



## 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 8, 2019

Re: Agreement Authorizing a License Agreement with Waste Connections for Residential Solid Waste, Recycling, and Yard waste Collection, Hauling, Processing and Disposal

The Department issued a request for proposals (RFP) for hauling and disposal of residential solid waste, recycling, and yard waste on February 11, 2019. In response, on March 8<sup>th</sup>, we received three (3) proposals from interested contractors as follows:

- Gateway Disposal
- Meridian Waste
- Waste Connections

Subsequently, the Department provided the proposals to the Admin / Public Works Committee for review at a special meeting that was held on March 12, 2019.

The term of the proposed new license agreement is for two (2) years with three (3) optional one-year extensions. The RFP required the contractors to provide a price quotation for a total of five (5) years for basic trash service, which included either dual-stream or single-stream recycling. In addition, senior citizens would receive a 15% discount. For your information the price quotation sheets received are attached as **Exhibit A**. As can be seen, the price quotation provided by Waste Connections was the lowest of the three (3) contractors for basic service, which includes trash and recycling. In fact, the rates quoted by Waste Connections for basic trash service are lower than customers are currently paying.

At the March 12<sup>th</sup> meeting, there was much review and discussion regarding the merits of the proposals received, as well as the future of our recycling program. At the meeting there was the opportunity provided for each contractor to address the Committee and respond to questions and comments. The merits and advantages of dual-stream versus single-stream recycling were also discussed in much detail. Ultimately, the Committee chose to schedule another meeting, which was held on March 22<sup>nd</sup>. At that meeting, a motion was unanimously approved to select Waste Connections as our new hauler and switch back to single-stream recycling.

### **Recommendation**

The Administration/Public Works Committee is recommending the selection of Waste Connections for a new license agreement for residential solid waste, recycling, and yard waste collection, including hauling, processing and disposal, which will be effective on August 1<sup>st</sup>. The new license agreement would be for two (2) years with three (3) optional one-year extensions. In addition, the Committee is recommending that our recycling program switch back to single-stream recycling effective with the start of the new agreement, likely the week of August 5<sup>th</sup>.

### **Reasons for Recommendation**

- Waste Connections price quotation was competitive and their rate for basic service was lowest of the three (3) proposals received.
- Waste Connections was able to demonstrate a record of excellent customer service based on their current contracts with St. Louis County and other municipalities.

Therefore, Bill # 2463, which authorizes the Mayor to execute the license agreement with Waste Connections, has been prepared for the consideration of the City Council.

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

RCB

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR OF THE CITY OF WILDWOOD, MISSOURI TO EXECUTE A SOLID WASTE LICENSE AGREEMENT ON BEHALF OF THE CITY OF WILDWOOD WITH WASTE CONNECTIONS OF MISSOURI, INC. FOR RESIDENTIAL SOLID WASTE, RECYCLING AND YARD WASTE COLLECTION, HAULING AND DISPOSAL WITHIN THE CITY OF WILDWOOD**

**WHEREAS**, Missouri Revised Statutes Sections 70.220 through 70.325, as amended, authorize political subdivisions to contract and cooperate with any private corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and

**WHEREAS**, City, pursuant to Section 230.250 of the Code of Ordinances of the City of Wildwood, Missouri (the “Code”), has determined it to be to the benefit of the health safety and general welfare of the residents of the City to enter into an agreement granting the exclusive right to collect, transport, process and remove solid waste within the limits of the City, subject to the limitations and provisions therein; and

**WHEREAS**, consistent with Chapter 230 of the Code, the City published a Request for Proposal for Residential Solid Waste, Recycling and Yardwaste Collection, Hauling, Processing and Disposal, and Addendum Nos. 1, 2 and 3 thereto dated March 4, 2019, copies of which are on file in the Office of the City Clerk, and incorporated by reference herein (collectively, the “RFP”); and

**WHEREAS**, Waste Connections of Missouri, Inc., (hereinafter “Contractor”) submitted to the City a timely proposal dated March 8, 2019, in response to the RFP (the “Proposal”); and

**WHEREAS**, after due evaluation of the proposals received, City has determined that it is in the best interest of the City and its residents to grant a license to Contractor; and

**WHEREAS**, Contractor is qualified to provide solid waste collection, disposal and recycling services, and City has agreed to contract with Contractor to provide such services for the City and its residents upon the terms and conditions hereinafter set forth.

**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 Solid Waste License Agreement by and between the City of Wildwood, Missouri, and Contractor, 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**

## **SOLID WASTE LICENSE AGREEMENT**

THIS SOLID WASTE LICENSE AGREEMENT (“License Agreement”) being entered into this \_\_\_\_\_ day of April, 2019, by and between THE CITY OF WILDWOOD, a municipal corporation located in St. Louis County, Missouri (“City”) and WASTE CONNECTIONS OF MISSOURI, INC., a Delaware corporation (“Contractor”).

WHEREAS, Missouri Revised Statutes Sections 70.220 through 70.325, as amended, authorize political subdivisions to contract and cooperate with any private corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and

WHEREAS, City, pursuant to Section 230.250 of the Code of Ordinances of the City of Wildwood, Missouri (the “Code”), has determined it to be to the benefit of the health safety and general welfare of the residents of the City to enter into an agreement granting the exclusive right to collect, transport, process and remove solid waste within the limits of the City, subject to the limitations and provisions therein; and

WHEREAS, consistent with Chapter 230 of the Code, the City published a Request for Proposal for Residential Solid Waste, Recycling and Yardwaste Collection, Hauling, Processing and Disposal, and Addendum Nos. 1, 2 and 3 thereto dated March 4, 2019, copies of which are on file in the Office of the City Clerk, and incorporated by reference herein (collectively, the “RFP”); and

WHEREAS, Contractor submitted to the City a timely proposal dated March 8, 2019, in response to the RFP which proposal is on file in the office of the City Clerk of the City and incorporated by reference herein (the “Proposal”); and

WHEREAS, after due evaluation of the proposals received, City has determined that it is in the best interest of the City and its residents to grant a license to Contractor; and

WHEREAS, Contractor is qualified to provide solid waste collection, disposal and recycling services, and City has agreed to contract with Contractor to provide such services for the City and its residents upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the mutual agreements and covenants hereinafter contained, City, for itself, its successors and assigns, and Contractor, for itself, its successors and assigns, each intending to be legally bound, hereby agree as follows:

1. Subject to the terms of this License Agreement, the Request for Proposal (“RFP”) and Chapter 230 of the Code, City grants to Contractor an exclusive license for the collection, transportation, processing and disposal of all residential solid waste (including recyclables) (“Wastehauling”) within the Service Area as set forth in Appendix D to the RFP. City may, in its sole discretion, enforce the exclusivity provisions of this License Agreement against third-party violators, taking into account the cost of doing so and other factors. Contractor may independently enforce the exclusivity provisions of this License Agreement against third-party violators, including, but not limited to, seeking injunctive relief and/or damages, and City shall use reasonable efforts to cooperate in such enforcement actions brought by Contractor.

2. Notwithstanding anything herein to the contrary: (a) Contractor shall have no obligation to collect any material which is or contains, or which Contractor reasonably believes to be or contain, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations (“Excluded Waste”); (b) if Contractor finds what reasonably appears to

be discarded Excluded Waste, Contractor shall promptly notify the City and the producer of the Excluded Waste, if the producer can be readily identified; and (c) title to and liability for any Excluded Waste shall remain with the producer of the Excluded Waste, even if Contractor inadvertently collects or disposes of such Excluded Waste.

3. Customers must comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials as reasonably provided by Contractor. If any customer fails to do so, Contractor may decline to collect such materials without being in breach of the Agreement; provided that Contractor shall have provided notice to the City of any decision to decline collection of such materials consistent herewith within seven (7) days thereof. Contractor shall not be responsible for and has not made any representation regarding the ultimate recycling of such recyclable materials by any third party facilities. Additionally, Contractor may transport recyclable materials to a bailing facility and remove all contaminated recyclables so that contaminated recyclables are not bailed and delivered to the recycling facility. Contractor will arrange for disposal of the contaminated recyclables which are separated at the bailing facility.

4. Except in the case of Contractor's negligence or willful misconduct, Contractor shall not be liable for any damages to pavement or other driving surfaces resulting from the weight of its trucks and equipment.

5. Notwithstanding anything herein to the contrary, in the event that equipment becomes lost, unsightly, unsanitary, broken, or unserviceable because of the acts or omissions of a customer (excluding normal wear and tear), Contractor shall have the right to charge the customer for the resulting repairs or replacement and demand that such amounts be paid to Contractor upon demand.

6. Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, customers shall have care, custody and control of the equipment while at the service locations. Customers shall not overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customers must provide unobstructed access to the equipment on the scheduled collection day. The word “equipment” as used in this Agreement shall mean all containers used for the storage of solid waste.

7. Contractor shall invoice each customer monthly according to the Price Quotation Sheet set forth in the Proposal. Each customer must pay all amounts due within 30 days of each invoice date. Contractor may suspend service to any customer that fails to timely pay all amounts due; provided, however, Contractor shall provide notice to the City prior to suspending service to any customer.

8. The recycling rebate payable by Contractor to City as set forth on the Price Quotation Sheet in the Proposal shall increase by ten cents (\$0.10) for every ten dollar (\$10) increase in the recycling rebates published by                      for the Chicago or Southwest markets. Likewise, the recycling rebate payable by Contractor to City shall decrease by ten cents (\$0.10) for every ten dollar (\$10) decrease in the recycling rebates published by                      for the Chicago or Southwest markets.

9. Contractor shall provide containers and collection of solid waste and recyclables for up to six (6) City sponsored public events (including Celebrate Wildwood and the Barbeque Bash). The Contractor shall not charge the City for these services.

10. Contractor will provide monthly and quarterly reports regarding the Wasthauling services (e.g., customer participation; volumes; etc.).

11. The term of this license shall be for a period of two (2) years from August 1, 2019, with three (3) additional one (1) year extensions available at the sole option of the City, and subject to the rights of the City Council to terminate or revoke, as hereinafter provided. In the event of such extension, all terms and conditions of the License Agreement shall be in full force and effect during the extension period, subject to the following:

- (a) The rates to be paid to the Contractor during the extension period shall be as listed on the Price Quotation Sheet set forth in the Proposal; and
- (b) The Contractor shall post with the City a Performance Bond procured at its expense for the period of extension and the amount of the Performance Bond shall be in the amount of twenty (20) percent of the annual compensation to be paid to the Contractor under this License Agreement, up to a maximum of \$1,000,000.00, during the extension period.

This exclusive license shall authorize Contractor to provide Wastehauling only in the geographic area within the Service Area licensed to Contractor by this Agreement. Except as may be provided herein, Wastehauling within the City outside of any licensed Service Area is prohibited.

12. Contractor shall provide the following prior to acceptance and execution of this License Agreement:

- (a) Certificates of insurance required pursuant to Section 11 of this Agreement; and
- (b) The Contractor shall also furnish to the City a Performance Bond in favor of the City, specified by name, in the amount of twenty (20) percent of the annual compensation to be paid to the Contractor, up to a maximum of

\$1,000,000.00. The total number of single family homes stated in Section C.2 shall be used to establish the number of homes potentially served under this License Agreement. The Performance Bond guaranteeing performance shall remain in effect for the term of the Agreement and shall be delivered upon execution of this License Agreement. A new Performance Bond shall be delivered to the City at least thirty (30) days prior to the expiration date of an existing bond.

13. Contractor acknowledges and agrees that this License Agreement shall not preclude Wastehauling not within the scope of this license, and is subject to Section 260.247, RSMo., as amended. In no event shall the City, or its employees or officers, be liable for any claim relating to any violation by any person or entity of the exclusivity or Service Area granted by this License Agreement.

14. The specific terms, conditions, promises, specifications and covenants made by Contractor by this License Agreement are as provided in this License Agreement, the RFP (including the Appendices thereto) and the Proposal. To the extent there is any conflict in the terms of this License Agreement and the Proposal, the RFP and the Code of the City of Wildwood, this License Agreement shall govern and prevail. To the extent there is any conflict in the terms of the RFP and the Proposal, the Proposal shall govern and prevail and the exceptions set forth in the Proposal shall apply.

15. The Contractor agrees and acknowledges that Here to Serve – Missouri Waste Division, LLC d/b/a Meridian Waste Services (hereinafter “Meridian”) purportedly acquired Eleven Thousand (11,000) 64-gallon solid waste containers and delivered such containers to residential customers in the City during March 2019 for the change to dual-stream recycling.

These containers will remain in the possession of residential customers upon commencement of the term of this License Agreement and will continue to be used under this License Agreement. The Contractor agrees to pay to Meridian, on or before July 1, 2019, an amount equal to Forty-three Dollars and 22/100 Cents (\$43.22) per container for all such containers purchased by Meridian in new condition between February 1, 2019 and April 4, 2019, which may include up to 11,000 containers. The Contractor shall take possession of any such containers that were not delivered to residential customers. The foregoing purchase obligations are subject to Meridian Waste Services, LLC transferring to Contractor free and clear title to the containers via a mutually agreeable Bill of Sale or similar instrument, along with accurate invoices proving the purchase dates of each container and matching serial numbers.

16. Any privilege granted herein is to be held in personal trust by the Contractor. It cannot, in any event, be sold, transferred, leased, assigned or disposed of, in whole or part, either by forced or involuntary sale or by a voluntary sale, merger, consolidation or otherwise without prior written consent of the City Council of the City.

No subcontract shall under any circumstances relieve Contractor or the surety of liability and obligation under the License Agreement, and all transactions shall be made through Contractor. Subcontractors shall be recognized and dealt with only as workers and representatives of Contractor.

17. This License Agreement shall be binding upon Contractor and all of its successors, lessors and/or assignees as may be approved by City pursuant to this License Agreement.

18. This License Agreement and the terms and conditions herein shall include and incorporate the terms and provisions of Chapter 230 of the Code, and any amendments thereto, except as said provisions are in conflict with any applicable statute of Missouri or the United States or rule or regulation of any state or federal agency exercising authority over solid waste disposal. Nothing herein shall be construed as an abrogation or limitation by the City of any of its police powers, and irrespective of this License Agreement, the City may amend or enact any legislation or law within the scope of its authority as a Charter city of the State of Missouri.

19. City reserves the right to terminate and/or revoke this License Agreement, which includes the provisions of the RFP, and the rights and privileges of Contractor in the event that Contractor:

(a) Violates any material provision of this License Agreement and fails to cure such violation within 10 days following Contractor's receipt of written notice from the City detailing the violation. All terms, conditions and specifications of the License Agreement, the RFP and the Proposal are considered material, and failure to perform any part of the License Agreement, RFP or Proposal shall be considered a breach of the License Agreement; or

(b) Fails to perform the services required under this License Agreement and fails to cure such failure within 10 days following Contractor's receipt of written notice from the City detailing the failure; or

(c) Fails to provide or maintain in full force and effect, the liability indemnification coverages or Performance Bond as required herein and fails to cure such failure within 10 days following Contractor's receipt of written notice from the City detailing the failure; or

(d) Is found by a court of competent jurisdiction, or by final order of any state or federal agency, to be in violation of any regulation, order or ruling of any regulatory body having jurisdiction over Contractor relative to the collection, disposal or processing of solid waste; or

(e) Evades or attempts to evade any provision of this License Agreement or the provisions of Chapter 230 of the Code; or

(f) Shall be adjudged bankrupt, either by voluntary or involuntary proceedings, and in no event shall this License Agreement be, or be treated as, an asset of Contractor after adjudication of bankruptcy.

(g) Is found by a court of competent jurisdiction to be in violation of City Ordinance.

In the event that the public safety or welfare requires Contractor to remedy a condition in a quicker manner, the City shall notify Contractor of the condition and Contractor shall remedy the condition as soon as reasonably possible.

The foregoing provisions of this Section shall be in addition to Section C. 13 in the RFP entitled "Contract Termination".

20. The City will charge Contractor the amounts specified in Table 1 in paragraph D.9 of the RFP, when Contractor has repeatedly failed to meet any of the specified performance standards after Contractor received written notice of such failure(s) and at least one (1) business day to cure any such failure(s). City will not charge Contractor such amounts if Contractor responds timely to City's notification that Contractor failed to comply with any performance standard. If charges are assessed, City must invoice Contractor for such charges on a quarterly basis, and Contractor shall pay such invoice within twenty (20) days of receipt. Failure to timely

pay such properly invoiced amounts within 10 days after Contractor receives written notice of any past due amounts shall be a basis for termination of this License Agreement by the City without any further notice or opportunity to cure being required.

21. The Contractor shall, at all times, fully indemnify, hold harmless, and defend the City and its officers, members, agents, and employees from and against any and all claims and demands, actions, causes of action, and cost and fees of any character whatsoever made by anyone whomsoever on account of or in any way growing out of the performance of this License Agreement by the Contractor and its employees, or because of any act or omission, neglect or misconduct of the Contractor, its employees and agents or its subcontractors including, but not limited to, any claims that may be made by the employees themselves for injuries to their person or property or otherwise.

Such indemnity shall not be limited by reason of the enumeration of any insurance coverage herein provided.

Nothing contained herein shall be construed as prohibiting the City, its directors, officers, agents, or its employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them.

The Contractor shall likewise be liable for the cost, fees and expenses incurred in the City's or the Contractor's defense of any such claims, actions, or suits.

Nothing contained herein shall be deemed a waiver of sovereign immunity by the City.

The foregoing provisions of this Section shall supersede and take the place of Section C. 24 of the RFP entitled "Indemnification".

22. Contractor shall procure and maintain for the duration of the License Agreement, including any extension thereof, insurance against claims for injuries to persons or damages to

property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors, including those insurance coverages set forth below. All such insurance policies shall name the City as an ADDITIONAL INSURED with the exception of the Worker's Compensation Policy. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice, or by such other method approved by the City, has been given to the City. Insurance is to be placed with insurers with a Bests' rating of no less than A:VI. The cost of such insurance shall be included in the Contractor's proposal.

#### MINIMUM LIMITS OF INSURANCE

Contractors shall maintain limits no less than:

- a. Workers' Compensation for statutory limits and Employer's Liability coverage with a minimum \$1,000,000 limit.
- b. Comprehensive General Liability or Broad Form Comprehensive General Liability to cover claims which may arise from operations under this License Agreement. The policy shall include, but not be limited to, protection for the following hazards:
  - i. Premises and Operations – Bodily Injury & Property Damage Liability
  - ii. Independent Contractors Coverage
  - iii. Products & Completed Operations Liability coverage to apply one year beyond completion and acceptance of the work specified by this License Agreement.
  - iv. Personal Injury Liability and Advertising Injury Liability
  - v. Broad Form Property Damage

- vi. Contractual Liability
- vii. Explosion, collapse, and underground damage, if applicable

The above policy shall be written with limits of at least \$3,000,000 per occurrence, and \$3,000,000 aggregate, which may be satisfied by umbrella/excess liability policies.

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

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administrative and defense expense.

#### OTHER INSURANCE PROVISIONS

The Contractor shall also obtain and pay for insurance policies that contain, or are endorsed to contain, the following provisions:

- a.

- b. The Contractor's insurance coverage SHALL BE PRIMARY INSURANCE as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

The Contractor'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.

#### VERIFICATION OF COVERAGE

Contractor shall furnish the City with certificates of insurance and an additional insured endorsement ("AIE") issued by each applicable insurance carrier to evidence the coverages required in this Exhibit, which AIE shall utilize the Standard ISO Additional Insured Endorsement, 1985 Broad Form. The certificates 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 the City before services commence.

#### SUBCONTRACTORS

Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates of each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

23. Authorization and Capacity. The City and Contractor 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 License Agreement warrants and represents that each

has the authority to execute this License Agreement in the capacity stated and to bind the City and Contractor, respectively, except as otherwise specifically set forth herein. Each person will furnish to the other such ordinances, resolutions, certificates and agreements as are reasonably necessary in order to confirm such authority and capacity of the City and Contractor and the persons who are to execute this License Agreement.

24. Notices. Except during the continuance of a known interruption of mail delivery service, in which event personal delivery or another means of delivery reasonably calculated to result in verifiable delivery shall be used, all notices, requests, demands and other communications required hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally or sent by registered or certified mail, postage prepaid, and addressed as set forth below:

**IF TO CONTRACTOR:**

Waste Connections of Missouri, Inc.  
196 NW Industrial Ct.  
Bridgeton, Missouri 63044  
Attn: Eric Bergin, Division Vice President

**IF TO CITY:**

City of Wildwood, Missouri  
16860 Main Street  
Wildwood, Missouri 63040  
Attn: Director of Public Works

Any party hereto may change the address to which notices are to be addressed by giving the other party notice, in the manner herein set forth.

25. Headings. The headings of this License Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this License Agreement or any part of it.

26. Severability. If any provisions of this License 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 part of this License Agreement, but the remainder of the License Agreement and the application of the affected provisions to other persons and circumstances shall be not be affected thereby, and this License 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 License Agreement and/or the ability of either party to perform its obligations hereunder.

27. Entire Agreement. The License Agreement constitutes the entire agreement between the parties with regard to the subject matter herein, and supersedes all prior agreements, negotiations or discussions and may not be modified or amended except by an instrument in writing signed by all the parties.

28. Amendments. This License Agreement cannot be modified or amended except by written agreement of the parties hereto.

29. Governing Law. This License Agreement shall be governed by and construed in accordance with the laws of the State of Missouri excluding its principles of conflicts of laws and

the parties hereto irrevocably commit to the jurisdiction and venue of the courts of St. Louis County to resolve any disputes arising hereunder or related hereto.

30. Attorney's Fees. In the event that either party hereto brings an action or proceeding for a declaration of the rights of the parties under this License Agreement or for any alleged breach or default thereof, or for any other acts arising out of this License Agreement, the prevailing party to such action shall be entitled to an award of all its costs, including reasonable attorney's fees, and any court costs incurred in said action or proceeding in addition to other damages or relief awarded, regardless of whether final judgment is entered in such action or proceeding.

31. Force Majeure and Other Extensions of Time for Performance. Neither Contractor nor the City nor any successor in interest shall be considered in breach or default of their respective obligations under this License Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, for purposes of this Agreement, legal proceedings, orders of any kind of any court or governmental body, strikes, lockouts, labor disputes, labor shortages, riots, acts of God, epidemics, landslides, lightning, earthquake, fire or other casualties, breakage, explosions, storm washouts, droughts, tornadoes, cyclones, floods, adverse weather conditions, unusually wet soil conditions, war, invasion or acts of a public enemy, serious accidents, failure of utilities, governmental restrictions or priorities, shortage or delay in shipment of material or fuel, any court order or judgment resulting from any litigation affecting the validity of this Agreement, or other like causes beyond the responsible party's reasonable control. The party claiming any extension caused by force majeure shall, within thirty (30) days after the event of

force majeure, notify the other party in writing of the occurrence of such event and shall have the burden of proof in establishing such cause.

32. Any claimed breach of this License Agreement by City shall be asserted by Contractor within sixty (60) days thereof in writing and filed with the City Clerk. Before any legal action or proceeding may be filed in any court of jurisdiction, Contractor agrees to exhaust its administrative remedy pursuant to a petition and proceedings filed with the City under its Code of Administrative Procedure, Chapter 150 of the Code, which shall have jurisdiction thereof.

33. Terms not defined herein shall have the same meaning as set forth in Chapter 230 of the Code.

IN WITNESS WHEREOF, the parties hereto execute this License Agreement the day and year first above written.

CITY OF WILDWOOD

By: \_\_\_\_\_  
James R. Bowlin  
Mayor, City of Wildwood

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

Dated: April \_\_\_\_\_, 2019

Contractor: \_\_\_\_\_

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

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

(SEAL)

ATTEST:

\_\_\_\_\_