than 30 days from the date of the invoice. All invoices shall include the applicable documentation to substantiate the payment due to Contractor.

- (iii) If the Contractor owes the City, the Contractor shall remit payment within 30 calendar days from the end of the month for which the payment is due.

6.2 Performance Bond.

Prior to commencing services, the Contractor shall furnish to the City, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in an amount equal to six months of Recyclables Processing Service Fees as estimated for Recyclables Processing.

6.3 Liquidated Damages

The City may assess liquidated damages against the Contractor for failing to provide recyclables processing services in compliance with requirements of this Contract. It is hereby agreed that the City may deduct from any monies due, or which may become due to the Contractor, liquidated damages, and not as a penalty, in the following amounts:

- | | | |
|----|---|-----------------------------|
| 1. | Failure to accept Program Recyclables during scheduled receiving hours. | \$500 per unaccepted load |
| 2. | Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes | \$300 per day |
| 3. | Disposing of Recyclable Materials or Recovered Materials without prior approval of the Contract Administrator | \$1,000 per occurrence |
| 4. | Failure to submit timely records and reports | \$200 per calendar day late |
| 5. | Failure to make timely payment to the City | \$200 per calendar day late |

EXHIBIT "B"
Calculation of Average Market Value

The Average Market Value (AMV) of Program Recyclables is calculated by inserting the Southeast USA Region Average commodity price first posted in the month for which payment is being made in www.secondaryfiberpricing.com and www.secondarymaterialspricing.com for each Material and Index Description listed in the table. The Southeast USA Region Average is then converted to an equivalent Market Value (\$/Ton) except in certain cases as specified in this Contract. The Market Value is then multiplied by the Material %. The average market values for all materials are then totaled to provide the AMV for Program Recyclables during that month. For illustrative purposes, the table below calculates the AMV for February 2019.

Material	Index Description	Southeast USA Region Average (Feb '19)	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Newspaper	PS 54	-2.50	(\$2.50)	9.9%	(\$0.25)
Corrugated containers	PS 11	72.50	\$72.50	20.0%	\$14.50
Mixed paper	PS 54	-2.50	(\$2.50)	19.9%	(\$0.50)
Steel cans	sorted, baled and picked up	122.50	\$122.50	1.6%	\$1.96
Aluminum cans	sorted, baled and picked up	55.50	\$1,110.00	1.3%	\$14.43
Plastics #3-#7	Commingled (#3-7, baled and picked up)	-1.50	(\$30.00)	3.8%	(\$1.14)
PET	Baled and picked up	15.88	\$317.60	5.0%	\$15.88
Natural HDPE	Baled and picked up	40.50	\$810.00	1.4%	\$11.34
Colored HDPE	Baled and picked up	18.25	\$365.00	2.1%	\$7.67
Glass (3 Mix)	Delivered	-22.50	(\$22.50)	10.7%	(\$2.41)
Aseptic Containers	None at this time	0	\$0.00	0.7%	\$0.00
Contamination	N/A	N/A	\$0.00	23.6%	\$0.00
				100.0%	\$61.48

EXHIBIT "C"
Sample Calculation of Net Payment

This sample Net Payment calculation is based on the February 2019 AMV as calculated in Exhibit "B".

If,

AMV = \$61.48

Processing Fee = \$85.00

Tons of Program Recyclables (for sample calculation only) = 900

Then,

Net Payment = ((AMV * % to City) – Processing Fee) * Tons

= ((\$61.48 * 75%) - \$85.00) * 900 = (-\$38.89) * 900 = -\$35,001.00

Since the Net Payment is less than \$0.00, the City would make payment to the Contractor of \$35,001.00.