



MEMORANDUM

To: Mayor Bowlin and City Council Members

From: Steve Cross, Co-Interim City Administrator
Joe Vujnich, Co-Interim City Administrator/Director of Planning and Parks
Rick C. Brown, Director of Public Works / City Engineer

Date: April 4, 2019

Re: Ordinance Authorizing a Use and License Agreement with Meridian Waste Services for the Collection of Recyclables on City Property

Background

As previously approved by the City Council, Meridian Waste Services transitioned our recycling program from single-stream to dual-stream recycling effective April 1st. With this change glass is no longer accepted at curbside. To provide a way to recycle glass, the City established four (4) drop-off locations for residents to utilize at the following locations:

- Anniversary Park
- Community Park
- Bluff View Park
- City Hall (East Side at End of Wildwood Avenue)

With the development of the drop-off locations on City property, a use and license agreement has been prepared by City Attorney John Young in order to establish the terms, conditions and requirements relative to the operations and maintenance of these facilities.

Recommendation

It is recommended that the City execute a use and license agreement with Meridian Waste Services for the collection of recyclables on City property.

Reasons for Recommendation

- Execution of the use and license agreement with Meridian is recommended to establish the terms, conditions and requirements relative to the operations and maintenance of the drop-off facilities located on City property.

Therefore, Bill # 2462, which authorizes the Mayor to execute the use and license agreement with Meridian Waste Services, has been prepared for the consideration of the City Council.

Steve Cross, Joe Vujnich or Rick Brown will be available for any questions or comments at the April 8th, 2019, City Council Work Session.

RCB

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A USE AND LICENSE AGREEMENT ON BEHALF OF THE CITY OF WILDWOOD WITH HERE TO SERVE – MISSOURI WASTE DIVISION, LLC d/b/a MERIDIAN WASTE SERVICES, LLC FOR THE COLLECTION OF RESIDENTIAL RECYCLABLES ON CITY PROPERTY

WHEREAS, Resource Management’s Earth City Materials Recovery Facility notified Meridian Waste Services that, as of November 1, 2018, they were no longer accepting single-stream recyclables collected curbside from residential customers; and

WHEREAS, Wildwood desires to transition its residents to dual-stream recycling, which involves the separation of recyclables, with certain items collected at the curb and others taken to identified drop-off locations; and

WHEREAS, Wildwood and Meridian Waste Services desire to install one or more receptacles (the “Recyclables Collection Receptacle”) at locations determined by Wildwood, in its sole discretion, for residents to deposit corrugated paper products and mixed papers (the “Recyclables”); and

WHEREAS, Wildwood and Meridian Waste Services are desirous of entering into this Agreement to protect the public health and safety by providing Meridian a revocable license to install and maintain one or more Recyclables Collection Receptacles for the purpose of collecting the Recyclables deposited therein by Wildwood residents.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That the form, terms, and provisions of the Use and License Agreement by and between the City of Wildwood, Missouri, and Here to Serve – Missouri Waste Division, LLC d/b/a Meridian Waste Services, LLC, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and are hereby approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

Section Two. That the Mayor is hereby further authorized and directed on behalf of and in the name of the City to agree to do any and all other acts and things and to execute and deliver any and all other agreements, documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Agreement, and to perform all of the terms, provisions and conditions of the Agreement. The execution by the Mayor of any agreement, document, instrument, check or certificate referred to in this Ordinance and the Agreement shall be conclusive evidence of the approval thereof and of all of the terms, provisions and conditions contained therein. Any and all acts which the Mayor may do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

Section Three. Savings. Nothing contained herein shall in any manner be deemed or construed to alter,

modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Section Four. Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Five. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

This Bill was passed and approved this ____ day of _____, 2019, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two (2) times prior to its passage.

Presiding Officer

James R. Bowlin, Mayor

ATTEST:

ATTEST:

City Clerk

City Clerk

EXHIBIT A

USE AND LICENSE AGREEMENT

This USE AND LICENSE AGREEMENT (the "Agreement") is made and entered into as of the ___ day of _____, 201___ (the "Effective Date"), by and between Meridian Waste Missouri, LLC, a Missouri limited liability company (hereinafter "Meridian"), and the City of Wildwood, Missouri, a Missouri charter city (hereinafter "Wildwood").

RECITALS:

WHEREAS, Resource Management's Earth City Materials Recovery Facility notified Meridian that, as of November 1, 2018, they were no longer accepting single-stream recyclables collected curbside from residential customers; and

WHEREAS, Wildwood desires to transition its residents to dual-stream recycling, which involves the separation of recyclables, with certain items collected at the curb and others taken to identified drop-off locations; and

WHEREAS, Wildwood and Meridian desire to install one or more receptacles (the "Recyclables Collection Receptacle") at locations determined by Wildwood, in its sole discretion, for residents to deposit corrugated paper products and mixed papers (the "Recyclables"); and

WHEREAS, Wildwood and Meridian are desirous of entering into this Agreement to protect the public health and safety by providing Meridian a revocable license to install and maintain one or more Recyclables Collection Receptacles for the purpose of collecting the Recyclables deposited therein by Wildwood residents.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00), the mutual agreements and covenants hereafter expressed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Meridian, for itself, its successors and permitted assigns and Wildwood, for itself, its successors and permitted assigns, hereby agree as follows:

1. The term of this Agreement shall begin on the Effective Date and shall end on August 1, 2019 (the "Term"). During the Term, Meridian shall have a revocable license to: (i) access certain real property located at 16860 Main Street, Wildwood, MO 63040, or any other parcel of real property owned by Wildwood, for which Wildwood authorizes the placement of a Recyclables Collection Receptacle (collectively and individually, the "Property"), for the purposes set forth in this Agreement; (ii) install one or more Recyclables Collection Receptacles on the Property; (iii) collect and remove Recyclables from a Recyclables Collection Receptacle; and (iv) load the Recyclables onto a transfer trailer for transport to a recycling processing facility. Meridian shall transport the Recyclables from a Recyclables Collection Receptacle to a recycling processing facility.

2. Meridian shall not do or permit anything to be done in or upon the Property tending to create a public nuisance. Meridian shall not use the Property or a Recyclables Collection Receptacle for any purpose that is deemed to be extra hazardous by any insurance

company insuring the Property, or used or occupied in a manner that will result in the cancellation of any policy of insurance on the Property. Subject to the limitations set forth in Section 5.01 below, Meridian shall indemnify, defend and save harmless Wildwood from all suits or actions brought against Wildwood for or on account of, any injuries or damages received, sustained, or occasioned by or on account of the negligent acts or omissions of Meridian, its employees, servants, or agents, incurred in performance of this Agreement, including, but not limited to, the collection and removal of Recyclables by or on behalf of Meridian from a Recyclables Collection Receptacle. The indemnification, defense, and save harmless obligations in this Section 2 shall survive the termination of this Agreement.

3. Revocable License. This Agreement shall become effective upon its execution by all parties hereto. Meridian acknowledges and agrees that Wildwood may revoke this Agreement, and the license to use the Property, at any time. Such a determination shall be made in the sole discretion of Wildwood, and shall not be subject to further review. Meridian further acknowledges and agrees that this Agreement is a mere privilege to go upon the Property for a particular purpose, and that it does not operate to convey any interest, estate, or easement in the Property. Meridian further acknowledges and agrees that this Agreement is not coupled with an interest, and that this Agreement is not necessary to Meridian's possession or enjoyment of any right or privilege as a result of this Agreement or any other agreement between Meridian and Wildwood.

4. Termination. Anything to the contrary contained in this Agreement notwithstanding, either party, by giving the other party seven (7) calendar days prior written notice, shall have the right to terminate this Agreement, with or without cause, in which event this Agreement shall terminate seven (7) calendar days after the date of the notice of termination is deemed delivered. Upon termination of this Agreement, Meridian shall, at its cost, remove all Recyclables Collection Receptacles and shall return the Property to a conditional substantially similar to the condition of the Property on the Effective Date, reasonable wear and tear excepted. If Meridian fails to remove all Recyclables Collection Receptacles from the Property, or fails to return the Property to the condition required herein, Wildwood may perform such work and Meridian shall pay to Wildwood all reasonable costs incurred for such work.

5. Meridian shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the activities of Meridian hereunder, its agents, representatives, employees or subcontractors.

5.01 Insurance. Meridian shall maintain a commercial general liability insurance policy in the amounts provided in this Agreement and shall name Wildwood as an additional insured party. The insurance policy shall be maintained in force at all times during the period of this Agreement. Certificate(s) of Insurance stating that the policy is in full force and effect and that the same will not be altered, amended or terminated without thirty (30) days prior written notice being sent to Wildwood. Notwithstanding anything herein to the contrary, no provision, term, or condition in this Agreement shall constitute, or be construed as, a waiver of the defenses of sovereign immunity, official immunity, or governmental immunity, by whatever name, as set forth in Section 537.600 RSMo. *et. seq.*, for any monetary amount whatsoever, or of any other defenses,

howsoever named, that are, or in the future may become, available to the parties by statute or common law. The cost of such insurance shall be at the expense of Meridian. Meridian shall maintain insurance coverage limits no less than:

1. Workers' Compensation for statutory limits and Employer's Liability minimum \$500,000 limit.
2. Comprehensive General Liability or Broad Form Comprehensive General Liability to cover claims which may arise from operations under this Agreement. The policy shall include, but not be limited to, protection for the following hazards:
 - a. Premises and Operations – Bodily Injury & Property Damage Liability
 - b. Independent Contractors Coverage
 - c. Personal Injury Liability and Advertising Injury Liability
 - d. Broad Form Property Damage

The above policy shall be written with limits of at least \$1,000,000.00 each occurrence and \$2,000,000 aggregate.

3. Business Automobile Policy (Comprehensive Automobile Liability Insurance) provides coverage for all owned, non-owned, and hired vehicles. Minimum limits should be at least \$1,000,000 Each Occurrence Bodily Injury Liability and Property Damage Liability.
4. Umbrella/Excess Liability – Limit of \$1,000,000 which will be excess of the primary limits for General Liability, Auto Liability and Employer Liability.

5.02 Deductions and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Wildwood.

5.03 Other Insurance Provisions. Meridian shall also obtain and pay for insurance policies that contain, or are endorsed to contain, the following provisions:

1. General Liability and Motor Vehicle Liability Coverages.
 - a. Contingent or Protective Liability and Property Damage to protect Meridian from any and all claims arising from the operations of any subcontractor employed by Meridian.
 - b. Protective Liability Policy for operations of Meridian or any subcontractor under this Agreement.

- c. The coverage shall be for a minimum of \$2,000,000, and shall contain no special limitations on the scope of protection afforded to Wildwood, its officers, elected or appointed officials, or employees.
- d. Meridian's insurance coverage SHALL BE PRIMARY INSURANCE as respects Wildwood, its officers, elected or appointed officials, or employees. Any insurance or self-insurance maintained by Wildwood, its officers, elected or appointed officials, or employees shall be excess of Meridian's insurance and shall not contribute with it.
- e. Meridian's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.04 Acceptability of Insurers. Insurance is to be placed with insurers with a A.M. Best's rating of no less than A:VI.

5.05 Verification of Coverage. Meridian shall furnish Wildwood with certificates of insurance and an additional insured endorsement ("AIE") issued by each applicable insurance carrier to evidence the coverages required in this Section 5, which AIE shall utilize the Standard ISO Additional Insured Endorsement, 1985 Broad Form. The certificates and AIE for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, and are to be received and approved by Wildwood before services commence. Wildwood reserves the right to require complete, certified copies of all required insurance policies, at any time.

6. Notices. All notices, requests, demands or other communications with respect to this Agreement, whether or not herein expressly provided for herein, shall be in writing and shall be deemed to have been delivered upon receipt or upon refusal to accept delivery after being either mailed by United States registered mail, postage prepaid, return receipt requested, or deposited with an overnight courier service for next-day delivery to the parties at the following addresses (the addresses may be changed by either party by giving the same written notice):

If to City:
Attn: City Administrator
16860 Main Street
Wildwood, MO 63040

If to Meridian:
13524 NW Industrial Dr.
Bridgeton, MO 63044
ATTN: Kevin O'Brien

7. Entire Agreement. The Recitals are material statements of fact and are incorporated in this Agreement by this reference. This Agreement comprises the entire understanding between the parties, shall be governed and enforced pursuant to the laws of the State of Missouri, may not be amended except by agreement in writing, and may not be assigned by either party without the prior written consent of the other party hereto. Further, the license granted herein may not be assigned or sublicensed by Meridian without the prior written consent of Wildwood.

8. Headings. The headings contained herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

9. Severability. If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable or shall become a violation of a local, state or federal law, then the same as so applied shall no longer be a part of this Agreement, but the remainder of the Agreement and the application of the affected provisions to other persons and circumstances shall not be affected thereby, and this Agreement as so modified shall continue in full force and effect unless the elimination of such provision materially and adversely affects the consideration either party is to receive under this Agreement and/or the ability of either party to perform its obligations hereunder.

10. Attorney's Fees. If any action at law or in equity shall be brought to recover any sums due under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

11. Authorization and Capacity. Wildwood and Meridian each represent to the other that it has the full right, power and authority to enter into this Agreement and to fully perform its obligations. Each person executing this Agreement warrants and represents that he has the authority to execute this Agreement in the capacity stated and to bind Wildwood and Meridian, respectively, except as otherwise specifically set forth herein. Each person will furnish to the other upon execution copies of such resolutions, ordinances and certificates as either shall require in order to confirm such authority and capacity of Wildwood and Meridian and of the persons who are to execute documents in connection with the execution of this Agreement.

12. Execution in Counterparts. This Agreement may be signed in any number of counterparts, and if so signed and delivered, the counterparts, taken together and bearing the parties' signatures, shall together be deemed to be an original and shall constitute but one and the same binding Agreement.

[The remainder of this page is intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SEAL

CITY OF WILDWOOD, MISSOURI

By: _____
Jim Bowlin, Mayor

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this _____ day of _____, 2018, before me appeared JIM BOWLIN, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF WILDWOOD, MISSOURI, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed in behalf of said City, by authority of its City Council; and said JIM BOWLIN acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State the day and year first above written.

Notary Public

My Commission Expires:

MERIDIAN WASTE MISSOURI, LLC

By: [Signature] Kevin O'Brien
Area President, Manager

STATE OF Missouri)
) SS.
COUNTY OF St. Louis)

On this 28 day of March, 2019, 2018, before me personally appeared Kevin O'Brien, to me personally known, who, being by me duly sworn, did say that he is a Manager of MERIDIAN WASTE MISSOURI, LLC, a Missouri limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its Members; and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

[Signature]
Notary Public

My Commission Expires: 12-17-20

